A STUDY OF TEACHER TENURE IN MICHIGAN WITH AN ANALYSIS OF SELECTED TENURE CASES TO DETERMINE THE APPARENT CAUSE FOR SUCCESS OR FAILURE BY LOCAL BOARDS OF EDUCATION

By

Richard Harold Escott

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ABSTRACT

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This study reviews the history of tenure in Michigan giving special attention to the Michigan State Tenure Commission from its formation in 1937 through June of 1969. This review focuses upon several significant persons who are considered to be key individuals in the organization of the tenure commission. This study also chronologically reviews the fifty-three decisions reached by the commission through June of 1969. Three decisions were analyzed in depth to indicate the apparent cause for success, or in one case, failure by the local boards of education.

The research was based primarily upon a review of the minutes of the Michigan State Tenure Commission. Since these minutes were brief and at times incomplete, interviews were held with persons who played significant roles in the work of the tenure commission. In analyzing specific decisions reached by the tenure commission, the opinions as written by tenure commissioners were reviewed. Interviews were also conducted with key participants in each of the selected cases. Further, an attorney was interviewed and he gave invaluable assistance in helping the writer understand the legal terminology and procedures.

Several major conclusions have been reached in this study. These may be covered in a few brief statements. First, both practicing administrators and boards of education need more knowledge about and help in preparing tenure cases. In this regard an attorney is a necessary consultant when it appears that the filing of charges against a tenured staff member may be necessary. Secondly, more studies should be done in this area in order to keep administrators informed on current tenure interpretations. Thirdly, the members of the tenure commission should, because of the way the current commission is structured, decide cases based only upon what they consider to be just cause and not legal technicalities.

These conclusions led this writer to recommend certain changes in the tenure law. First, two attorneys should be added to the tenure commission to assist in writing opinions and to assist in interpreting the law. Also, the tenure commission should have the authority to appoint hearings officers who will attend hearings conducted at the local level. These hearings officers could then submit an independent brief to the tenure commission which would make the expensive and time consuming hearing <u>de novo</u> less necessary.

The tenure law as presently interpreted in Michigan is serving one of the basic purposes for which it was developed. That is, it is giving teachers and administrators guidelines in providing for a just and orderly dismissal. Its second purpose, to reduce the time and money spent in dismissal proceedings, has not succeeded. Over fifty percent of all

tenure decisions that have been reached by the Michigan State Tenure Commission have been appealed.

It is evident that some type of protection against arbitrary dismissal is needed. It is not clear to this writer whether the tenure act as presently interpreted in Michigan is the answer.

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I wish to express my sincere appreciation to those individuals whose help and inspiration were helpful to me and who spent a great deal of time and effort on my behalf. The members of my graduate committee, Drs. Fred Vescolani, Dale Alam, James McKee, and especially Troy Stearns, who served as my chairman, were especially stimulating and encouraging over the past several years.

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In 1886 the state of Massachusetts enacted a teacher tenure law which allowed school districts to contract with teachers for a period in excess of one year. In the intervening eighty-three years tenure legislation of one sort or another was adopted covering the majority of teachers in the United States. In Michigan, tenure legislation was first adopted in 1937 but was subject to voter approval in each local school district. In 1964 the Michigan Legislature made the Teachers' Tenure Act apply to all districts equally.

Despite thirty-two years of tenure legislation in Michigan, as of June 1969, only fifty-three decisions have been rendered by the State Tenure Commission relating to the Michigan Tenure Act. Through June 1965, twenty-three cases were decided by the State Tenure Commission which resulted in nineteen decisions for the appellant, or teacher, and four decisions rendered in favor of the appellee, or school district. In October, 1965 and then again in November of 1965 two additional decisions were rendered and both were in support of the teacher.

These early decisions no doubt influenced the negative opinions of some forty-eight administrators and/or board

secretaries who reflected their views on tenure in a questionnaire circulated by Jack E. Meeder.[1] In addition, some thirty-three school board members and/or administrators had no comment to make which would reflect their views on tenure. This would indicate a need for public school administrators and school board members not only to understand the tenure law as it exists today, but to historically view the function of the State Tenure Commission in order to reflect a more positive attitude toward tenure than has been evidenced in the past.

Purpose of the Study

The purpose of this study is to: (1) review historically the function of the Michigan State Tenure Commission from its inception in 1937 through its legislative change in 1964, up to and including May, 1969, and (2) to review selected decisions rendered by the commission since the legislation to provide mandatory state-wide tenure was passed in Michigan with a view toward finding the apparent causes for success or failure on the part of the appellee, or board of education.

The Need for the Study

The change in tenure legislation which occurred in Michigan in 1964 had an immediate effect on school administrators in over 1,000 school districts which then came under

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[1]Jack E. Meeder, "A Study of Attitudes and Problems Relating to State-Wide Tenure and Compulsory Bargaining for Teachers in Michigan", (unpublished dissertation, Michigan State University, East Lansing, Michigan), (1968), p. 75.

the provisions of the mandatory tenure law. Prior to this change, only fifty-nine school districts had adopted the permissive Teachers' Tenure Act. Through 1964 some twelve tenure decisions out of seventeen rendered in favor of the appellant, or teacher, were decided because of inadequate preparation and/or failure to adhere to the law on the part of the appellee, or board of education.[2]

Recent cases reflect that the school boards are still not fulfilling the legal requirements of the act as evidenced in the cases of John R. Veenstra v. Frankenmuth, 1966, John Hutchinson v. Colon, 1967, Evelyn Weckerly v. Mona Shores, 1968, and Dorothy Madison v. Lakeview, 1969. For this reason it is important that boards of education and public school administrators become familiar with the workings of the State Tenure Commission and review previous decisions rendered in an effort to determine legal interpretations of existing legislation, as well as apparent causes for success or failure on the part of the appellee in similar decisions rendered in the past. This should enable public school administrators to be better prepared and more knowledgeable when they move to recommend tenure action against a classroom teacher under their supervision.

Assumptions of the Study

The need for this study is based upon the following five assumptions, realizing at the same time that these assumptions

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[2]See Appendix A.

are open to the usual doubts or questions of careful researchers.

1. That public school administrators will continue to seek the dismissal of selected tenure teachers in increasing numbers each year. The assumption has some basis in fact when one reviews the increasing number of tenure decisions issued each year.[3]
2. That, with approximately 96,000 public school teachers employed in Michigan in 1969, there will continue to be a need to dismiss some teachers who have achieved tenure status.
3. That a study of this nature will have relevance for all school administrators who are faced with the necessity of preparing for a tenure hearing before the State Tenure Commission.
4. That this study will be important for members of local boards of education in Michigan who must act in each tenure case with the knowledge that in all probability their decision, if against the teacher, will be appealed to the tenure commission.
5. That this study will be relevant for school board members who must recognize the legal involvement possible when a teacher who has the protection of the Michigan Tenure Law is dismissed.

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[3]See Appendix B.

Definitions of Terms Used

1. Tenure - Permanent appointment of instructional personnel to the professional staff.[4] Persons having such appointments could be dismissed only by following certain specified procedures. Those procedures include written notice filed and given to the teacher, reasons for dismissal, a hearing by the local board of education, and the right of appeal to the tenure commission.

2. The Tenure Commission - a board of review first appointed by Governor Frank Murphy in 1937. This commission was established to speed up decisions and foster economy in appeals by aggrieved teachers since court actions are usually costly and time consuming. This board is composed of five members: one a member of a board of education, two are teachers with tenure, and one is neither a teacher nor a board member.

3. Appellant - the party who takes an appeal from one court of jurisdiction to another.[5] In this study, appellant refers to the teacher who appeals a decision from the local board of education to the State Tenure Commission.

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[4]Edward W. Smith, Stanley W. Krouse, and Mark M. Atkinson, The Educator's Encyclopedia, Prentice Hall, Inc., Englewood Cliffs, New Jersey, (1961), p. 871.

[5]Henry C. Black, Black's Law Dictionary, West Publishing Company, St. Paul, Minnesota, (1951), p. 126.

4. Appellee - the party in a cause against whom an appeal is taken; that is, the party who has an interest adverse to setting aside or reversing the judgment.[6] In this study, appellee refers to the board of education.

5. Local Boards of Education - these boards of education are created by state law and have control, within statuatory provisions, of local school systems. The term "board" will be used interchangeably with local board of education.

Significance

Tenure legislation, tenure interpretation and tenure hearings have added a new dimension to the life of a public school administrator. He must now be familiar with legal terminology, legal defense, the rules of evidence, just cause and many other legal rights or actions.

> "A tenure law is one which requires notice, statement of reasons, and a hearing before a teacher can legally be dismissed at any time after acquiring tenure status."[7]

This sounds easy, but legally, it is both an extremely serious and complex procedure.

A significant part of this study is to review the history of tenure in Michigan paying close attention to the function of the tenure commission. This aspect of the study becomes

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[6]Ibid, p. 126.

[7]Trends in Teacher Tenure, National Education Association, Washington, D. C., (1957), p. 12.

significant only when viewed with the second aspect which is an analysis of selected tenure decisions. In analyzing these decisions, the pivotal issue will be isolated and then an attempt will be made to explain the reasons for success or failure on the part of the appellant. Through this study then, public school administrators will be able to understand how tenure is interpreted in Michigan. They then will know how to proceed to dismiss a teacher who has the protection of the tenure law.

Overview of the Study

In Chapter II a review of the literature concerning teacher tenure in Michigan will be presented. Chapter III will be devoted to a history of tenure in Michigan giving special attention to the State Tenure Commission. This review will start with the adoption of tenure in Michigan in 1937 through its changes in 1964 when the Michigan Legislature made the Teachers' Tenure Act applicable to all districts. Chapter IV will review and analyze tenure decisions reached by the State Tenure Commission since 1964 which is when tenure became mandatory in all districts in Michigan. The increase in number of tenure cases since this time makes it important for school administrators to understand the reasons for success or failure on the part of the appellant. Chapter V will be devoted to a summary and conclusions. In a final section of Chapter V the writer will make some selected observations concerning the Michigan Tenure Law and how it functions. The purpose of these observations would be to indicate changes which would improve the Teachers' Tenure Law.

CHAPTER II

A REVIEW OF TENURE LITERATURE

Introduction

In 1884 the National Education Association raised the question of tenure for school employees. This occurred just one year after the first civil service act was passed. The civil service act was enacted to curb the turnover in government employees caused by political changes in the federal government.[8] Despite the fact that this first concern for teacher tenure was raised about eighty-five years ago, the literature on tenure for educational employees is scarce. A book written some thirty-five years ago by Cecil Winfield Scott, studies by the national teacher organizations, and a more recent booklet by Kenneth Grinstead, appear to be the only significant publications dealing with this topic.

A book by Clark Byse and Louis Joughin dealing with tenure in institutions of higher learning will be reviewed briefly. This review will give specific attention to the section entitled "Tenure and the Law", as well as the section "Conclusions and Recommendations".

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[8]Kenneth Grinstead, A Study of the Michigan Teachers' Tenure Act, Campus Publishers, Ann Arbor, Michigan, (undated), p. 1.

In addition to these major items for consideration, attention will be given to specific parts of books which appear to have relevancy. Several articles and/or bulletins also are cited because of special significance they might have or their importance to Michigan school administrators.

For the sake of clarity, this review will be divided into three main areas. The first area will deal with tenure and its legal implications. The second section will stress the time period prior to 1937 which, though national in scope, may have had an influence on Michigan legislation. The third section will cover those publications which deal with Michigan and, therefore, are important to public school employees in Michigan. It is this third section of the review which is perhaps most significant in the study as it is the Michigan Tenure Law under which the state functions and with which this paper is concerned.

Tenure and Legal Interpretation

Clark Byse and Louis Joughin, in their book Tenure in American Higher Education, have devoted some fifty-nine pages to the topic "Tenure and the Law".[9] It is the legal interpretation of tenure legislation that this writer feels may cause an administrator or board of education the greatest concern. As late as November 18, 1969 in a letter to the Honorable James Brown, State Representative, the Attorney

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[9]Clark Byse and Louis Joughin, Tenure in American Higher Education, Cornell University Press, Ithaca, New York, (1959), pp. 71-130.

General, Frank Kelly, interpreted Michigan law to indicate that school diagnosticians do not have the protection of tenure legislation because the State Board of Education does not require that school diagnosticians be certificated persons.

In a letter to this writer, dated November 25, 1969, Representative Brown indicated that this opinion, when released, will be upsetting to some people in those districts which have allowed tenure status to those persons who, according to the Attorney General, are not entitled to it. This opinion could mean that all professional educational employees who have positions which are not certified by the State Board of Education do not have tenure in that position even though it might have been granted by the board of education. This would include librarians and counselors, as well as the diagnosticians for whom the opinion was written. Some, however, will have tenure as a classroom teacher if they have served the required probationary period.

This opinion further states that school boards cannot grant tenure even though they may desire to do so to those employees not covered in the law. It would therefore appear that this is an example of school districts assuming one fact to be the law when in truth, the opposite opinion is held by the Attorney General.

Robert Carr of Dartmouth College, who wrote the foreward for the book by Byse and Joughin, indicated that one of the most valuable features of the book was its systematic

evaluation of the treatment academic freedom and academic tenure have received in the courts.[10] Carr further stated that while there are occasional outstanding examples of excellent judicial rulings in support of academic tenure the record reveals that a great majority of American judges, both state and federal, have, up to now, shared with much of the public many serious misconceptions of the meaning and purpose of academic freedom and tenure.[11] Carr also quoted the Supreme Court of South Dakota by saying,

> "The exact meaning and intent of the so called tenure policy eludes us. Its vaporous objections, purposes and procedures are lost in a fog of nebulous verbiage".[12]

In 1965 Warren Gauerke, in the book School Laws,[13] states that the controversy over tenure rights continues to occupy much of the energies of the courts at the start of the 1960's. Teacher tenure legislation comes before the courts for interpretations of intent and for clarification of scope or benefits.

James Woodall, in his article, "State-Wide Tenure Implication for the Principal",[14] states that if anyone in school administration is on the spot, it is the principal.

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[10] Ibid, p. X.

[11] Ibid, pp. X-XI.

[12] Ibid, p. XI.

[13] Warren E. Gauerke, School Law, The Center for Applied Research in Education, Inc., New York, (1965), p. 66.

[14] James Woodall, "State-Wide Tenure Implications for the Principal", The Elementary School Principal, September-October, (1964), p. 10.

Perhaps more than any other he must implement the law on the level of direct day to day action, therefore, it is essential that he understand the law and adjust his personnel practices accordingly. Continuing, Mr. Woodall indicates that the history of tenure in Michigan reveals that most often difficulties have arisen when insufficient documentation has been provided as a basis for dismissal.

Although the title of Mr. Woodall's article indicates that these are implications for the principal, he does state that since superintendents are notoriously busy people and most often find it next to impossible to acquire their information first hand, it follows that the principal must fill the gap.[15] It would appear that this article in no way intends that the superintendent not have a working knowledge of the tenure law, but rather that the principal who as the "man under the gun" is the one that must adequately prepare the case.

The presentation of the case is extremely important not only to the board of education who may have to justify a dismissal before another legal body, specifically the tenure commission, but also for the school administrators because, as is pointed out in the book, The Effective School Principal, by Jacobson, Reavis, and Logsdon,[16] the dismissal of an

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[15] Ibid, p. 10.

[16] Paul B. Jacobson, William C. Reavis, and James D. Logsdon, The Effective School Principal, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, (1963), p. 343.

inefficient or incompetent teacher is practically impossible. Very frequently the school administrator who brings charges against the teacher is on trial rather than the teacher whose effectiveness is questioned. This is extremely important to the school administrator because although common law recognizes authority of the local board to discharge a teacher for sufficient cause during a contract period regardless of tenure status, exactly what constitutes sufficient cause cannot be stated categorically.[17] This may be because there are so many factors which provide protection for the teacher, factors ranging from state statutes, constitutional interpretation, local contract negotiations, as well as various court interpretations of each of these separate items. It behoves the public school administrator and the school board to proceed with the best legal advice possible while paying particular attention to past court interpretations and other legal opinions. Based upon Woodall's statement that problems arise when the controlling board has committed procedural errors,[18] may cause many administrators to regard

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[17]Robert R. Hamilton and Edmund E. Reutter, Jr., Legal Aspects of School Board Operation, Bureau of Publications, Teachers' College, Columbia University, New York, New York, (1958), p. 64. The conditions under which a teacher can be removed from his position are governed by the provisions of his contract and by state law. All provisions of the constitution, state statutes, and pertinent prescriptions of state agencies are part of the contract - the mutual promise idea - along with local board rules.

[18]Woodall, op. cit., p. 10.

the total emphasis on procedure as an obsession with legal technicality. In essence, however, this is not a truth.

The American way of life has always been the respect for the individual human being and the ideal that no person shall be deprived of life, liberty or property without due process of law. It then further follows that to commit "economic capital punishment" should be done only in a very legal procedure so that the rights of the individual may be protected. The problem with tenure legislation, however, is that while one board may interpret the legal aspects of a tenure decision in one way, another board may interpret them in quite a different manner.

A problem confronting the public school administrator and/or school board wishing to pursue a tenure case through to a legal ending is that often there are not sufficient legal interpretations or prior cases to study upon which to make a valid decision. Even as Justice Douglas has so eloquently said,

> "Who is there who does not cherish his reputation, his professional stature, his honor, as much as life itself. What greater inroad on liberty can there be than an official condemnation of a man without due process."[19]

While it may be granted that a public school administrator or school board is concerned about an individual's reputation or an individual's professional stature, he still has a responsibility to protect the school children entrusted

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[19]Byse and Joughin, op. cit., p. 130.

by state law into his care. Therefore, it might at times be necessary to infringe upon this professional stature or reputation by proceeding with a recommendation for dismissal. A question becomes, "What is due process?" This question can further be amplified by asking the question, "Is due process according to 1965 statutes still due process according to 1969 statutes?"

Byse and Joughin indicate that in 1959 the hard fact remains that in the present state of the law there are many areas in which legal guarantees of procedure regularity are lacking.[20] They recommended that this defect be remedied by courts through the development of new common law rules, or by legislators through enactment of statutes requiring compliance with due process requirements, or by the parties through contractural agreement.

Act Number IV of the Public Acts of 1937 was amended in 1964, wherein a locally permissive tenure law became mandatory state-wide law. The Michigan act made certain that there were legal guarantees of procedural regularity.[21] This act requires that charges be filed, a hearing, either public or private, be scheduled and after the determination of the hearing at the local level, the right of appeal to

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[20] Ibid, pp. 120-121.

[21] See Appendix C, Article IV, Discharge, Demotion or Retirement. This Article spells out the procedural steps which must be followed to protect the legal rights of the teacher.

a state-wide tenure commission. Section 38.104 of Article IV further spells out, step by step, how a hearing shall be conducted and the time limits which must be followed for notification at the conclusion of the hearing.

This defect, as noted by Byse and Joughin, therefore, is not evident in the Michigan tenure legislation. It appears to this writer that it is the procedural requirements which cause boards of education many of their problems.

Scott, in his discussion of the tenure law as revealed by appealed cases, came to the conclusion that local boards of education have a real advantage in appeal cases.[22] His data seemed to invalidate the claim that protective tenure laws make virtually impossible the removal of undesirable teachers. Table Thirteen[23] shows the distribution of appeal cases arising under state indefinite teacher tenure laws according to final rulings and decisions rendered. This Table shows that there were eighty-five decisions favoring the board of education and fifty-two decisions favoring the teacher. The early history in Michigan, that is, from 1937 through 1964, would indicate that the opposite is true. During this period of time, twenty-one cases were decided by the State Tenure Commission and only four decisions were rendered in favor of the local school district.[24] One reason

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[22]Cecil Winfield Scott, Indefinite Teacher Tenure, Teacher's College, Columbia University, New York City, (1934), p. 72.

[23]Ibid, p. 72.

[24]Note Appendix A.

for this difference might be that the Michigan tenure law has always included procedural requirements for dismissal of tenure teachers which might not have been required in many of the appeal cases noted by Scott.

Table Fourteen used the distribution of indefinite teacher tenure appeal cases for four of our states. A total of the decisions rendered indicate that seventy-nine were decided in favor of the board of education while forty-four were decided in favor of the teacher.[25] Though, as has previously been noted, Scott did conclude from his studies that it was not impossible to remove undesirable teachers who have the protection of tenure. He further states that this is the biggest problem arising under indefinite tenure laws.[26] He states that in some large places, e.g., Duluth, Minneapolis, St. Paul, Minnesota, and New York and New Jersey, whole years pass without the dismissal of a single teacher.

Difficulty of removal may vary among the states but it exists in all that have protective tenure statutes. In 1927 Superintendent William McAndrew of Chicago, Illinois rendered a comparative report on dismissal of only four teachers in a given year in this way,

> "But it seems incredible that only 3/100 of 1% out of 12,000 teachers indicate the number whom the board should separate from the service on the grounds of inefficiency."[27]

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[25]Scott, op. cit., p. 73.

[26]Ibid, p. 67.

[27]Ibid, p. 52.

Another problem facing public school administrators who would attempt to review cases involving the dismissal of a teacher for incompetency or unprofessional conduct is that so few cases have been brought or appealed to the higher authority in the history of tenure legislation throughout the United States. Scott lists one hundred thirty-seven cases which have been appealed for a variety of reasons. Of these one hundred thirty-seven cases, only twenty-four fall in the category of inefficiency, incompetency, unprofessional or unbecoming conduct, insubordination, and refusal to cooperate.[28] The remaining one hundred thirteen are for a variety of other kinds of reasons.

A public school administrator is hard-pressed to find precedent in many of the cases he wishes to present to his local board of education because so few cases have been decided by the tenure commission. Of those that have been decided, many of them have been decided on legal technicalities rather than on the merits of the case. This same article indicates that seventeen cases of summary dismissal have come before appeal authorities. In thirteen of these decisions, the decision has been rendered in favor of the appellant, or teacher. Such verdicts invariably assert that contracts of permanent teachers are terminable only according to prescribed legal procedures. This again shows the importance of legal procedures and the need for public school administrators to be familiar with tenure legislation.

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[28] Ibid, p. 71.

Nolte and Linn[29] quote nine essential points, which were recommended by the NEA Committee on Tenure and Academic Freedom,[30] that were to be guaranteed each tenure teacher as standard procedure to be followed upon discharge. In substance these were:

1. Adequate notice and written statement of charges.
2. Teacher to have counsel.
3. Testimony at hearing to be under oath.
4. The teacher has the right to subpoena.
5. Evidence admissable only when it bears directly on the charges presented.
6. The teacher would have the right to argument on evidence.
7. Transcripts would be available.
8. The hearing would be before the entire board of education.
9. Board can dismiss only by majority vote of the entire board.

It is important that the dismissal procedures applicable to the state in question be completely understood by the school administration. This is because a teacher who has been admitted to tenure status has what is called a vested right.[31]

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[29]M. Chester Nolte and John Phillip Linn, School Law For Teachers, The Interstate Printers and Publishers, Inc., Danville, Illinois, (1964), pp. 117-118.

[30]National Education Association, "Teacher Tenure Laws", Research Bulletin, (October 1960), pp. 84-85.

[31]Nolte and Linn, op. cit., p. 127.

That is, a teacher who has attained tenure has a vested right to employment in that district and cannot be denied that right except through due process of law. Further, that the teacher retains his rights gained under tenure until duly dismissed according to tenure law much as the civil service employee continues in office until removed according to legal procedures outlined in the law.[32]

One further point needs to be discussed and that is that the probationary period works hardships on a teacher. Scott refers to this[33] by indicating instances where local boards of education dismiss teachers merely to preclude their gaining permanent status. Also, and perhaps more significant from an educational point of view, the probationary period becomes a period of evaluation and testing rather than one of assistance, help and training. Jack E. Meeder, in his dissertation titled A Study of Attitudes and Problems Relating to State-Wide Tenure and Compulsory Bargaining for Teachers in Michigan made mention of the early history of dismissal rather than granting teachers permanent status because of the plentiful supply of teachers during the period of time when this practice was being carried out.[34]

Perhaps it is clear that the basic problem is a lack of understanding of the law by all concerned groups. Cases are

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[32]Ibid, p. 127.

[33]Ibid, p. 23.

[34]Meeder, op. cit., p. 18.

rarely decided on competency of the individual but rather upon the legal technicalities of the case.[35] Since the tenure commission must rule according to law, then the law must be adhered to very carefully by school administrators.

Perhaps this is best expressed by Holmstedt when he made the following point:

> "Administrative adjustments to conditions resulting from tenure can be worked out only after a period of experience with the law, but after a period of twenty years many school officials are experiencing difficulty in coping with problems due to the existence of the statute."[36]

The Historical Development of Tenure Prior to 1937

One of the major purposes of Cecil Winfield Scott's dissertation Indefinite Teacher Tenure, A Critical Study of the Historical, Legal, Operative and Comparative Aspects was to trace the development of tenure. Scott makes the point that teachers are, in reality, civil servants and, therefore, are entitled to protection similar to that afforded recognized members of the civil service.[37] This point is also made by Nolte and Linn[38] as well as Grinstead.[39] In 1883 the famous Pendleton Reform Bill was passed by

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[35] Ibid, p. 107.

[36] Raleigh W. Holmstedt, "A Study of the Effects of the Teachers' Tenure Law in New Jersey," Contributions to Education No. 526, Bureau of Publications, Teachers' College, Columbus University, New York, (1932), p. 99.

[37] Scott, op. cit., p. 9.

[38] Nolte and Linn, op. cit., p. 114.

[39] Grinstead, op. cit., p. 1.

Congress. This bill was the basic law of the Federal Civil Service Program. Prior to its passage in 1883 other attempts had been made at introducing some form of civil service legislation. The purpose of this legislation was to erase the Spoils System which had come into existence with the Jackson administration in 1829. President Jackson in his position of power afforded himself the opportunity to dismiss and appoint many staff members. This Spoils System gradually grew worse until about 1865.[40] In 1865 a serious attempt was made through the introduction of the Jenckes Bill to reform the Spoils System. It did, however, take an additional eighteen years before the bill was passed which established standards for selection of employees and supposedly removed this field of service from the political system. It was difficult for the author to find concrete examples of a similar Spoils System existing in the educational system in the United States. A research bulletin of the National Education Association did say that machine politicians attempted to control the administration of the schools and use them for political purposes. By this, they meant for purposes of patronage and spoils.[41] Scott, however, indicates that claims such as this of late have decreased

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[40] A Brief History of the U. S. Civil Service, U. S. Civil Service Commission, (1929), p. 12.

[41] Research Bulletin, Vol. 2, No. 5, National Education Association, (November 1924), p. 146.

both in intensity and frequency.[42] Although the teacher tenure law or legislation was undoubtedly influenced by civil service, there is at least one basic difference. In civil service legislation, retirement laws are always a correlary of civil service while in teacher tenure, they may or may not be considered a part of the tenure act itself. Scott reports that the earliest study of tenure by a committee of the National Education Association was reported at the annual meeting of that association in 1887.[43] Grinstead, however, reports to earlier considerations of the tenure question, one in 1884 by the National Education Association when they raised the question of tenure for school officials, and secondly, in 1886 when Massachusetts enacted a teacher tenure law which permitted school districts to enter into contracts for a period of longer than one year.[44] During the next few years various groups within the profession, both at the local, state and national level, carried on continuous campaigns and study programs concerned with tenure. Many of these studies on the national level were carried on in conjunction with studies of salary and pension provisions. An example: In 1905 a committee bearing the title Committee Upon Salaries, Tenure of Office, and Pension Provisions for Teachers, rendered a report which dismissed tenure with the comment that material was available

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[42]Scott, op. cit., p. 12.

[43]Ibid, p. 13.

[44]Grinstead, op. cit., p. 1.

in the United States Bureau of Education.[45] In 1911 the association had a committee in existence for approximately twelve years known as the Committee on Teachers' Salaries, Tenure, and Pensions. However, during the first nine years of its life this committee concentrated its attention upon salaries and retirement. The first preliminary report on tenure issued to the association by this committee was in 1920. This committee report stated that it wished to do for tenure what it already had done for salaries and pensions.[46] Scott indicates that with the appointment of a tenure committee of one hundred in 1923 began the most progressive period in the history of the associations report of indefinite tenure.[47] The American Federation of Teachers also has been actively in support of teacher tenure since its organization in 1916.[48] Much of the credit, however, for the early tenure legislation must be given to the National Education Association. Three states had had some type of tenure legislation introduced prior to 1916.[49] The American Federation of Teachers, however, has received credit for the legislation which resulted in state-wide tenure in California, as well as in Illinois.

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[45]Scott, op. cit., p. 13.

[46]Ibid, p. 14.

[47]Ibid, p. 14.

[48]Ibid, p. 17.

[49]Holmstedt, op. cit., p. 2.

Basically, many reasons have been advanced as to the concern of educational associations for tenure legislation. Such things as security for teachers, development of a true teaching profession to increase the competency of teachers, the efficiency of teachers, to protect the interest of the students, or of the school, or both, as well as the need to prevent biased discharge, are among the most common ones. As quoted by Scott, practically all of the claims are embodied in this statement from the Sierra Educational News of California:

> "It must be thoroughly understood that tenure, important as it may be to the teachers involved, is primarily needed in the interests of the schools and the children. Proper tenure lends itself to improving the stability of the profession. A thoroughly adequate tenure law does not protect the incompetent teacher as many suppose. It protects the community against the incompetent teacher, and through promise of added stability, secures and holds in the profession those men and women thus qualified to teach."[50]

An interesting point is that a study made in 1924 by the National Education Association pointed out the great turnover of teachers in 1923. They listed several reasons for this large turnover. Many of these reasons for discharge are the very reasons that the impetus for tenure legislation increased in fervor. Among the reasons listed for discharge were:

1. Political reasons
2. Non-residence in the community

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[50]Scott, op. cit., p. 21.

3. In order to make places for relatives and friends of board members and influential citizens
4. In order to break down resistance to school policies
5. To reduce budgetary expenditures.[51]

Perhaps the best statement for the purpose of tenure legislation was that as issued by the Minnesota Supreme Court. It stated,

> "The purpose of that Teacher Tenure Act was to do away with the then existing and chaotic conditions in respect to termination of teacher contracts."

Until then, in many cases, teachers would be left in a state of uncertainty as to whether they would be re-elected for the ensuing year. In many instances, this state of uncertainty ran over a period of months. The later in the school year that a school board acted, the greater the teacher's disadvantage in finding vacancies elsewhere.[52] The real concern for tenure in Michigan developed about 1925 when a department of the Michigan Education Association promoted a study of tenure for teachers. For the next few years no significant attempts were made to institute legislation concerning tenure in Michigan. However, during the depression years and the years that followed, some rather extreme cases of contract breaking by boards of education caused a flood of mail to reach the Michigan Education

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[51]Grinstead, op. cit., p. 2.

[52]Ibid, p. 3.

Association concerning the need for tenure. In a booklet published by the tenure committee of the Michigan Education Association under a section titled "Is Tenure Needed in Michigan" the booklet states:

> "If teachers who are sceptical in regard for the need for tenure in Michigan could look through the MEA mail, they would no longer have such doubts."

During March, April, and May of every year the MEA office is deluged with letters, telegrams, and telephone calls requesting assistance for a teacher or administrator who has not been given a contract for the next year.[53] Specifically, this pamphlet also indicates that it was the depression era when boards of education ruthlessly broke many teacher contracts that the concern for tenure reached its greatest heights. About 1933 these extreme cases of dismissing teachers caused an organized campaign which was carried on until 1937 when tenure legislation was introduced in Michigan. Although tenure legislation was introduced in the regular session of the State Legislature in 1937 it was not until a special session later that year when a bill was passed which indicated that tenure might be adopted by any school district of the state by a majority vote. This did not indicate mandatory state-wide tenure, but rather, permissive tenure which could be voted upon at a regular or special election in any school district in the

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[53] Tenure on the March, Tenure Committee, Michigan Education Association, Lansing, 5, Michigan, (undated), p. 4.

state of Michigan.

Tenure in Michigan

Kenneth Grinstead produced a booklet titled The Michigan Teacher and Tenure which was a study of the Michigan Teachers' Tenure Act. This booklet was written with a feeling that sooner or later all public school people, be it teachers, administrators, and/or school board members, are confronted with the need for a better understanding of the Michigan Teacher Tenure Law. Because all school districts in Michigan function under the mandatory Teachers' Tenure Act, it is imperative that information be available to all who might become concerned with the act itself.

Kenneth Grinstead spent some time reviewing the historical development of tenure in the United States. During the remainder of this booklet he analyzed each segment of the Teachers' Tenure Act and stated his interpretation of the law. These understandings are usually substantiated by either an Attorney General's opinion which is numbered and dated, or through the citing of an actual case which has clarified the law in a given instance.

In clarifying probationary service, Kenneth Grinstead indicates that Michigan statutes require that a beginning teacher complete a satisfactory probationary period of two years before attaining tenure status. He then proceeds to indicate what is meant by a satisfactory probationary period of two years and what type of employment will or will not

qualify. He further indicates that the two years of service need not be consecutive. A case decided in 1960 with the Flint Board of Education as the appellee further clarified the fact that all probationary teachers cannot be required to serve a third year of probation. Boards of educations, however, under the language in the tenure act, can require individual teachers to serve a third year of probation. Perhaps more significant to the public school administrator are the sections which have to do with the evaluation and the dismissal of a probationary teacher.

As is true in several of the booklets dealing with tenure and the law, there have been more recent court decisions which make some statements in Kenneth Grinstead's work outdated. Kenneth Grinstead indicates that it must be concluded that the sixty day notice of dismissal cannot be used without cause but must have some connection with whether the teachers services were satisfactory.[54] A more recent court of appeals ruling, however, indicates that the board of education may dismiss a probationary teacher without just cause.[55]

Kenneth Grinstead then proceeds to discuss the tenure rights and indicates that a dismissal of a teacher must follow the procedures prescribed by statutes. The procedures,

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[54]Grinstead, op. cit.,p. 5.

[55]Michigan appellant court decision dated 5/26/1969, Munro vs. Elk Rapids Schools.

as he develops them are:

1. A tenure teacher may be dismissed only after written charges have been filed and furnished the teacher.

2. The teacher must be given notice of date and opportunity for a hearing.

3. The board must render a decision within fifteen days after the conclusion of the hearing.

4. The teacher has the right to appeal the decision of the board of education to the tenure commission providing the appeal is made within thirty days after the board of education's decision.

5. The tenure commission is required to hold a hearing within sixty days after the date of appeal.

6. A tenure teacher whose contract has been terminated by a board and who has appealed to the tenure commission which has upheld the board's action may appeal to the court if he believes there has been a breach in the legal process.[56]

It must be noted at this time that the board of education also has the right to appeal a decision of the tenure commission to the court. Grinstead further discusses the dismissal of a tenure teacher when a school district no longer has need of his service, as well as the rights of a tenure teacher to a position when there has been an increase in the professional staff.

There are four basic points to consider when dismissing a tenure teacher. Whether it be because of the abolishment of that position, or when there has been a decrease in enrollment, or even if there is a lack of need for his service, it has been recommended that provisions in tenure

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[56]Grinstead, op. cit., p. 12.

laws to cover dismissal include these four points:

1. A permanent teacher may not be dismissed while a probationary teacher is retained in a position which the tenure teacher is qualified to fill.

2. Permanent teachers must be dismissed in reverse order of employment.

3. Permanent teachers so dismissed are to be re-employed before probationary teachers are added to the staff.

4. Permanent teachers so dismissed are to be re-employed in the order of length of service.[57]

When there is a vacancy the Michigan law does not indicate that teachers with a longer term of service have preference over those with a shorter term of service. In brief, there are no seniority qualifications attached to the re-employment of staff; however, it must be kept in mind that probationary employees cannot be hired if tenure teachers have been dismissed and are waiting for re-employment.

Grinstead indicates that fair dismissal practices should be followed regardless of the length of employment or the existence or absence of statuatory requirements. He further indicates that fair dismissal practices would include the following:[58]

1. When any action or other matter appears to exist which may possibly result in the future dismissal of an employee, the situation should be brought promptly to the attention of the employee involved.

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[57] Ibid, pp. 14-19.

[58] Ibid, p. 21.

2. Every helpful effort should be made, especially by those in an administrative or supervisory relationship, to aid the employee to correct whatever appears to be the cause for potential dismissal.

3. Except in extremely serious circumstances, the employee should be given sufficient time for improvement.

4. Any charges of undesirable traits or practices should be bonified, verifiable and clearly stated to the employee in writing.

In discussing the role of the school administrator and teacher dismissals, Grinstead indicates that the administrator must be able to document the written charges he files against a classroom teacher. He should be able to describe specific situations which reflect upon the teacher as well as indicate that a reasonable effort has been made to help correct any deficiencies.

It is the role of the administrator to prepare and file the charges with the board of education for their consideration and to present definite and irrefutable evidence at the hearing to substantiate the charges. He is under the highest professional obligation to present honest, complete and accurate information.[59]

In much the same way, the board of education should enter into dismissal proceedings of a tenure teacher only upon the strong recommendation of its superintendent, the person or administrator who is filing the charges, and their own legal counsel. It is well to remember that the board of

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[59]Ibid, p. 23.

education should expect that the teacher will appeal a dismissal action and, therefore, the board should be ready and able to defend legally and irrefutably their decision before the Michigan Tenure Commission.

Referring to the effect of transfer to another district on tenure rights of teachers, Grinstead indicated that it is clear that a tenure teacher may be required to serve no more than one year of probation when he moves to another district, but that the school district cannot require a second year of probation.[60]

A short section of the above booklet discusses the rights of school administrators under the Michigan Teachers' Tenure Act and quite liberally quotes from the decision of Street versus the Ferndale Board of Education. In summary, Kenneth Grinstead indicated that the Michigan Teachers' Tenure Act provides an opportunity for a local board of education to establish tenure policies for its school administrators. Basically, this opportunity is based upon the satisfactory completion of an administrative probationary period. The board can grant administrative tenure merely by dropping the phrase, "this is a non-tenure position", from the new contract. Boards of education in Michigan have stipulated in most administrative contracts whether they desire that administrator to have tenure in his administrative position.

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[60] Ibid, p. 25.

In discussing the transferring or reassigning of teachers, principals, or superintendents, Grinstead indicated that the Michigan Teachers' Tenure Act does not prohibit a change in grade or school as long as it is not considered to be a demotion. By demotion, it infers a reduction in salary. More specifically, a classroom teacher has no vested right to teach any certain class or in any certain school. Grinstead indicated that a transfer may not be made for the purpose of compelling a teacher's resignation.[61] However, he fails to indicate how it is determined that this reassignment compels a teacher's resignation. He does stipulate, however, that teachers may not be assigned to a position for which they are not qualified and that if a teacher fails to accept the offered assignment that it is, indeed, grounds for dismissal.[62]

A Summary of the Review of the Literature

Tenure literature indicates that historically, tenure had its inception near the end of the last century and gradually grew through the efforts of national, state, and local teacher organizations. Further, that the larger cities tended to gain tenure legislation before it became state-wide. The review of literature also indicates that the discussions of teacher tenure in the United States grew out of the related arguments in civil service.

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[61] Ibid, p. 28.

[62] Ibid, p. 32.

Every state has a different law which interprets tenure for its public school employees. With a wide variety of tenure legislation in existence in the United States, it is not surprising that many of the state laws are considered inadequate by a definition of tenure. Several states do not even allow for an appeal from a local board of education decision.

Even in those states where an appeal is allowed, very few teachers have appealed a local board of education's decision to a state-wide tenure body. As Meeder indicated,[63] most incompetents are probably weeded out without resort to the full application of tenure law. If this is true, and many teachers are weeded out, perhaps this explains the reason for so few appeals being made to a state-wide tenure body. The study by Grinstead indicated that administrators should be aware of the tenure law in Michigan because a great majority of the tenure cases have been decided by the application of specific provisions of tenure law rather than an argument regarding the competency or the incompetency of a teacher. Though Wever indicated that smart managers need have no fear about tenure,[64] a review of the literature would indicate that smart managers would, indeed, have fear concerning tenure. This fear is expressed in the need for a thorough knowledge of the tenure act. This fear can further

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[63]Meeder, op. cit., p. 33.

[64]Weber, op. cit., p. 152.

be expressed in the large number of the tenure commission decisions which have gone in favor of the appellant, or teacher, and also, fear because as has been indicated, sometimes it is the administrator rather than the teacher who faces the whims of the local board of education in the event that a tenure decision has not been satisfactorily concluded.

Perhaps the most serious mistake a public school administrator can make in reviewing tenure literature is to assume that every statement regarding tenure law is, indeed, fact. Tenure law is being determined each year as additional cases are appealed to the tenure commission and/or additional Attorney General's opinions are sought. There can be no legal booklet regarding tenure in Michigan which can be up to date and remain updated for a very long period of time.

CHAPTER III

A HISTORICAL OVERVIEW OF THE TENURE COMMISSION

Introduction

The overview of the study as reported in Chapter I indicated that Chapter III will be devoted to a history of tenure in Michigan giving special attention to the State Tenure Commission. When the Teacher Tenure Act was adopted in 1937, the act called for the formation of a three member board appointed by the Governor, whose function was to speed up decisions and foster economy in appeals by aggrieved teachers. The specific purpose of this commission was to take the place of court action since experience proved that court actions were usually expensive to all parties, as well as time consuming. The original tenure act as passed in the extra session of the State Legislature in 1937 indicated that the State Tenure Commission be composed of three members appointed and constituted as follows:

> "One classroom instructor, one member of a board of education of a graded or city school district, and one person not a member of a board of education or a teacher. The Superintendent of Public Instruction shall be ex officio secretary of the commission and the Attorney General shall assign to the commission an assistant from his office who shall be legal advisor to the commission."[65]

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[65]Article VII, Section I, Public Acts, Extra Session, (1937) No. 4.

It was not until the 1963 amendment increased the membership from three to five that a second classroom instructor was added to the commission, as well as a superintendent of schools.

Prior to the passage of the original tenure act in Michigan teachers were concerned about, and interested in, tenure. In 1935 the first tenure proposal was presented in the State Legislature as a result of teacher groups lobbying for enactment of tenure legislation after several years of meetings and discussions. This bill, however, was not reported out of committee and, therefore, it died. Early in 1937 at the request of Governor Frank Kelly,

> "Each of the groups appointed a representative to act as a committee to work with the Governor in introducing and promoting the proposed bill. The groups who had representation on this committee were the Michigan Federation of Teachers, the State Federation of Teacher's Clubs, and the Michigan Education Association."[66]

The basic push for tenure legislation in Michigan came about through the efforts of the Michigan Education Association and various member groups. Mr. Wes Thomas, who was a lobbyist for the Michigan Education Association, was the most active single individual urging the passage of tenure legislation according to Mr. Clay Campbell. As noted in Appendix D, Mr. Campbell assumed his appointment on the tenure commission in 1949.

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[66]Meeder, op. cit., p. 8.

Early History of the Tenure Commission 1937 through 1954

As part of the original Teacher Tenure Act adopted in 1937 a sum of $4,500 was appropriated for the first two fiscal years ending on June 30, 1939. The purpose of this allocation was to defray the expenses of the tenure commission during that two year period. Immediately after passage of the tenure act which included this monetary appropriation, school board members throughout the state began to register deep concern about the tenure legislation to state legislators. These legislators then began to have serious concerns about tenure in Michigan. Although a State Tenure Commission was created in 1937, Michigan manuals for the years 1938, 1939, and 1940 do not list any tenure commission as having been appointed. Since no tenure commission was appointed at the end of 1939, the $4,500 original allocation was returned to the state's general fund. No further appropriation was made to the State Tenure Commission until 1946. According to Mr. Clay Campbell, no further appropriation had been made because the legislators had "cooled" in their concern for tenure. Although Governor Murray D. VanWagoner appointed the first tenure commission members in 1941 to terms expiring as late as 1945 and, although the Michigan manuals list tenure commission members as being appointed every other year from 1941 through 1949, no formal meeting of the tenure commission was held until June 19, 1946. Partly because of lack of appropriations and partly because of a lack in procedures, the first tenure case

which was discussed on July 16, 1946 was not decided until 1953. This delay placed Georgia Swickard among the first martyrs in Michigan tenure history as she had retired but continued to press her appeal on principle rather than as an attempt to gain back her teaching position. Mrs. Swickard had been a very popular teacher for many years in the Highland Park School system and because of her age the board of education thought she could no longer function effectively with kindergarten students. The Highland Park Board of Education did not want to use incompetency as their reason in dismissing her under tenure. They recognized the fact that she had been an extremely popular teacher and had served the district so capably for such a long period of time. Therefore, the Highland Park Board of Education decided the best way to dismiss this teacher was to change the attendance boundaries of the local elementary schools and by this gerrymandering tactic, indicated to her that there were not enough students to warrant having her on the payroll. In reality, this became the first case in Michigan regarding a reduction in professional staff. Although the case was finally decided in favor of Highland Park in 1953 there is some indication in early minutes that she did receive remuneration for some of this period of time.

There were four other key figures in the early history of tenure in Michigan. Superintendent Otto Haisley, who for a long time was superintendent of the Ann Arbor Public Schools, Superintendent Miller of the Centerline School

District, Centerline, Michigan, which was the first school district in Michigan to adopt tenure, Mr. Clay Campbell, who was an early chairman of the tenure commission, and Juste Rosati, who was chairman of the tenure commission for several years, were most prominent in early tenure history. Superintendent Haisley of the Ann Arbor School District was a significant figure in early tenure history because of his stand indicating that the position of superintendent of schools was a tenure position. There had been a change on the local board of education in Ann Arbor and the board of education attempted to discharge Superintendent Haisley. Superintendent Otto Haisley indicated that the superintendent was a tenure position and, in fact, he could not be dismissed. The board of education, without taking this case to the tenure commission nor to the courts, agreed to this. It did, however, appear to many people that it was unjust for districts to be forced to keep a superintendent of schools for life that they really didn't want. It seemed so unjust that the legislature amended the tenure act to allow tenure for school administrators, but more significantly, it allowed the board of education the right to deny tenure to an administrator in position.

Superintendent Miller of the Centerline Public School District was one of the early advocates of tenure and was a key figure in leading Centerline to a consideration of tenure through popular vote. The Centerline School District was the first district in Michigan to take this action. A

third person responsible for much of the formation of tenure in Michigan was Mr. Clay Campbell of Lansing who was appointed to the State Tenure Commission in 1949 for an original four year term by Kim Sigler, Governor. According to Mrs. Thrun, who was the legal advisor to the tenure commission in its formative years, Mr. Clay Campbell was perhaps the key individual in Michigan who gave the tenure commission credibility status and legally responsible procedures which could be followed by the tenure commission and commissioners in the future. Juste Rosati, who was an attorney from St. Clair Shores, and who was an appointee of Governor G. Mennen Williams, was perhaps the lay commissioner who was more controversial during his term on the tenure commission than any other single individual.

A fifth name might well be added to the list of important contributors to early tenure history; that would be Mrs. Carolyn Thrun, who was the first legal advisor to the State Tenure Commission. It was Mrs. Thrun who first explained the statuatory rules relating to the conduct of the appeals before the State Tenure Commission and who recommended the adoption of three other rules which later became significant in terms of decisions which were decided in favor of the appellant as boards failed to follow these procedures.

The first members of the tenure commission who served in the organizational meeting held on June 19, 1946 were

Mr. B. J. Adams of Lansing, Mary Ellen Lewis of Ann Arbor, and Henry Wolfenden. Mr. Wolfenden did indicate to Mrs. Thrun that he might not be able to serve on the commission pending the result of an election scheduled for July 15th, or in less than a month from the date of this original meeting. He did indicate that he would advise Mr. B. J. Adams on July 16th as to whether or not he was qualified to serve. This election scheduled for July 15th was a school board election and Mr. Henry Wolfenden was attempting to serve the commission as the school board representative. It is evident that Henry Wolfenden lost the election because the 1947 Michigan Manual lists only Mary Ellen Lewis of Ann Arbor as serving with two vacancies.

The next complete board listed in the 1949 Michigan Manual lists Mrs. Lola B. King of Pontiac, Mrs. Marjorie Mullightener of Port Huron, and Mr. Clay Campbell of Lansing as the three commissioners. At the first meeting of the tenure commission, Mrs. Thrun was requested to draw up rules of procedure for consideration to the commission in a hearing of appeals. Two parties were appealing their dismissal at this time and Mr. Adams, who was elected chairman of the commission, contacted Mr. Roscoe Bonisteel of Ann Arbor, an attorney, and requested that he file formal appeals for his clients in order that they might be formally presented before the commission at its next meeting which was scheduled for July 15th. It was also at this meeting in 1946 that Mr. Adams reported on appropriation problems. Specifically, he

reported that no appropriation had been acted upon by the state legislators for use of the State Tenure Commission and that he had called this matter to the attention of the Ways and Means Committee in both Houses. Superintendent of Instruction, Eugene Elliott, was suggested as a possible person with whom Mr. Adams might discuss that problem.

It was further decided at this meeting that the commission, on the advice of Mrs. Carolyn Thrun, adopt as few rules and regulations as possible inasmuch as it was a requirement to file rules with the Secretary of State in accordance with the provisions of Act 88, Public Act 1943. Based upon this recommendation, three specific rules were adopted in addition to those prescribed by statute.

1. The request for a hearing should be in writing and shall specify whether the hearing shall be public or private.

2. Its initial appeal request shall be sent to the secretary of the commission.

3. Upon receipt of these requests, it is the duty of the secretary to call a meeting of the tenure commission at which time it will consider the request and, if granted, set a date for the hearing.

The next official notice of a meeting on file at the tenure commission indicates that a meeting was held in February of 1948. At this time attorney Clay Campbell from Lansing was appointed chairman and Mary Ellen Lewis continued to serve as secretary. It was at this meeting that procedures for the tenure commission were further defined which indicated that the initial appeal from the appellant

shall be made in writing to the secretary of the commission and should also indicate whether the appellant desires a public or a private hearing. It then became the responsibility of the chairman of the tenure commission to arrange for a place of the meeting for the hearing and to engage the services of a court stenographer.

The specific case which required the further definition of the function of the tenure commission was the case of Mr. Clark Rehberg of Melvindale who appealed to the tenure commission through the Superintendent of Public Instruction. The Superintendent of Public Instruction had referred the letter from Clark Rehberg of Melvindale to the tenure commission.

The next minutes on record are for a meeting which was held in June of 1951. Mr. Campbell was re-elected chairman of the tenure commission. The commission also discussed the cases of Mrs. Georgia Swickard, Mr. Godsey, and Mr. Rehberg. It was at this session in 1951 that the Supreme Court decision in the Rehberg case was secured, read and studied. This decision ruled that the tenure commission should have used the testimony which was given at the hearing conducted by the Melvindale Board of Education. This ruling is significant in tenure history, however, because it also rules that the commission had the authority to hear cases <u>de novo</u>. By granting the commission authority to hear cases <u>de novo</u> this meant that in addition to reviewing the transcript of proceedings of hearings held at the local board of education

level, the tenure commission could subpoena witnesses and hear the cases themselves before they had to arrive at a decision. A second landmark decision was arrived at on that date because the tenure commission decided that it did not have jurisdiction in the case of Mr. Godsey since Mr. Godsey was not on continuing tenure in the Flint Public School system.

The next official meeting which was recorded by the tenure commission was held in May of 1953. It is interesting to note that further consideration of the Rehberg case and the Swickard case were still being discussed. It was at this meeting that the tenure commission decided to hold its two statuatory meetings on the second Saturdays of May and September. Mr. Campbell continued in the office of chairman of the tenure commission and Miss Gladys Davis continued to act as secretary.

Early records become a little more complete after this meeting as there is evidence of three additional meetings being held in the months of July and August of 1953. The first of these three meetings was held in a branch of the Detroit Library to hear the cases of five teachers from the Carver School District in Ferndale versus the Carver Board of Education. In August on the 19th, 1953, the commission met at 1:30 in the afternoon to hear a continuation of the Rehberg versus Melvindale Board of Education case. This meeting took place in the Cadillac Square Building in Detroit. On August 29th the commission moved to Lansing into

the law suite of chairman Clay Campbell to decide the Carver cases and that of Mr. Rehberg. In both of these cases the opinion indicated that the teachers were to be restored to their positions and salaries were to be paid in accordance with the Michigan State Tenure Law.

Despite the approximate six year gap from the dismissal of Mr. Rehberg in 1947 until this decision on August 29, 1953, the commission ordered the Melvindale Board of Education to pay the salary of Mr. Rehberg for that six year period. Once these two decisions were reached, the commission then turned its attention to reviewing the testimony of the hearings on the Swickard case. These hearings were held in April, 1948 and in January of 1950. They then dictated an order granting the motion of the counsel for the Board of Education of the school district of Highland Park that this case did not come under the jurisdiction of the tenure commission.

The commissioners also named Mr. Martin A. Wellna of Dearborn to serve as acting chairman for a twelve day period due to the expiration of the term of chairman Clay Campbell on August 31, 1953.

The regular meeting on September 12, 1953 was held in the room occupied by the Corporation and Securities Commission in the Bank of Lansing. It was called to order by acting chairman Martin Wellna with commissioner Gladys Davis in attendance. No new commissioner had been appointed so, therefore, only two commissioners were present. The two

commissioners approved the minutes of previous meetings and acting chairman, Martin Wellna was elected to the chairmanship of the commission.

Since there were no further cases pending before the tenure commission at this time, plans were made to call a special meeting and the appointment of a third commissioner in order to meet him and to acquaint him with the business of the commission. This meeting was held on October 10, 1953. It was held specifically for the purpose of acquainting the newly appointed commissioner, Mr. Juste Rosati, with the work of the commission, however, Mr. Rosati did not show up for the meeting. Only the two commissioners, Martin Wellna and Gladys Davis were in attendance.

After an unsuccessful attempt to contact Mr. Rosati, the meeting was adjourned shortly after 11 a.m. Just prior to adjournment they set January 1, 1954 as the date for the next meeting. This meeting was conducted in Detroit to hear the cases of five teachers from the Carver School District. They were dismissed for the second time in September of 1953. The teachers were the same five as had previously been dismissed from the Carver School District. The teachers testified at this hearing, as did the school board attorney and the superintendent, Walter Buffington. During the hearing fourteen exhibits were submitted to the commission. Chairman Martin Wellna asked the attorneys to file briefs with the tenure commission and he indicated that the

commission would make a decision on the case on January 30, 1954.

According to the history of the tenure commission, that meeting was not held and the next meeting was held on February 13, 1954, again at the room at 1700 Cadillac Square Building. At this meeting, chairman Martin Wellna, commissioners Juste A. Rosati and Gladys E. Davis, were present. At this time chairman Wellna read the unanimous decision of the commission in the case of the five teachers in the Carver School District versus the Board of Education of the Royal Oak Schools, District # 1, Royal Oak Township. In effect, the unanimous decision which was reached by the tenure commission in this second hearing of the five teachers in the Carver School District indicated that the local board of education did not respect the tenure commissions previous order of August 29, 1953 which ordered the five teachers restored to their positions as active teachers and that they be paid their salaries pending a hearing of their cause. The record of the local board of education meeting of September 28th in which they dismissed the five teachers for a second time indicates that they were not in compliance with three sections of the law. The tenure commission indicated that the teachers did not have a fair and complete hearing so that it can be determined whether they were dismissed for just and reasonable cause. Since the tenure commission felt that they did not have a fair and complete hearing, therefore, it was the decision of the tenure commission that their order

of August 29, 1953 was still in effect.

This early history of the tenure commission, though sketchy in detail, does give evidence of the formation of the tenure commission as a legally endowed and functional body affecting the actions of all boards of educations and teachers who came under tenure law by popular vote.

Through the early cases mentioned, such as Swickard and Rehberg, through the year 1954, there were seven cases appealed to the State Tenure Commission. Of these seven, four were either dismissed prior to a hearing or the appellee's attorney did not answer an appeal to the tenure commission, therefore, the commission took no action. On two other cases, the commission rendered a decision for the teacher appellant and in one case, the decision was rendered for the board of education, or the appellee. The seven cases are listed below:

1. Grace Flood v. Garden City Board of Education, 1949
2. Clark Rehberg v. Melvindale Board of Education, 1949
3. Georgia Swickard v. Highland Park School District, 1950
4. Lois Buchbinder v. School District of Pontiac, 1952
5. O. A. Johnson v. Royal Oak School District #1, 1952
6. Mayola Salt Paw v. Royal Oak School District #1, 1953
7. Blanche W. Northwood v. School District of the City of River Rouge, 1954

History of the Tenure Commission, 1955 through 1964

It is during this middle period in the history of the State Tenure Commission that Juste Rosati was perhaps the key figure in formulating tenure decisions in Michigan. During the time that Juste Rosati was a member of the tenure commission, many school administrators became concerned over

the regularity of decisions being reached by the tenure commission which were in favor of the teacher or appellant. During this period of time thirty-nine cases were appealed to the State Tenure Commission and of this number, some nineteen were either dropped, dismissed, or withdrawn by the appellant prior to a decision or a hearing being held by the tenure commission. Of the remaining twenty cases, fifteen were decided in favor of the teacher while but five were decided in favor of the appellee, or the board of education. Since seventy-five percent of the cases were won by teachers, many public school administrators were reluctant to pursue a tenure case through to a dismissal since they felt there was not much hope for ultimate success if the teacher were to appeal the case to the State Tenure Commission. In the offices of the State Tenure Commission there are no minutes to show the action of the State Tenure Commission from 1953 through 1959. According to Mr. James Woodall, who was chairman of the Michigan Education Associations Tenure Committee:

"Mr. Rosati was a power unto himself."

What records there were for this period of time were kept by Mr. Rosati. It is interesting to note that at this time the Michigan Tenure Commission had its own stationery listing their address as 23493 Greater Mack, St. Clair Shores, Michigan. This address, incidentally, was the law office of chairman Juste A. Rosati. Meetings which were held in 1959 were for the purpose of hearing the case of Garrett

versus the Dearborn Board of Education. Hearings were held in September on the 8th and the 25th, then again on November 19th and on December 17th and December 22nd. During these hearings only two members on the tenure commission were present, namely; chairman Rosati and Gladys Davis, a teacher from Royal Oak. Roger Craig, the school board member of the tenure commission, was a member of the Dearborn Board of Education and at the hearing at the local level, since he was a member of the tenure commission and had a legal background, he chaired the dismissal proceedings in the private hearing requested by the teacher. Therefore, when the appeal was made to the State Tenure Commission, Roger Porter Craig disqualified himself.

It is interesting to note that after a long period of deliberation the tenure commission could find no legal fault with the hearing conducted before the local board of education. However, they did decide to hold a complete new hearing, or hearing de novo, and called witnesses for testimony. According to Art Raymond, principal of the Henry Ford School in Dearborn, who was the original complaintant in this case, it was the first time a complete hearing de novo was held. Art Raymond felt that this established a dangerous precedent in that prior to this time all the tenure commission had decided was whether the local board of education had handled the case legally correct and whether the local board did have reasonable and just cause. This was the first clear cut case where the tenure commission

substituted their opinion for the findings before the local board of education.

The Garrett case continued with the record indicating a hearing on April 8th and another meeting on August 1st of 1960, both of which were concerned with the Garrett case. In 1960 a hearing was held in Benton Harbor at the Saint Vincent Hotel regarding fifty-six tenure teachers versus the Benton Harbor Board of Education. Although this case was dismissed without any resolution on the part of the tenure commission, chairman Rosati had requested briefs be submitted related to four specific legal issues. This case is mentioned because it is the first time the question of bargaining as it may or may not conflict with tenure was raised. The four questions which chairman Rosati requested the briefs on were:

1. Whether refusal to bargain on the part of the school board is a violation of the tenure act.
2. What constitutes discharge within the meaning of the tenure act?
3. Is failure to sign a contract of employment just and reasonable cause for discharge?
4. If such is a discharge, must there be charges noted in a hearing determination thereunder?

The remainder of the minutes extending through the year 1963 indicate only that a hearing was held or that a decision had been reached regarding a specific case. Following are the twenty cases for which the tenure commission reached a decision. These are the fifteen cases referred to where the tenure commission reached a decision in favor of the teacher

appellant and the five which were reached in favor of the appellee board of education:

Case	Decision Rendered
Dorothy Posey vs. Board of Education District #1 Royal Oak Township Oak Park City	Appellant
Dezena Williams vs. Board of Education Melvindale	Appellant
James Satterwhite vs. Royal Oak Township District #1	Appellant
Marveta Hine vs. Hazel Park School Board	Appellant
Henry M. Fallon vs. Board of Education Highland Park	Appellee
Jeanette Snyder vs. Lakeshore Public Schools	Appellant
Mary Ann Garrett vs. Board of Education Dearborn	Appellant
Scott W. Street vs. Board of Education Ferndale	Appellant
Burnestyne Wilson vs. Board of Education Flint	Appellee
Florence Gerdes vs. Board of Education Romulus Township	Appellee
Isa M. Vogel vs. Board of Education City of Pontiac	Appellee
Inez A. Beebe vs. Willow Run Public Schools	Appellant
Hugh M. Kahler vs. Benton Harbor School District	Appellant
Thomas P. Noland vs. Lincoln Park School District	Appellant
David Lawson Overbey vs. Highland Park Board of Education	Appellant
Esther Palmer vs. Royal Oak School District	Appellant

George R. Lutfy vs. Fitzgerald Public Schools	Appellant
Helen S. Wiltsie vs. Roseville Public Schools	Appellee
Anne Lash vs. Board of Education Dearborn	Appellant
Bobby Jack Young vs. Board of Education Hazel Park	Appellant

Tenure Commission from Re-organization until June 1969

The Michigan Education Association, after years of meetings, resolutions, and legislation lobbying, was able to initiate the enactment of a mandatory state-wide teacher tenure law. Despite the opposition of the Michigan Association of School Boards, the Michigan Education Association had secured through petition the required number of signatures for presenting a proposed amendment to the Michigan Constitution to the people. Had this course been followed, this then would have given the teachers in Michigan tenure protection by constitutional amendment. The legislatures, however, preferred to enact the law themselves in order that they might retain control of that law. In Michigan it is easier to change a law through legislative revision than it would be to change a constitutional revision if this was the method through which tenure had been achieved. Therefore, Act Number IV of the Public Acts of 1937 was amended in 1964. It is interesting to note that this change, as well as the tenure amendments of 1963, were much nearer to the original proposal for tenure in Michigan which was first proposed in 1937. In the original proposal presented

in 1937 the statement for mandatory state-wide tenure was included. The bill as passed, however, made tenure a local option at the pleasure of the qualified electors of each school district. The original proposal also called for a tenure commission of five members which would include the Superintendent of Public Instruction, two classroom teachers and two others to be appointed by the State Board of Education. The Tenure Act as passed in 1937 reduced this to three as had previously been noted. The amendments which passed in 1963 included adding two commission members to bring the total to five, much like the original proposal of 1937. The law as amended in 1963 created this five man tenure commission to include two instructors, one member of a board of education, one person not a member of a board of education, nor a teacher, and one superintendent of schools.

On January 30th of 1964 the first meeting of the new five member tenure commission was held in the office of the State Superintendent of Public Instruction, Dr. Lynn Bartlett. He distributed copies of the new tenure act and reported that there was $2,500 appropriated by the Legislature for this commission and, in addition, he had asked for $9,700 to be placed in the Department of Public Instruction budget request. Dr. Bartlett also indicated that the files of the tenure commission had been brought to his office from Detroit. This was in keeping with the amended Act of 1963 which stated in Section 38.138 that all records

shall be kept in the office of the Superintendent of Public Instruction. Dr. Bartlett further indicated that a per deim expense would be paid the members of the tenure commission. Dr. Bartlett also indicated that it was felt to be necessary that a secretary be hired in order that the tenure commission might maintain a permanent office.

A considerable discussion occurred over the expense necessary for the employment of court stenographers who would take testimony at hearings and then transcribe it. This original five member tenure commission discussed the duties of chairmen, where the files should be kept, and what the function of the secretary of the commission would be. They concurred that the chairman of the commission should be an attorney as the appeals have to be put in judicial language. They further ordered that a thousand copies of the tenure act should be printed and distributed. The five commission members present at this meeting were Carl Morris, Gladys Davis, Harry Lockwood, Albert Johnson, and Chalmer Young.

Early in 1964 a question of a standard contract form for all teachers was presented to the tenure commission by Don Doubleday of Kalamazoo. The tenure commission discussed the advisability of recommending the standard contract form and finally determined that the tenure commission did not have the authority to devise or recommend a standard form. Also, in May of 1964, the tenure commission discussed the question, "May a board of education request three years

probation for all teachers?" After much discussion it was suggested by the commission that this be answered in the negative because of the Wilson case.

In 1954 the Flint Board of Education adopted a policy requiring a third year of probation for all new teachers employed in the system. Early in 1958 all second year probationary teachers were given third year probation status as per board of education policy and the State Tenure Commission was notified as to this action. At the end of this third year of probation Burnestyne Wilson was notified that she would not receive tenure status. Following legal procedure a hearing was held before the local board which supported the position of the administration. This decision was appealed to the tenure commission and finally to the Michigan Supreme Court which, in reviewing the case, said:

> "We have made reference heretofore to the "policy" of the board to "require" three years of probation for a beginning teacher. But the state, also, has a policy as to beginning teachers expressed in the Teachers' Tenure Act. That policy is that the probationary period shall be not three years, but two. "No teacher", says the statute, "shall be required to serve more than one probationary period," such period having been heretofore defined as two years duration. It is true that a board may "grant" a third year of probation to a teacher, but the language of the grant (as opposed to that of a requirement) makes clear that the third year is for the benefit of the teacher who may not have satisfied the board fully but who may have shown promise nonetheless. Nowhere in such language is there any foundation for saying that a board may require in all cases, three years of probation."[67]

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[67]Grinstead, op. cit., p. 7.

The minutes of the succeeding years 1965, or up through June 1967, indicate a series of meetings were held each year for the purpose of conducting hearings and reaching decisions over the cases that were appealed to the tenure commission. Other meetings indicated the election of officers including chairman and secretary. It should be included in this brief review of the tenure commission that an additional act was passed during this time which has had an effect upon the decisions that were reached by the tenure commission.

In the spring session of 1965 the State Legislature passed a compulsory bargaining law with mandatory and state-wide effect. Therefore, by the fall of 1965, teachers found themselves with tenure protection which went into effect with the opening of school in 1964 and now, also, with the power to legally bargain for themselves with their local school boards. Some of the significant decisions reached by the tenure commission since 1965 have to do with apparent conflicts between the tenure law and Act 379. Perhaps one of the most significant appeals to reach the tenure commission was the case of Vierra versus Saginaw where the question was, "Is failure to pay union dues pursuant to a labor agreement just cause for dismissal?" In this case, the tenure commission reached a two-two decision with one commissioner, Mr. Porterfield, abstaining because he was a teacher from Saginaw.

In 1970 it might be added that this decision has been

re-affirmed by the tenure commission on a three to two decision that the teacher may be dismissed for failure to pay union dues. Therefore, failure to pay union dues pursuant to a labor agreement may be consideration to be just and reasonable cause for dismissal. Following is a list of decisions reached from 1964 through June of 1969:

Case	Decision Rendered
Hosain Mosavat vs. Board of Education Garden City	Appellee
Delilah Matthews vs. School District of City of Pontiac	Appellant
Velma Rogers vs. Taylor Township School District	Appellee
Basil I. Wright vs. Port Huron Area Public Schools	Appellant
Gerald Socha vs. Fitzgerald Public Schools	Appellee
Frank Creelman vs. Van Buren Public Schools	Appellee
Rhoda London vs. Oak Park School District	Appellee
Norman Keefer vs. Jackson County School District	Appellant
Raymond Moore vs. Newaygo Public Schools	Appellee
Evan Karabetsos vs. East Detroit School District	Appellant
John R. Veenstra vs. Frankenmuth School District	Appellee
Matthew Rumph vs. Wayne Community School District	Appellee
Arthur Williams vs. Cheyboygan Area Schools	Appellee
John Bruek vs. Lincoln Park Public Schools	Appellee
John Hutchinson vs. Colon Community Schools	Appellant

Mary King vs. Sumpter School District	Appellant
Melba Ellingson vs. Alpena Public Schools	Appellee
James Morgan vs. Gibraltar School District	Appellee
Gerald Zarend vs. Oscoda Area Schools	Appellee
Elizabeth C. Riley vs. Sturgis School District	Appellee
Anne McClure vs. Godwin Heights Public Schools	Appellee
Evelyn Weckerly vs. Mona Shores Board of Education	Appellant
Kathleen Moore vs. Monroe School District	Appellant
Lillis McLain vs. School District of City of East Detroit	Appellee
Dorothy Madison vs. Lakeview Public Schools	Appellant
Robert Vierra vs. Saginaw School District	Appellee
Catherine A. Hargreaves vs. Saginaw Board of Education	Appellee
Michael Diana vs. Potterville Public Schools	Appellee
Paul R. Mead vs. Grand Rapids Public Schools	Appellee
Nicholas McCullough vs. Willow Run Public Schools	Appellee

Attorney General's Opinions Affecting Tenure

As indicated earlier in this Chapter, in addition to the statuatory regulations passed during the extra session of the State Legislature in 1937, very few rules were adopted to guide the procedures under which the tenure commission would function. As Mrs. Carolyn Thrun had indicated, the fewer the number of regulations that were adopted by the commission, the better it would be since

all regulations had to be filed with the Secretary of State. This approach led to the necessity for legal opinions to be sought from the office of the Attorney General who, by law, acts as the legal advisor for the tenure commission. The procedures under which the tenure commission functions today are based upon the original statuatory provisions and the changes which occurred as a result of changes in the tenure law when it became mandatory in this state. The procedures are further defined by court decisions, regulations adopted by the commission itself, and, in a large number of instances, by opinions from the Attorney General's office. These opinions, as the term implies, are not actual law in that when released, they have not been determined by a legal court decision but rather they are the opinion of the Attorney General as to how he feels the court would act on a requested interpretation. For this reason, Attorney General's opinions may be challenged in court, but quite often, they are accepted as fact because no one challenges his opinion in court. Appendix E lists those Attorney General opinions which affected tenure through 1965.

CHAPTER IV

REVIEW OF SELECTED TENURE CASES

In Chapter I of this study it was indicated that selected tenure cases would be reviewed in an attempt to isolate what appeared to be the pivotal issue in each of the cases and give the apparent reasons for the lack of success or failure on the parts of boards of education in selected tenure cases presented before the commission after 1964. Chapter I also indicated that the decisions rendered by the commission which are reviewed in this study are among those handed down since legislation was passed which provides mandatory state-wide tenure in Michigan.

The reason for limiting the selection of tenure cases to those that were handed down since 1964 is that, at that time, the teachers tenure act became administratively more the responsibility of the Department of Public Education. Thus, as indicated in Chapter III, the minutes and records of deliberations and meetings of the tenure commission are much more complete since 1964 than they were during the prior period when tenure was not mandatory in Michigan. The limiting of case review to those decisions rendered since January, 1964 should in no way negate the effectiveness of this section of the study. Since 1964 thirty decisions have been reached starting with the decision of

Hosain Mosavat versus Garden City Board of Education and ending with the Nicholas McCullough versus Willow Run Board of Education decision which was handed down in May of 1969.

These thirty decisions are noted in Appendix F which states the pivotal issue upon which the tenure commission based its decision in each case. Of these thirty cases, three have been selected to be reviewed in detail.

In selecting the three cases to be reviewed, James Maatsch, an attorney who has argued six cases before the State Tenure Commission[68] was interviewed. During this interview it was deemed important to select a case in which the board of education failed to follow the legal requirements as specified in the tenure law. Of the thirty decisions reached it was felt that the case of John Hutchinson versus the Colon Board of Education was a clear example in which a board of education failed to follow the legal requirements. The second criteria used as a basis for selecting a case to be reviewed in detail was again based upon legal procedure. An attempt was made to find a case in which the local board of education assumed they had followed all legal requirements but the tenure commission ruled otherwise. This was felt to be important in order to emphasize to school board members and administrators the complexities of tenure law. For

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[68]James Maatsch of the firm Miller, Canfield, Paddock and Stone, Lansing, Michigan.

this reason the case of Evelyn Weckerly versus the Mona Shores Board of Education was selected.

The third case to be reviewed was selected in order to give in reference a local board of education which had clear cut personnel policies and procedures. For this reason the case of Rhoda London versus Oak Park Board of Education was selected. Despite a legally complex question the local board was successful in defending its actions before the tenure commission because it had excellent documentation and policies. These policies, when coupled with the well documented procedures were crucial in sustaining the clear charge under which the teacher was dismissed.

Selected Tenure Cases

Title: John Hutchinson Appellant vs. Board of Education Colon Community Schools Appellee

Docket # 67-8 Date: September 15, 1967

Background Information

Mr. John Hutchinson was employed as a tenure teacher in the Colon Community School District during the 1966-67 school year. He had taught in that school system since 1963. Among his duties and responsibilities during that year were teaching physical education, serving as a coach, advising one of the high school classes and, during the summer, teaching driver education.

Mr. Stehpen Hayden, a first year superintendent of Colon Community Schools had been concerned with the teaching

of Mr. Hutchinson during that year. He was not, however, in favor of dismissing Mr. John Hutchinson through the tenure law because he felt he did not have enough documented information to substantiate the dismissal if it were to be appealed to the tenure commission. According to Mr. Hayden the following were listed as examples of the deficiencies of Mr. John Hutchinson:

1. During the physical education classes and while the students were under the supervision of Mr. Hutchinson there were extensive thefts.

2. He was the type of physical education teacher who threw the ball out and told the kids to go to it and then sat and watched the students play, or he played basketball with a small group of students in one end of the gym and left the other students to play on their own without instruction or supervision.

3. As a coach it was not uncommon for students to be in the building at the conclusion of practice dressing in preparation to go home long after Mr. Hutchinson had left for the day.

4. He taught driver education in the summer and some eight months later he still had not turned in his report.

5. He would ask fellow colleagues to report the fact that he would be absent when they arrived at school rather than make a call himself as was required.

On March 13, 1967 during a legal meeting of the Colon Board of Education the problem of the dismissal of Mr. John Hutchinson was discussed. After reviewing the above deficiencies, Mr. Stephen Hayden told the board of education that at various times during the year he had informed Mr. Hutchinson verbally, and in writing, that he was dissatisfied with his work. As an example of his discussions with Mr. Hutchinson concerning his dissatisfaction with his work, a

letter dated January 20 from Superintendent Hayden to Mr. Hutchinson was read. This letter indicated that Mr. Hutchinson had failed to comply with four specific points:

1. He failed to supervise the showers and locker room properly.
2. He failed to supervise the use of, and maintenance of school equipment.
3. He made a practice of playing with the students. It was felt he should be a demonstrator and not a class member.
4. He left the building before the kids when he was coaching.

Following a discussion of the pros and cons of the dismissal of Mr. Hutchinson, the following motion was passed. This motion comes from the minutes of the board of education dated March 13, 1967.

> "Excerpts from Mr. Hutchinson's trial were read. These were discussed thoroughly and since there seemed to be very little improvement, even with all the recommendations to him, and upon the recommendation of the superintendent, a motion made by Lutfy, seconded by Cox, that steps be initiated for the procedure of dismissing John Hutchinson from the Colon Community Schools."

The motion carried with only one negative vote with one member absent. According to Mr. Hayden, though he was not in favor of dismissing Mr. Hutchinson because of a lack of documented information, he felt that the board of education would have no chance whatsoever in an appeal without his recommendation. Therefore, he agreed to recommend that Mr. Hutchinson be dismissed.

At this point in time, the superintendent had not filed charges in writing with the board of education. Following

this meeting, on March 16, 1967, Superintendent Hayden sent a letter to the appellant which indicated to him that upon his recommendation the board had voted to initiate proceedings for dismissal effective at the end of that school year. This letter listed four reasons for the action:

1. Inadequate supervision of the students.
2. Incomplete compliance with the regulations as presented to him in January.
3. General effectiveness as a staff member.
4. Incomplete compliance with orders of the administration.

The superintendent indicated that the board would conduct a hearing if he requested the same. On March 22, 1967, the secretary of the board, Fay Whitford, mailed a letter to the appellant, John Hutchinson. This letter indicated the charges which led the board to not offer him a contract for 1967-68. This letter listed the same four concerns as expressed above by the superintendent. Again, as of this date, no written charges were filed with the board of education.

On the following day, Mr. Hutchinson sent a letter to the board of education requesting a hearing. The local hearing was held on April 17, 1967, and a copy of the proceedings was filed with the State Tenure Commission. In reviewing the minutes of that board meeting one can see that the following motion was passed:

> "Since a decision had to be made regarding John Hutchinson, this was discussed further and then the motion was made by Lutfy, seconded by Cox, that upon the recommendation of the superintendent and based upon the hearing, that we do not rehire Mr. Hutchinson for the school year 1967-68 and that the secretary write Mr. Hutchinson to this effect."

After this decision was passed, the secretary informed Mr. Hutchinson by letter that the board had unanimously agreed that they would not offer him a contract for the 1967-68 school year.

Subsequently, Mr. Hutchinson filed an appeal requesting a hearing before the State Tenure Commission which was granted. His attorney argued that the board had failed to follow legal procedures as required by the tenure act. The other two points raised by the counsel for the appellant,

1. That the charges were insufficient to constitute cause for discharge, and
2. That there was not enough evidence available or presented to prove the charges

were not involved in the basis for the decision issued by the tenure commission.

Pivotal Issue

Of the three points raised by the counsel for the appellant, the one which became the basis for the decision was that the Colon Board of Education did not follow the provisions of the tenure act as provided under Section II, Article IV. It is this section which says that all charges against a teacher shall be made in writing and that these charges should be filed at least sixty days prior to the

close of the school year.

Basis for Finding

The language of the tenure act is quite clear in that written charges concerning the character of professional services should be filed with the board of education at least sixty days before the close of the school year before the board of education can proceed upon such charges. (Note Appendix B). The record clearly indicated that the minutes of March 13, 1967, of the Colon Board of Education did show that the question of renewal of the contract of Mr. Hutchinson had been discussed and that the board had acted to initiate proceedings to dismiss Mr. Hutchinson as a teacher. This was within the sixty day limitation. However, it was also clear that no written charges had been filed by the board of education before this time. Only written communication between the appellant and the superintendent and recollections of verbal conversations were presented to the board prior to this time.

Since the question of the dismissal had only been discussed prior to the motion to proceed with discharge, it was the finding of the tenure commission that it should uphold the teacher. Specifically, their reasoning was that since the controlling board of education had not received written charges from its administrative staff, it could not decide to proceed upon such charges. It would then follow that it was impossible to furnish the teacher with an actual written statement of the charges approved by the

board of education.

It is true that the superintendent had notified the appellant by letter that the board of education voted to initiate proceedings and had listed the charges. The superintendent also indicated that the board of education would conduct the hearing if the teacher so requested. However, in a complete review of the case there was no evidence to show that the board of education had acted upon written charges at any time after they had been filed with the secretary of the board of education. The failure to take board of education action on the charges as they were filed in writing by the superintendent is, in the interpretation of the tenure commission, not following all the legal requirements under the tenure act.

An earlier court case, which was not a decision of the tenure commission, indicated that the board of education followed legal procedure if, even though prior to giving the teacher a written statement of the charges, the board had adopted a resolution that the teacher not be given a contract for the coming year and the board did not rescind that action until one or two days prior to the actual hearing at the local level. In this case the rescinding of the action prior to the hearing indicated that the action to dismiss was taken only after the local hearing which indicated that the statement of charges had been filed and the appellant had received a written copy of those charges.

With this court case available to be used as a basis for action it would appear that the Colon Board of Education

could have successfully discharged Mr. Hutchinson had they rescinded the motion that they took on March 13, 1967, at any time prior to April 17, 1967, which was the date of the local hearing. If they had rescinded action on March 13th, they then could have presented Mr. Hutchinson with charges upon which they would act at the conclusion of the local hearing. The only concern at that time would be that the local hearing be held at least sixty days prior to the end of the school year.

Unanimity of Opinion

This decision, dated September 15, 1967, was signed by all five members of the Michigan Tenure Commission; Albert C. Johnson, Marian Gibson, Donald Schoenrath, Harry Lockwood and Leonard Porterfield. The unanimous opinion of all five members of the tenure commission indicated that, in their opinion, the Colon Board of Education did violate the intent of Section II, Article IV, of the Michigan Tenure Act.

Though the decision to support the appellant was issued by the tenure commission, Mr. Hutchinson was never reinstated as a teacher in Colon. The board of education appealed this decision to the circuit court in St. Joseph County but before the case was conducted, a settlement was reached with Mr. Hutchinson and he is now living in Indiana. The settlement reached was for $900.00.

Title: Evelyn Weckerly Appellant vs. Board of Education Mona Shores School District Appellee

Docket # 68-6 Date: August 26, 1968

Background Information

Evelyn Weckerly was a certified teacher in the Mona Shores School District for the school year 1967-68. Although she was a first year teacher at Mona Shores, she had served one year of probation in another school district. Mr. William Luyendyk, who was the superintendent of the Mona Shores Public School District at that time, had a verbal agreement with Evelyn Weckerly that she should try the third year of probation before he had to make a decision whether to terminate her employment or grant her tenure with the school district.

With this verbal commitment to a third year of probation the superintendent, on April 3, 1968, at a special meeting of the local board of education recommended that Evelyn Weckerly be placed on a third year of probation because of the lack of discipline in her classroom. The superintendent indicated that the lack of discipline in her classroom and her other problems were due to her handicap. Miss Evelyn Weckerly was blind. Despite this recommendation the Mona Shores Board of Education passed a motion to terminate her employment at the end of the 1967-68 school year. They gave as the reason for dismissal that of unsatisfactory discipline caused by her handicap.

In discussing Evelyn Weckerly with superintendent

William Luyendyk, Mr. Luyendyk felt the problem was not her handicap but her personality. This led the students to take advantage of her because of her handicap. As examples, Superintendent Luyendyk said that the students would write obscenities on the blackboard and the teacher would never know it. Another reaction to Miss Weckerly by the students was indicated by the example in which students would ask to go outside for a class on a warm day. Miss Weckerly refused them. Then four or five of the students would stay in, talk quietly together and shuffle their feet while the rest of the class took off their shoes and tiptoed out of doors. Miss Weckerly never knew the majority of her students were not in the classroom.

Her personality alienated her from the remainder of the teaching staff because she used her handicap to request that teachers do things for her. According to Superintendent Luyendyk, it was so bad that staff members, when they saw her coming down the hall, would stop and not say anything to her. In this manner, she would not know that other members of the staff were nearby. Staff members felt that if she knew they were there she would take advantage of them and ask them to do something for her. She was continually making demands on other staff members using her handicap as the reason for making the demand.

On April 8, 1968, a letter was sent to Miss Weckerly by certified mail which said that because of unsatisfactory

work her contract would not be renewed. On April 8, the same day as mailing the letter, Mr. Hanischen, her building principal, orally told Miss Weckerly that her contract was not going to be renewed for the next school year and that she would receive this same information in the mail.

On April 9th a postal employee left a notice in her mailbox which indicated that a registered letter was being held for her at the post office. She was not home at the time the mail was delivered. Miss Weckerly testified that she looked for the letter in her mailbox on the 9th through the 11th of April but was not able to find it. She further testified that she did not find the notice of mail arrival in her post office box until April 12, 1968. The reason for her not finding the notice, in the opinion of the tenure commission, was the fact that she was blind.

Whether Miss Weckerly used her handicap as an excuse to delay official notice of receiving the letter until a date less than sixty days before the end of the school year, whether the notice had not been put in her mail box as the postal employee testified, or whether the notice was there but stuck in a crack in the corner of the mailbox so that in a quick examination of the mailbox it might be overlooked, was not made clear. It should be noted that although this letter was sent on April 8th, and, according to Miss Weckerly, not received until April 12, 1968, that the sixtieth day before the close of the school year was April 9, 1968.

Pivotal Issue

The pivotal issue in this case is did the delivery of a mail notice by the postman to Miss Weckerly's mailbox on April 9th constitute the required notice for termination of employment according to the tenure law?

Basis for Finding

The majority of the tenure commission found that Miss Weckerly became a tenure teacher on the fifty-ninth day before the close of the school year because she had not been properly notified. Therefore, it was the ruling of the commission that she could be dismissed only by an appropriate method of filing charges and a request for a hearing as specified under Article IV of the tenure act. In this case the tenure commission ruled that the mail arrival notice informing the teacher that a certified letter was being held for her at the post office did not constitute the legal requirements as outlined in Article II, Section III of the tenure act.

The tenure commission noted the similarity between this case and the case of Norman Keefer which was decided in 1966. Norman Keefer was using a post office box and received notice in his postal box that a registered letter was held for him either Friday, April 15, or on Saturday, the 16th. He was unable to claim the letter except Monday through Friday from 8 a.m. to 5 p.m. because the service of claiming special mail was limited to these specific days and hours.

The assistant superintendent of Ann Arbor had attempted to locate Norman Keefer through the Ann Arbor police, the Sheriff's Department, the county clerk, and by using surrounding area telephone books, but all such efforts were unsuccessful. He attempted to notify him in this manner because school was out for spring vacation from April 11 through April 15, 1966.

The only significant difference in the case of Norman Keefer and the case of Miss Evelyn Weckerly is that Miss Weckerly had received oral notice of her termination and this was not true in the case of Mr. Keefer. Section III, Article II of the tenure act specifically says that at least sixty days before the close of each school year the controlling board shall provide the probationary teacher with a definite written statement as to whether his work is satisfactory.

Section III continues and in the last sentence states:

> "Provided further that any probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified at least sixty days before the close of the school year that his services will be discontinued."

It is this last sentence which may be the basis for some argument that Miss Weckerly had been notified because she had received oral notice from her principal. The majority opinion in this tenure decision, however, indicated that they believed it was the intent of the legislators that such notice should be in written form even though the word "written" is not used in the last portion of Section III.

Unanimity of Opinion

The three tenure commissioners who wrote the majority opinion argued that the principal could not legally give notice of dismissal even though in testimony before the commission it was indicated that Mr. Hanischen, her building principal, had told her that her contract was not going to be renewed and that she would receive this information in the mail. The commission felt that he had not been designated by the board of education to act as the agent for the board in this case.

The minority opinion signed by the superintendent of schools and the board of education member of the tenure commission indicated they felt that the legal requirements were fulfilled by the board in that the appellant was properly notified at least sixty days before the close of the school year. This was due to the oral action taken by her principal and the fact that the superintendent had sent a registered letter notifying the appellant on April 8th, sixty-one days before the end of the school year. The minority opinion indicated that the failure of the appellant to pick up her mail after being properly notified is her responsibility and not that of the board of education. She also admitted being notified of the contents of the letter verbally by her immediate supervisor, the building principal.

The Mona Shores Board of Education appealed the decision of the tenure commission in Circuit Court in Ingham County

and the Circuit Court over-ruled the tenure commission. In part, their decision was based upon the fact that a postal employee had left a notice of mail in the appellant's mailbox within the sixty day period. Michigan law is well settled as to a general principle that notice by mail is presumed to have been received until lack of receipt is denied by credible evidence.

Title: Rhoda London Appellant vs. Oak Park Public Schools Appellee

Docket # 66-5 Date: December 9, 1966

Background Information

As indicated earlier, this case was selected because it was extremely well documented with clear policies and procedures which sustained the clear charge which was filed by the board of education. This point is emphasized in the majority opinion written by three tenure commissioners who noted numerous exhibits as well as extensive and well prepared briefs. Mrs. Rhoda London was a mathematics teacher at the Robert Frost Junior High School in Oak Park. At no time during this tenure hearing was the competency of the appellant as a teacher of mathematics questioned.

The husband of the appellant, Mr. Burton London, had a heart attack which required hospitalization. He also had been requested by the doctor to take periodic vacations outside the city at least once every six months. Because of the demands of his business and their religious beliefs, the appellant and her husband took their vacation during

the month of February. Mrs. London originally applied for and was granted leave without pay in the year 1964 by her principal, Mr. Arden Detert. She again requested leave without pay for two weeks in 1965. At this time Mr. Detert expressed his displeasure at this apparent yearly two week vacation but granted it. Mrs. London indicated to Mr. Detert that because of her husband's health this leave would be necessary each year. According to Mr. Detert, Mrs. London also indicated that if he was not happy with this arrangement that he should notify her before the contracts come out. The contract for the next school year was issued to her and contained no changes from the previous contract except for an increase in salary. Further, there were no special arrangements for a leave of absence noted in this contract.

In November of 1965, the appellant applied for a leave without pay for February, 1966, as she had done each of the two previous years. This third time Mr. Detert did not approve application. Mrs. London discussed it with Mr. Detert and when it was still denied, she appealed to Mr. May who was the assistant superintendent for instruction. This appeal was made in January of 1966. Mr. May, at that time, refused to change Mr. Detert's stand and suggested if she wanted to carry it further she could see Dr. Dickey, the superintendent of schools. Although this meeting was scheduled it was not possible to hold the meeting because of a conflict in scheduling. Rhoda London and Dr. Dickey

did discuss the matter in a telephone conversation whereby Dr. Dickey agreed with Mr. Detert and Mr. May and refused to change the decision.

On February 2nd, Mrs. London sent a note to Mr. Detert indicating to him that she would be absent for two weeks beginning on the 14th of February and that he should get a substitute for her. On February 3, 1966, Dr. Dickey, superintendent of schools, sent a letter to Mrs. London indicating that she should reconsider such action. The five paragraph letter concluded by saying:

> "Inasmuch as it is now my understanding from your letter to Mr. Detert that you are proposing to take the special two weeks vacation your contract and our decisions notwithstanding, I must now officially ask you to reconsider and to assure me that you will not take an unexcused vacation. If you cannot provide such assurance, please be advised that I will have no alternative other than taking steps to have your contract rescinded as of the date of your unexcused absence from your duties."

School board policy clearly states that leave without pay may be granted by the superintendent for matters of extreme importance to the individual. Even the intercession of Dr. Simmons of the Michigan Education Association on behalf of Mrs. London was not successful in getting Dr. Dickey to approve this request for leave without pay.

The appellant took the vacation in February of 1966 and upon her return charges were filed for insubordination. On February 24th, superintendent Otis Dickey sent Mrs. Rhoda London a letter in which the second paragraph stated:

> "I have reported to the board of education that you violated your contract by leaving your teaching duties and responsibilities for a period of two weeks without

> the authorization of the board's administrative officials and thereby acting in an insubordinate manner. The board's attorney, Mr. Burton Shiftman, has been instructed to start formal dismissal procedures. You will hear directly from him concerning official board actions in this matter."

On February 28,1966,the Oak Park Board of Education passed the following resolution:

> "Resolved that the board of education undertake proceedings for the discharge of Rhoda London, a teacher at the Robert Frost Junior High School, on the charges today filed by Otis M. Dickey, superintendent of schools. Further, that a copy of charges be furnished Mrs. London and that Mrs. London be suspended from her position as a teacher until March 14, 1966, at 8 p.m. at which time the board will take action on said charges unless written request for a hearing pursuant to the teacher tenure act is received from Mrs. London."

A copy of this resolution was forwarded to Mrs. London on March 1, 1966, to inform her in advance of the board's intent to take action on this matter at the March 14, 1966 regular board meeting. Attached to the letter sent to Mrs. London was a statement of the charges filed and signed by Superintendent Dickey precipitating the above action taken by the board of education.

Testimony before the tenure commission indicated that the appellant realized she was faced with a dilema. Her husband, on one hand, insisted that she accompany him, but she was also aware that if she did, she would not meet satisfaction in an attempt to get this action approved by the administration in Oak Park. Inherent in her choice to attend her husband was her attempt to meet her marital obligations in preference to her school obligation. Also inherent in her choice was the fact that her husband's

schedule and her desire to avoid vacations during religious holidays would certainly have forced the school officials to schedule classes at her convenience rather than at the convenience of the school system. There was some question, also, as to whether the appellant was obliged to accompany her husband for the sake of his health or just because he requested it. This was particularly noteworthy when viewed with the fact that between his scheduled vacations he was able to meet a demanding work schedule of seven days a week and often more than eight hours a day.

Pivotal Issue

The pivotal issue in this case was simply this: Was the controlling board estopped by the previous leaves granted and the appellant's conversations with Mr. Detert concerning her request for leave without pay? Legally, the question is, can you deny a person something that was previously granted her unless the change were so specified in her contract?

A second crucial point raised by the appellant was the right of Mr. Detert to change her contractual understanding because she had signed a contract under an assumption that she would be allowed to take this leave just as she had been on each of the two previous occasions. Therefore, when he subsequently denied it the third year he was, in fact, changing her contract.

Basis for Finding

The three tenure commissioners who wrote the majority opinion based it in part on the Michigan School Code which

provides as follows:

> "The board of every district shall hire and contract with such duly qualified teachers as may be required. All contracts with teachers shall be in writing and signed by a majority of the board on behalf of the district or by the president and secretary or by the superintendent of schools when so directed at a meeting of the board."

This section of the Michigan School Code indicates who may sign the contract. Since the principal is not designated as one who may sign the contract between the local board and the teacher, they were unable to find on behalf of the appellant that Mr. Detert, her principal, had any authority to change the contract between the board of education and the teacher. Further, the fact that she orally had requested him to change the contract did not force Mr. Detert to report this conversation to the controlling board of the superintendent.

This point was important to the tenure commission because they felt the doctrine of estoppel was inapplicable in this case. In was inapplicable because Mr. Detert had no authority to act on the subject of a leave for Mrs. London in the future. Clearly the school policy stated that leave without pay may be granted at the discretion of the superintendent so that the fact that Mr. Detert had granted her leaves in the past, or expressed a concern about a request for a leave in the future, did not apply. They stated specifically:

> "To individualize each and every contract by the positive oral acclamations or the negative oral assertions of one of the contracting parties arising from conversations with a person who is not an agent of the

> other contracting party for the purposes of the specific details of the contract would only mean in substance that the legislature had delegated precise areas of authority for teaching contracts as only general guideposts."

The tenure commission further found that, although Article IV of the tenure act does not require discharge as a disciplinary act by the controlling board, they felt that, nevertheless, they were inclined to believe that she had every reason to know that this would happen if she continued on the collission course which apparently was her intent when she took the leave without authorization.

This possible action was clearly indicated in the superintendent's letter of February 3rd, when he said:

> "I will have no alternative other than taking steps to have your contract rescinded because of your unexcused absence from your duties."

Unanimity of Opinion

In this case, London versus the Oak Park Board of Education, the tenure commissioners were unable to reach a unanimous opinion. The minority opinion was signed by the two teachers with the three remaining commissioners voting to uphold the board. This case has been appealed to the Ingham County Circuit Court and is now awaiting for a hearing date to be set.

CHAPTER V

SUMMARY AND CONCLUSIONS

For the past thirty three years Michigan has had some form of tenure legislation. In 1937 an optional tenure law was passed whereby through a vote of the electorate the school district could adopt tenure protection for its teaching staff. As of 1964 when the law was revised making it mandatory for all teachers in the state of Michigan to come under the protection of the tenure law, only fifty-nine districts had adopted this law.

Through a concerted effort on the part of the two professional teacher organizations, an optional tenure law had been pushed through the Republican dominated legislature in 1937. The Michigan Association of School Administrators and the Michigan School Board Association on the other hand, though not enthusiastic about the proposed law, had done very little in an organized way in an attempt to overcome the efforts of the teacher organizations. Once the permissive law was passed in the extra session of the state legislature in 1937, then the school board members throughout Michigan voiced their displeasure to the state legislators. As a result of this belated opposition to the tenure legislation the members of the Michigan Legislature became disillusioned with the new law and did not appropriate additional funds to enable the

tenure commission to carry out its work. As a result, the tenure commission was ineffective for the first few years. In 1964 the implied threat of changing the tenure act and adding it to the constitution as an amendment forced the legislature to enact a statute. The legislators changed the law so that this new tenure statute could be amended by the legislature rather than by constitutional amendment if a need to change were to become necessary. The Michigan Education Association, supported by the Michigan Federation of Teachers, had conducted a petition campaign and achieved the required number of signatures which would have forced the constitutional amendment vote in the November 1964 election.

Review of Literature

The review of literature conducted by this writer indicates that there were only four major works that appear to be significant in dealing with tenure. The first was conducted by Cecil Winfield Scott in 1934 at Columbia University. Scott related the development of the tenure movement in the United States to the philosophies which were behind the development of civil service. Basically, civil service was developed to establish standards for the selection of employees and more important to tenure, it was to have removed this field of service from the political spoils system. By this it was meant that the spoils system so common to American politics was to be corrected.

Scott does indicate the one basic difference between civil service legislation and teacher tenure legislation is that civil service legislation normally included retirement laws, while in teacher tenure they may or may not be considered a part of the tenure act itself. The Michigan Tenure Act makes no specific retirement provisions, but only indicates that this act shall not prevent any controlling board from establishing a reasonable policy for retirement which must apply equally to all teachers who are eligible to retire. It also allows the public school system to continue on a year to year contract any teacher who is considered beneficial to the school system even though that teacher might be eligible for retirement.

Clark Byse and Louis Joughin in their book titled Tenure In American Higher Education gave attention to the topic "Tenure and the Law". They indicated that even as late as 1959, or some twenty-two years after permissive tenure had been adopted by the state of Michigan, the fact remained that in the present state of the law, there were many areas in which legal guarantees of procedure regularity were lacking. They recommended that these procedural defects be remedied either through the development of laws through legislative enactment of statutes which might require boards to form a due process requirement, or through contractual agreement. It is interesting to note that all three are presently used as means to interpret

the tenure law in Michigan.

The third major work which was considered to be important was the booklet by Kenneth Grinstead of Eastern Michigan University. His booklet was entitled A Study of the Michigan Teachers' Tenure Act. The basic purpose of this book was to promote uniform interpretation of tenure legislation. Much of his booklet has been taken from interpretations of the Michigan Teacher Tenure Act, through decisions of the Michigan Supreme Court, and opinions of the Attorney General of the state of Michigan. Although Grinstead devotes a few pages to the development of tenure legislation, the majority of his booklet tries to clarify for the reader each of the sections of the Michigan Tenure Act.

The final major work which was reviewed was the study by Jack E. Meeder titled A Study of Attitudes and Problems Relating to State-Wide Tenure and Compulsory Bargaining for Teachers in Michigan. Through a series of questions on three questionnaires, Meeder found that most educators and school board members were in favor of tenure. He did, however, indicate that there is a great feeling that tenure will not improve teaching. By the same token, superintendents of some fifty-nine Michigan school districts felt strongly that tenure had not lowered the performance of teaching in their school district.

The sixth chapter of this study by Meeder titled "Tenure and Compulsory Bargaining in Michigan" is perhaps

the most up to date analysis of the effect of Public Act 379 and the tenure legislation. Meeder again clearly states that the philosophy behind tenure and compulsory bargaining each had a separate strand. Act 379 gives bargaining rights to teachers. This allows them to share in decisions which affect their working conditions. The tenure law only gives teachers security from arbitrary dismissal. It has been seen, however, that there is a conflict between the two laws and that there is a need for the establishment of legal definitions between tenure and bargaining. The agency shop[69] decisions more clearly emphasize this legal question mark.

Historical Overview of the Tenure Commission

There were three significant periods in the history of the tenure commission as indicated in Chapter III. The early formative years after the state legislators passed the permissive tenure act in 1937 was the first significant period. This period became important because the members of the tenure commission were making attempts to formulate policies and plans under which they would operate. Further, legislators and school board members who had second thoughts about the effectiveness of tenure legislation were taking steps to ignore as much as possible the work of the commission itself. This was evident through

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[69]Note Appendix F., Robert Vierra versus Saginaw School District tenure case.

the failure of the legislature to appropriate funds for the expenses of the commission. Led by such people as Clay Campbell, Cardlyn Thrun, and Otto Haisley, the work of the tenure commission slowly took form and developed into a judiciously sound commission whose main responsibility was to provide quick and unbiased decisions to take the place of lengthy court hearings. This was the anticipated responsibility since court cases were time consuming and costly.

The second significant period in the development of the tenure commission was the period from about 1954 through to the change in the tenure law in 1963 and 1964. This period was significant because even though so few tenure cases were decided the great majority of those that were decided were in favor of the teacher. This fact, plus the secretiveness of the commission itself as evidenced through the lack of minutes and the location of commission headquarters and meetings, gave many administrators concerns about the impartiality of this body.

Boards of education and administrators were also going through the throes of interpreting the law as they saw it and then having more legally firm interpretations being made binding upon them through attorney general opinions and/or appeals. The key figure in the tenure commission during this period was Mr. Juste Rozati who was earlier referred to as a "power unto himself". During this period of time the tenure commission used its power to hold a

hearing de novo which in turn had the effect of doubling the cost of a tenure case to local boards of education.

The third significant period as indicated was after the amendments to the law in 1963 and the change in the law in 1964 when the tenure commission became administratively better organized and under the control of the Department of Public Education. From 1964 through June of 1969, thirty cases were decided by the tenure commission. Of these thirty cases, twenty-one decisions were rendered in support of the local board of education, whereas only nine decisions were rendered in favor of the appellant, or the classroom teacher. This could lead one to assume that the local boards of educations were becoming more familiar with the tenure law and the procedures which must be followed before a teacher may be dismissed. Further, one would assume that they began to seek more expertise in terms of legal help in assisting them prepare for a defense before the State Tenure Commission.

Analysis of Selected Tenure Cases

In Chapter IV of this study three individual tenure cases were analyzed. First, the case of Hutchinson versus the Colon Board of Education was reviewed because this was a clear cut example of where the local board of education failed to follow legal requirements as specified in the tenure law. The second case, that of Evelyn Weckerly versus the Mona Shores Board of Education was selected because, though the local board of education assumed that

they had correctly followed the legal requirements of the tenure act, the tenure commission reversed the local board's decision. Case number three, Rhoda London versus Oak Park, was analyzed because it was felt that this was an extremely well documented case and a case which was substantiated by clear cut local board of education policies which helped to sustain the clear charges which had been filed.

Many people felt that the tenure law was an excellent piece of legislation in that it allowed for a reasonable and just dismissal of a teacher without having to go through a lengthy and costly court proceeding. It should be pointed out, however, that each of these three cases was appealed through the court system. The case of Hutchinson versus the Colon Community Schools was appealed to Circuit Court in St. Joseph County. However, before the case was heard the teacher accepted an out of court financial settlement in the amount of $900.00. In the second case reviewed, that of Evelyn Weckerly versus the Mona Shores Board of Education, the decision of the tenure commission was over-ruled by the Ingham County Circuit Court.

In the case of Rhoda London versus the Oak Park Public Schools, which was the third case reviewed, the three to two decision reached by the tenure commission in favor of the Oak Park Board of Education is currently being appealed to the Ingham County Circuit Court. Both Rhoda London and

the Oak Park Board of Education are awaiting a date to be set for that hearing.

As indicated earlier, some fifty-three decisions have been rendered by the tenure commission through June of 1969. Of these fifty-three cases, thirty-one were appealed to either a circuit court or a court of appeals. Twenty-one of these appeals were filed by local boards of educations attempting to overturn the tenure commission's ruling which was made in favor of the teacher, or appellant. Ten of these appeals were initiated by the teacher, or appellant, attempting to overturn the decision rendered in favor of the local board of education.

The desire to appeal a decision of the tenure commission is not a new trend. Chapter III titled " A Historical Overview of the Tenure Commission" was divided into three parts. The first part was an overview of the history of the commission from 1937 through to 1954. The second section dealt with the tenure commission from 1955 through 1964. The third section of Chapter III dealt with the history of the tenure commission from 1965 through June of 1969. The early history of the tenure commission, or that period from 1937 to and including 1954, revealed that four decisions were rendered by the tenure commission. Each of these four tenure decisions was appealed. The middle era of tenure commission history from 1955 until its re-organization in 1964 indicated that twenty decisions were rendered. Of these twenty decisions, nine were appealed through the

court system. The review of history from 1965 to June of 1969 indicated that thirty-one decisions were reached and eighteen of these decisions were appealed.

Since it appears that many tenure decisions are appealed either through the circuit court or the court of appeals, both of which are permissable in Michigan law, a further study might be valuable. This study might review the findings of the courts in order to determine whether the tenure commission was upheld and the basis for the Circuit of Court of Appeals decision as compared to the basis for the decision by the tenure commission. Further, this study could determine whether the tenure commission solved one of the problems it was hoped it would solve when formed: to reduce the time and costs incurred by the local school districts and/or appellants in determining whether the correct procedure was followed or ample justification was given for a dismissal.

Conclusions

The study of tenure in Michigan has led this writer to make several conclusions. The first two conclusions are based upon a study of actual tenure cases. The next three conclusions are based upon a study of the Michigan Tenure Commission. The final conclusion became evident through reviewing the literature, as well as studying actual tenure cases.

1. Legal advice, offered by an attorney who has knowledge in both school and tenure law, is important when attempting to discharge a tenure teacher.

This conclusion has been arrived at for the following reasons: First, many school administrators and boards of education lack knowledge in tenure law. Secondly, rules of evidence and court room techniques are not familiar to many school administrators, yet they are critical in the successful pursuance of a tenure dismissal. Third, legal briefs must be submitted at various times during the course of a tenure dismissal attempt and, fourth, over fifty percent of the tenure decisions handed down by the commission have been appealed to the courts. An attorney is far more valuable if he has been familiar with the case from the beginning rather than only at the time of appeal.

2. A well documented case, supplemented by sound board of education policies are important considerations prior to making a decision whether to file charges and attempt to discharge a tenure teacher.

The reason for this conslusion is that every administrator who initiates proceedings against a tenure teacher should do so on the assumption that the case will be appealed to the tenure commission. Since a period of time will elapse between the hearing held at the local level and the hearing before the tenure commission, a well documented case is necessary, not only for submission as evidence but also for refreshing one's memory.

3. It would appear that the number of tenure cases which are appealed to the Michigan Tenure Commission will increase.

This conclusion is based upon four facts: One, since the tenure commission has come under the direct administrative control of the Department of Education, the number of decisions reached by the tenure commission has increased. Secondly, an increasing number of decisions have been handed down in favor of the local boards of education which should encourage more local boards of education to institute tenure dismissal procedures. It would appear that the legal procedures are more clearly defined and that the local boards will be upheld if it appears they acted with just cause. Thirdly, numerically more teachers are gaining tenure status each year which will increase the likelihood that a greater number of teachers will be dismissed after gaining tenure. Finally, since the emergence of the local association versus a bargaining power, teachers are less likely to accept dismissal and will challenge this in order to more clearly define the rights of a teacher.

4. Despite thirty-three years of tenure legislation, very few tenure teachers have been dismissed.

Through June of 1969 only fifty-three decisions had been reached by the tenure commission. This number is considerably less than one percent of the total teaching staff in Michigan during the 1968-69 school year. Further,

administrators have reported that it is too difficult to dismiss teachers who they feel are below average and also they feel they are the one on trial rather than the teacher being dismissed.

5. The tenure commissioners are making many legal rather than just cause decisions even though most of the commissioners do not have the legal background necessary to interpret the law.

The tenure commission is composed of five people, none of whom is required to be an attorney. The act specifies that the attorney general shall assign to the commission an assistant who shall be their legal advisor. Though the current practice is to appoint an attorney as one of the commissioners, he may or may not be familiar with school law. Since the decisions reached by the tenure commission are legally binding unless challenged in court, it would appear the legal questions should be determined by qualified attorneys or judges, not school teachers and administrators. Members of the commission as it is now structured should determine whether a person should be teaching. They further could determine whether the local board of education has proven adequately the charges filed against the teacher.

6. There is a considerable lack of knowledge concerning the tenure law among school administrators, school boards, and teachers.

This conclusion is based on the fact that so few school districts and administrators have had experience in attempting to dismiss a tenure teacher. Secondly, there are so few works regarding Michigan tenure which are available for study and, thirdly, teacher education programs do not include the study of tenure at both the undergraduate and graduate level.[70]

Recommendations

In the thirty-three year period since tenure was first an optional choice of local voters in a school district, through 1970, the tenure law has been interpreted by many different sources. Commission decisions, court rulings, attorney general opinions, and even local boards of educations have interpreted the law in many ways.

Due to the variety of interpretive sources, as well as the complexity of the law itself, many decisions reached by the Michigan State Tenure Commission have been based upon legal technicalities, therefore, it would appear that additional legal assistance should be availbale to the tenure commissioners. Further, more educators and members of local boards of education need to become familiar with how the tenure act is interpreted and implemented.

For these reasons which have been arrived at through observations gained in conducting this research, this writer is led to make three specific recommendations which

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[70]Meeder, op. cit., p. 111.

he feels will make the tenure law function more efficiently. These three recommendations are as follows:

1. <u>The tenure commission should be increased to a seven member board</u>.

The two additional commissioners should be appointed by the governor for four year terms and each should be an attorney. One of the two attorneys appointed by the governor should be based upon the recommendation of the Michigan Association of School Boards, and one based upon the recommendation of the Michigan Education Association. These two commission members should be full time appointees and have specific areas of responsibility. The first area of responsibility would be to write the opinions of the minority and majority members, or the unanimous opinions when necessary. The tenure commissioner recommended by the school board association could write the opinions which are supportive of that position. The attorney recommended by the Michigan Education Association could be responsible for writing the legal opinions for those favoring the appellant, or classroom teacher. The opinions as written by the tenure commissioner are extremely critical in the event the case is appealed into the existing court system. For this reason, expertise in writing legal opinions should be available to the commission members.

The second responsibility of the two full time commission attorneys could be to assist the one lay member of the commission who also should be an attorney in determining

whether an administrator has acted legally when presenting its case at the hearing before the local board. The educational members and the school board member of the tenure commission are really not qualified to test the legality of actions taken by administrators or school boards as they pursue the dismissal of the tenure teacher. The three attorneys then could form a legal panel to evaluate the legality of the procedure and issue a legal opinion as to whether they feel the board acted correctly.

The third responsibility of the two full time attorney commission members could be to handle the case before the local board of education. There are too few school attorneys who are competent in tenure law. By having two experts available at the local hearing, both the teacher and the local board of education could be assured of competent advice. The currently appointed five remaining members of the tenure commission then could be responsible only to act and make decisions on cases involving competency rather than the procedural problems that are currently taxing its schedule.

2. <u>The tenure commission should have the authority to appoint hearings officers</u>.

The hearing officer would be responsible directly to the tenure commission and would attend all tenure hearings held before local boards of educations. The purpose of this officer is to reduce the costs to local boards of educations for conducting a tenure dismissal and, secondly,

to eliminate the need for a hearing de novo. A hearing de novo, as was established in Garrett versus the Dearborn Board of Education case, established the precedent that the tenure commission could hold an entire new hearing while, in fact, completely ignoring the hearing held before the local board of education.

A hearing de novo, in reality, is hearing a case twice. This cost causes a double financial burden on the local board of education. Further, a hearing de novo will run the risks that the decision made by the tenure commission is not based upon the same evidence as was heard by the local board of education and upon which the local board based their decision. In a hearing de novo, new witnesses may be called to give additional information before the tenure commission. If a hearings officer were present at every tenure hearing before a local board of education, he could arrive at a decision as to whether the teacher should be dismissed entirely independent of that decision reached by the local board of education.

If the decision of the local board was then appealed to the tenure commission, the tenure commission would have the transcript at the hearing before the local board of education, as well as the opinion of each of the attorneys representing the appellant and representing the appellee. They further would then have the opinion of their own hearings officer. This would then allow them to use these four decisions and opinions in order to assist in making

a decision on whether to uphold the local board of education. If this procedure were followed, then it would allow for a speedier tenure process since in a relatively short period of time, these four items of information could be reviewed independently by commission members and then they could meet to, in fact, render their opinion. If the case were not appealed to the commission, this opinion of the hearings officer would never be made.

3. <u>This study should be replicated within the next three years</u>.

The purpose of this dissertation would be to see what effects Act 379 has had on tenure. It would appear that Act 379, which gives the right to negotiate a master contract protecting the welfare of individual members, could be in conflict with certain aspects of the tenure law. Further, additional studies in this area need to be made because legal interpretations change yearly as court decisions are reached or attorney general's opinions are presented. This then would allow a more current study to be available to assist local school boards and administrators in understanding the complexities of tenure.

APPENDIX A

Twenty-one Early Tenure Decisions

APPENDIX A

Twenty-One Early Tenure Decisions

Case No.	Appellant	Appellee	For Whom the Commission Decided
1	Clark Rehberg	Melvindale-Ecorse	Clark Rehberg
2	Mayola Salt Paw	Royal Oak	Mayola Salt Paw
3	Blanche Northwood	River Rouge	River Rouge
4	Dorothy Posey	Royal Oak	Dorothy Posey
5	Dezena Williams	Melvindale-Ecorse	Dezena Williams
6	James Satterwhite	Royal Oak	James Satterwhite
7	Marveta Hine	Hazel Park	Marveta Hine
8	Henry Fallon	Highland Park	Highland Park
9	Jeannette Snyder	Lakeshore	Jeannette Snyder
10	Mary Ann Garrett	Dearborn	Mary Ann Garrett
11	Scott Street	Ferndale	Scott Street
12	Burnestyne Wilson	Flint	Burnestyne Wilson
13	Florence Gerdes	Romulus	Romulus
14	Isa Vogel	Pontiac	Isa Vogel
15	Inez A. Beebe	Willow Run	Inez A. Beebe
16	Hugh M. Kahler	Benton Harbor	Hugh M. Kahler
17	Thomas P. Noland	Lincoln Park	Thomas P. Noland
18	David L. Overbey	Highland Park	David L. Overbey
19	Esther Palmer	Royal Oak	Esther Palmer
20	George R. Lutfy	Dearborn	George R. Lutfy
21	Helen S. Wiltsie	Roseville	Roseville

APPENDIX B

A Chronological Compilation of State Tenure Commission Decisions

APPENDIX B

A Chronological Compilation of State Tenure Commission Decisions

No.	Date	Teacher	School District
1	4/6/50	Clark Rehberg v.	Melvindale-Ecorse
2	8/29/53	Mayola Salt Paw v.	Royal Oak
3	1/6/54	Blanche Northwood v.	River Rouge
4	8/10/56	Dorothy Posey v.	Royal Oak
5	9/23/55	Dezena Williams v.	Melvindale-Ecorse
6	1/12/57	James Satterwhite v.	Royal Oak
7	3/7/58	Marveta Hine v.	Hazel Park
8	8/19/59	Henry Fallon v.	Highland Park
9	5/30/58	Jeannette Snyder v.	Lakeshore
10	8/30/60	Mary Ann Garrett v.	Dearborn
11	4/17/59	Scott Street v.	Ferndale
12	6/16/62	Burnestyne Wilson v.	Flint
13	undated	Florence Gerdes v.	Romulus
14	8/15/60	Isa Vogel v.	Pontiac
15	9/21/62	Inez A. Beebe v.	Willow Run
16	4/24/63	Hugh M. Kahler v.	Benton Harbor
17	6/7/63	Thomas P. Noland v.	Lincoln Park
18	3/19/64	David L. Overbey v.	Highland Park
19	undated	Esther Palmer v.	Royal Oak
20	3/19/64	Helen S. Wiltsie v.	Roseville
21	3/19/64	George R. Lutfy v.	Dearborn
22	1/12/65	Anne Lash v.	Dearborn
23	6/23/65	Bobby J. Young v.	Hazel Park

No.	Date	Teacher	School District
24	10/13/65	Delilah Matthews v.	Pontiac
25	11/2/65	Hosain Mosavat v.	Garden City
26	1/27/66	Velma Rogers v.	Taylor Township
27	5/6/66	Basil I. Wright v.	Port Huron
28	9/19/66	Gerald Socha v.	Fitzgerald
29	8/4/66	Frank Creelman v.	Van Buren
30	12/16/66	Rhoda London v.	Oak Park
31	12/9/66	Norman Keefer v.	Jackson County
32	12/16/66	Raymond Moore v.	Newaygo
33	12/19/66	Evan Karabetsos v.	East Detroit
34	12/16/66	John R. Veenstra v.	Frankenmuth
35	6/22/67	Matthew Rumph v.	Wayne Community
36	7/10/67	Arthur Williams v.	Cheboygan
37	8/24/67	John R. Bruek v.	Lincoln Park
38	9/15/67	John Hutchinson v.	Colon
39	12/1/67	Mary King v.	Sumpter
40	10/9/67	Melba Ellingson v.	Alpena
41	12/1/67	James Morgan v.	Gibralter
42	12/1/67	Gerald Zarend v.	Oscoda
43	5/8/68	Elizabeth C. Riley v.	Sturgis
44	8/19/68	Anne McClure v.	Godwin Heights
45	8/26/68	Evelyn Weckerly v.	Mona Shores
46	10/14/68	Kathleen Moore v.	Monroe
47	undated	Lillis McLain v.	East Detroit
48	2/7/69	Dorothy Madison v.	Lakeview
49	5/2/69	Robert Vierra v.	Saginaw

No.	Date	Teacher	School District
50	5/2/69	Catherine Hargreaves v.	Saginaw
51	2/7/69	Michael Diana v.	Potterville
52	4/11/69	Paul Meade v.	Grand Rapids
53	5/2/69	Nicholas McCullough v.	Willow Run

APPENDIX C

The Michigan Teacher Tenure Act

APPENDIX C

The Michigan Teacher Tenure Act

State of Michigan

An act relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act.

ARTICLE I.

DEFINITIONS

38.71 Definitions; teacher.

Sec. 1. The term "teacher" as used in this act shall include all certificated persons employed by any board of education or controlling board of any public educational institution.

38.72 Same; certificated.

Sec. 2. The term "certificated" shall be defined by the state board of education.

38.73 Same; controlling board.

Sec. 3. The term "controlling board" shall include all boards having the care, management, or control over public school districts and public educational institutions.

38.74 Same; demote.

Sec. 4. The word "demote" shall mean to reduce compensation or to transfer to a position carrying a lower salary.

38.75 Same; school year.

Sec. 5. The "school year" shall be defined as the legal school year at the time and place where service was rendered.

ARTICLE II.

PROBATIONARY PERIOD

38.81 Probationary period; teachers that have served one system the required period on effective date of act; authority of controlling board.

Sec. 1. All teachers during the first two school years of employment shall be deemed to be in a period of probation: Provided, That any teacher under contract at the time this act becomes effective who has previously rendered two or more years of service in the same school district shall be granted continuing tenure immediately upon reappointment by the controlling board: Any such controlling board by unanimous vote of its members, however, may refuse to appoint a teacher who has rendered two or more years service in the school district under its control. In the event the vote against reappointment of such teacher is not unanimous the controlling board shall deem such teacher as on continuing tenure with full right to hearing and appeal as provided in Article IV[1] and Article VI[2] of this act: Provided further, That the controlling board, after this act becomes effective, may place on continuing tenure any teacher who has previously rendered two or more years of service.

38.82 Same; number of years a teacher may be required to serve; extension of period.

Sec. 2. No teacher shall be required to serve more than one probationary period in any one school district or institution: Provided, That a third year of probation may be granted by the controlling board upon notice to the tenure commission.

38.83 Same; notice to teacher, written statement.

Sec. 3. At least sixty days before the close of each school year the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his work has been satisfactory: Provided, That failure to submit a written statement shall be considered as conclusive evidence that the teacher's work is satisfactory, and: Provided further, That any probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified at least sixty days before the close of the school year that his services will be discontinued.

38.84 Same; portions of act inapplicable.

Sec. 4. Articles IV, V, and VI[1] shall not apply to any teacher deemed to be in a period of probation.

ARTICLE III.

CONTINUING TENURE

38.91 Continuing tenure; administrative capacity; contracts; extra duty for extra pay.

Sec. 1. After the satisfactory completion of the probationary period, a teacher shall be employed continuously by the controlling board under which the probationary period has been completed, and shall not be dismissed or demoted except as specified in this act. If the controlling board shall provide in a contract of employment of any teacher employed other than as a classroom teacher, including but not limited to a superintendent, assistant superintendent, principal, department head or director of curriculum, made with such teacher after the completion of the probationary period, that such teacher shall not be deemed to be granted continuing tenure in such capacity by virtue of such contract of employment, then such teacher shall not be granted tenure in such capacity, but shall be deemed to have been granted continuing tenure as an active classroom teacher in such contract of employment, if such controlling board shall not re-employ such teacher under contract in any such capacity, such teacher shall be continuously employed by such controlling board as an active classroom teacher. Failure of any controlling board to re-employ any such teacher in any such capacity upon the termination of any such contract of employment shall not be deemed to be a demotion within the provisions of this act. The salary in the position to which such teacher is assigned shall be the same as if he had been continuously employed in the newly assigned position. Failure of any such controlling board to so provide in any such contract of employment of any teacher in a capacity other than a classroom teacher shall be deemed to constitute the employment of such teacher on continuing contract in such capacity and subject to the provisions of this act. Continuing tenure shall not apply to an annual assignment of extra duty for extra pay.

38.92 Same; employment by another controlling board, maximum length of probationary period, option of board.

Sec. 2. In the event that a teacher on continuing tenure is employed by another controlling board, he shall not be subject to another probationary period of more than one year, and may at the option of the controlling board be placed immediately on continuing tenure.

ARTICLE IV.

DISCHARGE, DEMOTION OR RETIREMENT

38.101 Discharge, demotion or retirement of teacher.

Sec. 1. Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause, and only after such charges, notice, hearing, and determination thereof, as are hereinafter provided. Nothing in this act shall be construed as preventing any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under Act. No. 136 of the Public Acts of 1945[1] or having established a reasonable retirement age policy, from temporarily continuing on criteria equally applied to all teachers the contract on a year-to-year basis of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system.

38.102 Same; written charges, signatures; professional services.

Sec. 2. All charges against a teacher shall be made in writing, signed by the person making the same, and filed with the secretary, clerk or other designated officer of the controlling board: Provided, That charges concerning the character of professional services shall be filed at least sixty days before the close of the school year. The controlling board, if it decides to proceed upon such charges, shall furnish the teacher with a written statement of the charges, and shall, at the option of the teacher, provide for a hearing to take place not less than thirty nor more than forty-five days after the filing of such charges.

38.103 Same; suspension, compensation.

Sec. 3. On the filing of charges in accordance with this section, the controlling board may suspend the accused teacher from active performance of duty until a decision is rendered by the controlling board, but the teacher's salary shall continue during such suspension: Provided, That if the decision of the controlling board is appealed and the tenure commission reverses the decision of the controlling board, the teacher shall be entitled to all salary lost as a result of such suspension.

38.104 Same; hearing.

Sec. 4. The hearing shall be conducted in accordance with the following provisions:

a. The hearing shall be public or private at the option of the teacher affected.

b. No action shall be taken resulting in the demotion or dismissal of a teacher except by a majority vote of the members of the controlling board.

c. Both the teacher and the person filing charges may be represented by counsel.

d. Testimony at hearings shall be on oath or affirmation.

e. The controlling board shall employ a stenographer who shall make a full record of the proceedings of such hearing and who shall, within ten days after the conclusion thereof, furnish the controlling board and the teacher affected thereby with a copy of the transcript of such record, which shall be certified to be complete and correct.

f. Any hearing held for the dismissal or demotion of a teacher, as provided in this act, must be concluded by a decision in writing, within fifteen days after the termination of the hearing. A copy of such decision shall be furnished the teacher affected within five days after the decision is rendered.

g. The controlling board shall have the power to subpoena witnesses and documentary evidence, and shall do so on its own motion or at the request of the teacher against whom charges have been made. If any person shall refuse to appear and testify in answer to any subpoena issued by the controlling board, such controlling board may petition the circuit court of the county setting forth the facts which court shall thereupon issue its subpoena commanding such person to appear before the controlling board there to testify as to the matters being inquired into. Any failure to obey such order of the court may be punished by such court as contempt thereof.

38.105 Necessary reduction in personnel, first vacancy.

Sec. 5. Any teacher on permanent tenure whose services are terminated because of a necessary reduction in personnel shall be appointed to the first vacancy in the school district for which he is certified and qualified.

ARTICLE V.

RESIGNATION AND LEAVE OF ABSENCE

38.111 Resignation and leave of absence; teacher's duties, notice.

Sec. 1. No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least sixty days before September first of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.

38.112 Same; leave of absence; physical or mental disability.

Sec. 2. Any controlling board upon written request of a teacher may grant leave of absence for a period not to exceed one year, subject to renewal at the will of the board: Provided, That without request, leave of absence because of physical or mental disability may be granted by any controlling board for a period not to exceed one year: Provided further, That any teacher so placed on leave of absence shall have the right to a hearing on such unrequested leave of absence in accordance with the provisions for a hearing in Article IV, Section IV of this act:[1] Provided, That no leave of absence shall serve to terminate continuing tenure previously acquired under this act.

ARTICLE VI.

RIGHT TO APPEAL

38.121 Appeal, hearing, notice:

Sec. 1. A teacher who has achieved tenure status may appeal any decision of a controlling board under this act within thirty days from the date of such decision, to a state tenure commission. The State Tenure Commission shall provide for a hearing to be held within sixty days from the date of appeal. Notice and conduct of such hearing shall be the same as provided in Article IV, Section IV of this act,[1] and in such other rules and regulations as the tenure commission may adopt.

ARTICLE VII.

STATE TENURE COMMISSION

38.131 State tenure commission; creation, members, ex-officio secretary; legal advisor.

Sec. 1. There is hereby created a state tenure commission of five members: two of whom shall be classroom instructors, one a member of a board of education of a graded or city school district, one a person not a member of a board of education or a teacher, and one a superintendent of schools. The superintendent of public instruction shall be ex-officio secretary of the commission, and the attorney general shall assign to the commission an assistant who shall be legal advisor to the commission.

38.132 Same; terms, vacancy.

Sec. 2. Within thirty days after the effective date of this act, the governor shall appoint the members of the tenure commission for the following terms: One for a term of three years, one for a term of two years, and one for a term of one year. Each term shall begin on the first day of September. Immediately preceding the expiration of their

respective terms the governor shall appoint succeeding members of the tenure commission for terms of five years. In the event of a vacancy on the tenure commission the governor shall immediately appoint a successor to complete the unexpired term.

38.133 Same; geographical qualifications of members.
Sec. 3. Not more than one member of the tenure commission shall be appointed from any one school district.

38.134 Same; qualification of teacher member.
Sec. 4. Any teacher appointed to the tenure commission after September 1, 1938, must be on continuing tenure.

38.135 Same; teacher member's status with controlling board.
Sec. 5. Membership on the state tenure commission shall not adversely affect the status of the teacher's tenure with a controlling board.

38.136 Same; meetings.
Sec. 6. The tenure commission shall meet twice a year at stated times in the city of Lansing, and at such other times and in such other places as shall be determined by the commission.

38.137 Same; power to enforce act.
Sec. 7. The tenure commission is hereby vested with such powers as are necessary to carry out and enforce the provisions of this act.

38.138 Same; compensation and expenses.
Sec. 8. The members of the state tenure commission shall receive $25.00 per day while hearing cases and shall be reimbursed for necessary traveling and other expenses incurred in the performance of the duties of the commission. The expenses of the state tenure commission shall be paid out of appropriations made by the legislature.

38.139 Same; board of review, records.
Sec. 9. The tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board. All records shall be kept in the office of the superintendent of public instruction.

38.140 Same; first meeting, chairman and secretary, rules and regulations.
Sec. 10. Within thirty days after the effective date of this act, the tenure commission shall hold a meeting in the city of Lansing for the purpose of organization and the election of a chairman and secretary, both of whom shall be members of the commission. The tenure commission

shall draw up rules and regulations and shall have the power to amend same and to provide for the conduct of its affairs in such manner as shall be consistent with the provisions of this act.

ARTICLE VIII.

DISTRICTS

38.151 Teacher tenure act, application.

Sec. 1. This act shall apply to all school districts of the state.

ARTICLE IX.

PENALTY

38.161 Penalty.

Sec. 1. Failure of any member of a controlling board to comply with any provisions of this act shall be deemed a violation of the law and shall subject said member to the same penalty as prescribed for a violation of the general school law.

38.172 Waiver of rights by teachers.

Sec. 2. No teacher may waive any rights and privileges under this act in any contract or agreement made with a controlling board. In the event that any section or sections of a contract or agreement entered into between a teacher and a controlling board make continuance of employment of such teacher contingent upon certain conditions which may be interpreted as contrary to the reasonable and just cause for dismissals, provided by this act, such section or sections of a contract or agreement shall be invalid and of no effect in relation to determination of continuance of employment of such teacher.

APPENDIX D

Tenure Commission Members

APPENDIX D

Tenure Commission Members

1941	Term Expires
Fred Dewey, Detroit	August 31, 1943
Fred C. Pennert, St. Louis	August 31, 1944
Harold Matzke, Ann Arbor	August 31, 1945
Eugene Elliott, State Superintendent	
Murray D. Van Wagoner - Governor	
1943	
Fred C. Pennert, St. Louis	August 31, 1944
Louella Harris, Flint	August 31, 1945
Fred Dewey, Detroit	August 31, 1948
Eugene Elliott, State Superintendent	
Harry Kelly - Governor	
1945	
Louella Harris, Flint	August 31, 1945
Fred Dewey, Detroit	August 31, 1948
B. J. Adams, Lansing	August 31, 1949
Eugene Elliott, State Superintendent	
Harry Kelly - Governor	
1947	
Two vacancies	
Mary Ellen Lewis, Ann Arbor	August 31, 1950
Eugene Elliott, State Superintendent	
Kim Sigler - Governor	
1949	
Mrs. Lola B. King, Pontiac	August 31, 1949
Marjorie Muhlitner, Port Huron	August 31, 1950
Clay Campbell, Lansing	August 31, 1953
Lee M. Thurston, State Superintendent	
G. Mennen Williams - Governor	

1950-1951

Clay Campbell, Lansing	August 31, 1953
Martin A. Wellna, Dearborn	August 31, 1954
Gladys Davis, Royal Oak	August 31, 1955

Lee M. Thurston, State Superintendent

G. Mennen Williams - Governor

1953-1954

Martin Wellna, Dearborn	August 31, 1954
Gladys Davis, Royal Oak	August 31, 1955
Juste Rosati, St. Clair Shores	August 31, 1956

Clair Taylor - State Superintendent

G. Mennen Williams - Governor

1955-1956

Juste Rosati, St. Clair Shores	August 31, 1958
Martin Wellna, Dearborn	August 31, 1959
Gladys Davis, Royal Oak	August 31, 1960

Clair Taylor - State Superintendent

G. Mennen Williams - Governor

1957-1958

Juste Rosati, St. Clair Shores	August 31, 1958
Martin A. Wellna, Dearborn	August 31, 1959
Gladys Davis, Royal Oak	August 31, 1960

Lynn M. Bartlett, State Superintendent

G. Mennen Williams - Governor

1959-1960

Roger E. Craig, Dearborn	August 31, 1959
Gladys Davis, Royal Oak	August 31, 1960
Juste Rosati, St. Clair Shores	August 31, 1963

Lynn Bartlett, State Superintendent

G. Mennen Williams - Governor

1961-1962

Burton H. Cronin, Hamtramck	August 31, 1963
Carl W. Morris, Romulus	August 31, 1964
Gladys Davis, Royal Oak	August 31, 1965

Lynn M. Bartlett, State Superintendent - ex officio

John B. Swainson - Governor

1963-1964

Gerald Tuchow, Detroit	August 31, 1963
Carl W. Morris, Romulus	August 31, 1964
Gladys Davis, Royal Oak	August 31, 1965
2 vacancies	

Lynn M. Bartlett, State Superintendent - ex officio

George Romney - Governor

1965-1966

Gladys Davis, Royal Oak	August 31, 1965
Albert C. Johnson, Benton Harbor	August 31, 1968
Harry A. Lockwood, Monroe	August 31, 1968
Chalmer Young, Bay City	August 31, 1968
Mrs. Marian Gibson, Newberry	August 31, 1969

Alexander J. Kloster, Acting State Superintendent ex officio

George Romney - Governor

1967-1968

Leonard M. Porterfield, Saginaw	August 31, 1968
Albert C. Johnson, Benton Harbor	August 31, 1968
Harry A. Lockwood, Monroe	August 31, 1968
Mrs. Marian Gibson, Newberry	August 31, 1969
Donald Schoenrath, Dearborn Heights	August 31, 1970

Ira Polley, State Superintendent - ex officio

George Romney - Governor

1969-1970

Donald A. Schoenrath, Westland	August 31, 1970
William L. Austin, Muskegon	August 31, 1973
William S. Farr, Jr., Grand Rapids	August 31, 1973
Leonard M. Porterfield, Saginaw	August 31, 1973
Mrs. Marian Gibson, Newberry	August 31, 1974

Vacancy - State Superintendent

William G. Milliken - Governor

APPENDIX E

Attorney General Opinions Affecting Tenure

APPENDIX E

Attorney General Opinions Affecting Tenure

Number 782, Dated 1947-48
A unanimous vote of controlling board is required only for refusal to appoint a teacher having two or more years of service prior to adoption of the tenure act, and failure of such unanimous vote results in teacher receiving tenure status, but a simple majority vote is sufficient for refusal to appoint a teacher having less than two years service.

Number 987, Dated 1949-50
The word "shall" as used in the last sentence of this section is mandatory to the extent that it is the duty of the tenure commission to provide for a hearing; however, the time of the hearing is directory, and once the commission acquires the jurisdiction in an appeal due to the timely action of an appellant, the commission does not lose jurisdiction thereafter because of a delayed hearing date.

Number 1126, Dated 1949-50
The completion of two school years of service is a prerequisite to tenure under the Teachers' Tenure Act.

Number 2380, Dated 1955-56
Public school teachers are not criminally liable for assault and battery for corporal punishment of pupils under their supervision, if such punishment is inflicted in a reasonable manner in the enforcement of authorized and reasonable discipline.

Number 2406, Dated 1955-56
The State Tenure Commission was a state agency within the meaning of Section 606.5 (repealed) which provided for appeals to circuit courts from orders, decisions or opinions of state boards, commissions or agencies and was, in event of appeal, required to make return on appeal to circuit court.

Number 2406, Dated 1955-56
Cost of hearing before State Tenure Commission may not be assessed against contestants equally or to the losing party and the cost of stenographic services on such hearings are payable out of the general fund without specific appropriation therefore.

Number 2987, Dated May 23, 1957
Tenure of teachers act, section 38.71 et seq., authorizes State Tenure Commission to act only on appeals properly brought before it as provided by statute; commission has no authority to render oral or written unofficial advice by way of opinions on questions submitted by local school boards or teachers interested in construing the statute.

Number 2991, Dated 1957-58
Tenure of Teachers Act which provided referendum authorized submission of same to any annual or special school election, and such referendum was governed by provisions of school code regarding elections.

Number 2992, Dated 1957-58
School board must serve notice on tenure commission that teacher is being placed on probation for a third year, and notice must be in writing.

Number 3107, Dated 1957-58
Where teacher has had two years of employment prior to adoption of tenure by district, such teacher automatically goes on tenure upon going to work at commencement of new school year, unless controlling board by unanimous action votes against reappointment.

Number 3201, Dated 1959-60
It is not mandatory that all three tenure commissioners be present at all phases of a hearing on appeal authorized by the Michigan Tenure of Teachers' Act.

Number 3296, Dated 1959-60
Statute gives teacher right to private hearing before board of education and before tenure commission and, where private hearing is sought, the press may not have access to hearing, to transcript of hearing, or to information concerning events transpiring at hearing, but may ask and receive information concerning outcome since fact of dismissal or acquittal is not part of protected record.

Number 3297, Dated 1958
In absence of the sixty day notification under tenure of teachers act, section 38.83, providing that any probationary teacher or teacher not on a continuing contract shall be employed for ensuing year unless given the sixty day notice, teacher engaged in second year of employment would have tenure and continuous employment at completion of second year if controlling board did not require third year of probation by giving notice to tenure commission under the statute.

Number 3297, Dated 1957-58
Sixty day notice under this section cannot be used without cause but must have connection with whether teacher's services are satisfactory, and controlling board cannot without good

cause dismiss a teacher by giving the required sixty days notice.

Number 3364, Dated 1959-60
Teachers of annexed district are required to serve probationary period and cannot be placed on immediate tenure and if annexation occurs during the school year, annexation date fixes beginning of probationary period.

Number 3364, Dated 1959-60
Upon annexation by a district where tenure is in effect, teachers of annexed district are subject to terms of tenure act and teachers of annexed district are required to serve probationary period and cannot be placed on immediate tenure.

Number 3406, Dated 1959-60
The State Tenure Commission is without authority to compel compliance with its order by its own mandate; but commission may enforce its orders through mandamus proceedings brought against a controlling board that refuses to obey the orders upon application to a court of competent jurisdiction and may present to prosecuting attorney information concerning neglect or refusal of the controlling board to comply with an order of the commission.

Number 3467, Dated 1959-60
The controlling board of a tenure district is without authority to place a teacher on a three year probation at the inception of probationary employment.

Number 3511, Dated 1961-62
A teacher who has rendered two or more years of service to a particular school district prior to effective date of tenure act in that district but who was not under contract with district at effective date of act may be granted tenure status in discretion of controlling board but is not entitled to such status as a matter of right.

Number 3577, Dated 1961-62
Teachers with tenure status in district which was dissolved before end of school year and whose contracts were honored by operating district to which territory of dissolved district was attached came within coverage of statute providing that a tenure teacher employed by another controlling board should not be subject to another probationary period of more than one year and could be given an immediate tenure status; and additional probationary period would be first full school year of employment under contract with board of operating district.

Number 3609, Dated 1961-62
A teacher on continuing tenure, returning from a leave of absence, may be placed in any school or grade within the

employing district for which the teacher is legally qualified and at no reduction in salary.

Number 3609, Dated 1961-62
Teachers on continuing tenure returning from a leave of absence may be placed in any school or grade within employing district for which the teacher is legally qualified and a school district may not retain a non-tenure teacher in preference to a tenure teacher returning from a leave of absence in a position which the latter is qualified to fill.

Number 3609, Dated 1961-62
A school district may not retain a non-tenure teacher in preference to a tenure teacher returning from a leave of absence in a position which the tenure teacher is qualified to fill.

Number 3614, Dated 1961-62
Per diem is payable to members of tenure commission on basis of calendar day while hearing cases, and the phrase "while hearing cases" may include reading transcripts and visitation of premises.

Number 4114, Dated 1963-64
State funds could be used to pay costs and expenses incidental to tenure commission members attending a [illegible] convention or visiting local school districts for [illegible] of improving their understanding of commission's [illegible] as a review board, but state funds could not be used to pay costs and expenses while attending meetings of [illegible] of education or teachers' associations for purpose of explaining rules and regulations applicable to Teachers' Tenure Act or to encourage school districts to adopt [illegible].

Number 4253, Dated 1963-64
Where school district under tenure votes to consolidate with a school district not under tenure, consolidated district is not subject to provisions of the tenure of teachers' act, Sections 38.71 et seq., 38.151, but becomes subject to the act if the school electors of the consolidated school district vote to come under the act.

Number 4313, Dated 1963-64
Law enacted by 1964 legislature in response to the initiative petition amending Section 38.71 et seq., to require mandatory tenure in Michigan school districts would take effect ninety days after final adjournment of 1964 regular session of such ninety day period by filing of a valid referendum petition in accordance with Constitution 1963, Article II, Section IX.

Number 4397, Dated 1965
Teacher not under written contract for subsequent school year could reserve his tenure by resigning with appropriate notice at least sixty days before September 1 of the ensuing year or within sixty days with controlling board's consent, but teacher may contract for subsequent period could not resign merely by giving the sixty day notice before September 1 and would have to honor contract unless board agreed to release him from it.

Number 0-4949, Dated 1947-48
In absence of legislative appropriation to meet expenses of teachers' tenure commission, funds appropriated to superintendent of public instruction may not be used for such purpose.

APPENDIX F

Tenure Commission Decisions
1965-1969

APPENDIX F

Tenure Commission Decisions 1965-1969

1. Hosain Mosavat versus the Garden City Board of Education
   This decision issued in 1965 was rendered for the board of education. The issue in question was whether the board had acted properly in requiring a third year of probation.

2. Delilah Matthews versus the Pontiac Board of Education
   This decision reached in 1965 was rendered for the teacher. The question in this case was whether the board could freeze a teacher at some point on the salary scale.

3. Velma Rogers versus the Taylor Township Board of Education
   This decision was rendered in 1966 and supported the local board of education. This decision was concerned with the effect of a lapsed teaching certificate on a teacher's tenure status.

4. Basil Wright versus the Port Huron Board of Education
   This decision was issued in 1966 and supported the teacher. The question in this case was that the local board failed to file charges after suspending the appellant.

5. Gerald Socha versus the Fitzgerald Board of Education
   This decision dated in 1966 was rendered in support of the Fitzgerald Board of Education. The issue in this case involved a reduction in the teaching staff and its effect on a teacher with tenure.

6. Frank Creelman versus the VanBuren Board of Education
   This decision was rendered in 1966 for the VanBuren Board of Education. In this case Frank Creelman contended that the written notice of dismissal did not have sufficient detail as to the reasons behind the dismissal.

7. Norman Keefer versus Jackson County School District
   This decision issued in 1966 was rendered for the teacher. The issue in question was whether the probationary teacher was provided with a written statement concerning his work and whether he had been notified at least sixty days before the school year ended that his services would be discontinued.

8. Raymond Moore versus the Newaygo Board of Education
This decision was rendered in 1966 in favor of the local board. The question raised in this appeal was whether the appellant had appealed his dismissal within the time outlined in the tenure act.

9. Rhoda London versus the Oak Park School District
This case was completely reviewed in Chapter IV.

10. Evan Karabetsos versus the East Detroit Board of Education
This case rendered in 1966 was decided in favor of the teacher. It was found that the East Detroit Board of Education failed to provide Mr. Karabetsos with a written statement notifying him that his services would be discontinued sixty days prior to the close of the school year.

11. John Veenstra versus the Frankenmuth Board of Education
This case was rendered for the Frankenmuth Board of Education in 1966. This decision did not support the contention of John Veenstra. His contention was that the local board had used improper dismissal procedure.

12. Matthew Rumph versus the Wayne Community Schools
This was the first case decided in 1967 and it favored the position of the board of education. Matthew Rumph was on sabbatical leave and failed to fulfill the obligations of the leave, therefore, did he discontinue his services and as a result, lose his tenure status?

13. Arthur Williams versus the Cheboygan Board of Education
This decision rendered in 1967 was on support of the position of the board. The tenure commission ruled that when the special certificate held by Mr. Williams expired, he lost his tenure status.

14. John Bruek versus the Lincoln Park Board of Education
This decision was dated in September of 1967 and was rendered for the local school board. The basic issue in this case was whether an electronic recording device used to transcribe the hearing need have a reporter present at all times to insure that the device was working. Further, is the use of a transcript as certified by the circuit court proper?

15. John Hutchinson versus the Colon Board of Education
This case was reviewed in detail in Chapter IV.

16. Mary King versus the Sumpter School District
This decision was rendered for the teacher appellant in 1967. In this case the Sumpter Board of Education failed to notify Mary King in writing at least sixty days before the closing of the school year that her services would be discontinued.

17. Melba Ellingson versus the Alpena Board of Education
This decision reached in 1967 was rendered in support of the board appellee. This decision clarified the question as to whether the controlling board has to give reasons for denying a request on the part of a teacher to teach beyond the retirement age.

18. James Morgan versus the Gibralter Board of Education
This decision was rendered in support of the board appellee in 1967. The issue in this case was whether a teacher could rescind a written resignation.

19. Gerald Zarend versus the Oscoda Board of Education
This decision was rendered in 1967 for the board appellee. The issue in this case was whether attendance at a party where minors consumed alcoholic beverages is of sufficient lack of judgment to reduce the teachers effectiveness in the school system.

20. Elizabeth Riley versus the Sturgis Board of Education
This decision rendered in 1968 was in support of the board of education. The issue in this case was corporal punishment and whether this can be considered just cause for dismissal.

21. Anne McClure versus the Godwin Heights Board of Education
This decision dated in August of 1968 was in support of the position of the board of education. This unanimous opinion supported the decision of a building tenure committee that the appellant be required to take a course in kindergarten methods before issuing her a new contract. The appellant failed to take this course and as a result, is this just cause for dismissal?

22. Evelyn Weckerly versus the Mona Shores Board of Education
This case was reviewed in detail in Chapter IV.

23. Kathleen Moore versus the Monroe Board of Education
This decision was reached in 1968 and was rendered in support of the teacher. In this case the issue was whether or not a "spanking" was excessive. The board of education policy allows corporal punishment when a witness is present.

24. Lillis McLain versus the East Detroit Board of Education
This decision was rendered for the board appellee in 1968. The issue in this case was whether a board could deny a teacher the right to teach beyond the retirement policy if the board had allowed others to continue teaching.

25. Dorothy Madison versus the Lakeview Board of Education
This decision was rendered in 1968 in support of the teacher appellant. This issue was whether the appellant had tenure in an administrative position since no reference to exclusion was made by the appellee either in a written contract or in board policy.

26. Michael Diana versus the Potterville Board of Education
This decision was rendered in 1969 for the board appellee. The issue in question in this case is whether the appellant received procedural due process. The board of education has the right to establish reasonable rules and regulations in conducting a local hearing.

27. Paul Mead versus the Grand Rapids Board of Education
This decision was rendered for the board in 1969. The issue in this case was whether the appellant was denied a fair hearing before the appellee.

28. Robert Vierra versus the Saginaw Board of Education
This decision was rendered (by a two-two vote) in favor of the board in 1969. The issue in this case was whether refusal to join the bargaining unit was just cause for dismissal. This, in fact, tested the tenure implications of the Agency Shop Clause.

29. Catherine Hargreaves versus the Saginaw Board of Education
This was considered in consolidation with the Vierra versus Saginaw case since it dealt with the same "agency shop" clause.

30. Nicholas McCullough versus the Willow Run Board of Education
This decision was rendered for the board appellee on June of 1969. The issue in this case was that the commission could find no evidence that the salary for the new position the appellant was being forced to accept would be less than he had received during the previous school year. Therefore, this could not be considered a demotion.

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