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Administrative Law—Teacher Tenure—Waiver

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could be completed by the new Board.[11] In addition, the law created a Division of Equalization and Assessment which was to carry out the policies of the permanent Board[12] and into which all officers and employees of the temporary Board should be transferred.[13]

It is clear that the essential purpose of the statute was to effect the transfer of the powers and duties of the temporary Board to the permanent Board. Nowhere in the statute is it stated that the temporary board members should continue to exercise rate-making power in the absence of their appointment to the new Board. Nor does such authority arise by implication. The majority, recognizing that this implication cannot be found in the statute, and realizing a contrary decision would create chaos in the tax system, chose to read into the statute an ambiguity, and justified the interpretive procedure by cloaking it in a protective mantle of legislative intent. Such a procedure is unjustified when the statute, as in the instant case, is clear.

R. J. D.

TEACHER TENURE—WAIVER

After a meeting of the local school board, a teacher was dismissed without written charges and a hearing as required by N.Y. Education Law, section 3013. The school agreed to pay the teacher's salary for the duration of the school year and to give her a letter of recommendation for a new teaching position in return for the teacher's waiving her right to a hearing under the Education Law. The teacher after having accepted the salary and waiting an additional two years sought a statutory hearing and back pay. The school board appealed from an Appellate Division ruling in favor of the teacher.[1] *Held*: affirmed, with two judges dissenting, because Education Law section 3013 forbids a waiver for consideration by a teacher to written charges and a hearing, as contrary to the avowed public policy of giving a substantial degree of permanency to the jobs of experienced teachers. To admit otherwise, the Court added, would permit local school boards to fashion public policy as they see fit. The Court also held that the paying of a teacher's salary for not teaching is in violation of the N.Y. Constitution, as an unconstitutional gift of public monies. *Boyd v. Collins*, 11 N.Y.2d 228, 182 N.E.2d 610, 228 N.Y.S.2d 228 (1962).

No prior relevant case law deals with the question. Although there is a limited prohibition against waiver in section 96 of the Civil Service Law, it is applicable only to "candidates for employment." No similar prohibition is found in the Education Law. It would seem to follow from the instant case that since the agreement was void, as a matter of law, there was an unconstitu-

11. N.Y. Sess. Laws 1960, ch. 335, § 16.
12. N.Y. Real Prop. Tax Law § 201.
13. N.Y. Sess. Laws 1960, ch. 335, § 11.

1. 14 A.D.2d 645, 218 N.Y.S.2d 203 (3d Dep't 1961).

tional gift of public monies. If, however, an agreement of this nature were valid, the New York constitutional provision relating to gifts of public monies would not be violated since a local unit of government may exchange its property for a valid consideration.[2] Thus in cases, excluding waiver, such as a voluntary agreement to resign, school boards have flexibility in bargaining power with teachers and the community. After a probationary period in the school system, a person may be appointed to tenure by a Board of Education upon recommendation of the District Superintendent of Schools. Once on tenure, a teacher holds this position "during good behavior and efficient service"; but may be removed upon the presentation of written charges and a hearing by the local Board of Education.[3]

The Court of Appeals summarily disposed of the matter on the ground that the teacher never entered a voluntary agreement to resign, but that for a consideration she waived her rights to charges and a hearing. Such a waiver is contrary to public policy and any attempt to effect it is invalid. To allow such a waiver would destroy the very purpose of the tenure statutes, i.e., to give security to competent members of the educational system in the position to which they have been appointed.[4] The Court emphatically declared that the paying of a teacher's salary for not teaching is a violation of the New York State Constitution.[5] The dissent differed substantially with the statutory interpretation of the majority and said that such a right to charges could be waived by the teacher. It argued that a high degree of administrative flexibility should be allowed the school board provided it is properly exercised.

The Court in laying down a prohibition against tampering with the statutory method of removing teachers is aiming its judicial arrows at any attempts by a local school board to use a waiver agreement as a weapon of intimidation, coercion, or discipline against an innocent teacher. With the privilege of waiver allowed, school boards could deceive teachers into signing away their "fundamental rights" based on prefabricated and exaggerated evidence. The stability of the statutory procedure provides a secure and equitable method of removing undesirable teachers and adequately reflects the intent of the legislature in drafting the law. There are, however, tenable arguments for allowing a waiver agreement. This process could be a convenient way for all concerned to avoid community scandal. A teacher, who would rather accept a compromise, is required to submit to a rigorous public hearing. There is no compulsion in signing a waiver, and the teacher may well be acting freely for her own benefit. Finally, there is always court review of the agreement on

2. Ross v. Wilson, 284 App. Div. 522, 132 N.Y.S.2d 760 (3d Dep't 1954), rev'd other grounds, 308 N.Y. 605, 127 N.E.2d 697 (1955).

3. N.Y. Educ. Law § 3013.

4. See Monan v. Board of Education, 280 App. Div. 14, 111 N.Y.S.2d 797 (4th Dep't 1952); Donahoo v. Board of Education, 413 Ill. 422, 109 N.E.2d 787 (1953).

5. N.Y. Const. art. VIII, § 1: "No county, city, town, village or school district shall give or loan money or property to or in the aid of any individual . . . ."

both the theories of contract and the abuse of discretion by the school board. Broad proclamations of public policy may often place the law in rigid straits which on the surface seem to protect a class of citizens, but upon closer analysis subvert the very foundations of necessary free choice. The Court, however, has, by its strict interpretation of the statute, placed free choice in the background to ensure that local action which may be prejudicial, arbitrary, and capricious will not be used to undermine the confidence, security, and morale of the teaching profession.

W. A. C.

ARBITRATION

APPOINTEES ON TRIPARTITE ARBITRATION BOARD ALLOWED TO BE PARTIAL TO THE VIEWS OF THE PARTIES WHO SELECT THEM

Defendant, a non-profit corporation organized under the Insurance Laws of New York, entered into contracts with various partnerships of physicians, whereby the latter supplied medical assistance to the insurer's customers. Payment to the doctors was initially a fixed sum with an additional supplemental payment depending on criteria and standards both parties were to fix in the future. In the event that the parties failed to arrive at these criteria, the question was to be submitted to a tripartite arbitration board, each party selecting an arbitrator and a third chosen by the two appointees. Subsequently, the parties failed to agree. Defendant selected one of its Board of Directors as its appointed arbitrator. Plaintiff moved to disqualify him on the grounds of personal bias, interest and partiality and to have appellant substitute an impartial arbitrator. Special Term granted the motion which was affirmed by the Appellate Division and the defendant appealed to the Court of Appeals.[1] *Held*: reversed with three judges dissenting. Although a court could intervene in an appropriate case and disqualify an arbitrator *before an award has been rendered,* a member of a board of directors of a corporate party was not disqualified to act as the party's nominated arbitrator solely because of this relationship. Tripartite arbitration is implicitly partisan in nature. *In the Matter of Astoria Medical Group*, 11 N.Y.2d 128, 182 N.E.2d 85, 227 N.Y.S.2d 401 (1962).

Arbitration is a method of adjudication of differences which parties, by consent, substitute for usual processes provided by law.[2] Parties to an arbitration contract are completely free to agree upon the identity of the arbitrators and the manner in which they are chosen.[3] The law recognizes the arbitration contract of the parties, and courts will not vary its terms but will implement

1. 13 A.D.2d 288, 216 N.Y.S.2d 906 (1st Dep't 1961).
2. Cf. Cross and Brown Co. v. Nelson, 4 A.D.2d 501, 167 N.Y.S.2d 573 (1st Dep't 1957).
3. See N.Y. Civil Practice Act § 1452.