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Robley E. George

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Dismissal of Permanent Teachers

Unlike dismissal procedures commonly known to civil service systems, teachers with tenure may demand a judicial hearing in the superior court before being dismissed. This distinction was alluded to in *Board of Education v. Ballou*¹ where the court said:

The legislature has placed upon the judges the duty of determining whether a teacher should be dismissed when charges such as incompetency are filed. A duty essentially administrative has been withdrawn from administrative officials and imposed upon officials exercising judicial functions. It is to be hoped that the legislature will not be prevailed upon to extend this duty so that the courts will be compelled to pass upon all of the charges that may be filed against civil service employees of the state and its various political subdivisions.²

This decision was rendered shortly after the enactment of Chapter 657 of the Statutes of 1931 which preceded the present provisions concerning the dismissal of permanent teachers.³

Briefly, the present dismissal procedure requires the filing of written charges with the governing board of the school district or, in the alternative, the preparation of charges formulated by the board alleging one or more of the statutory causes for the dismissal of the permanent teacher. After charges have been filed, the board may notify the teacher of its intention to dismiss him at the expiration of thirty days, unless the teacher demands a hearing.⁴ If no hearing is demanded the employee may be dismissed at the expiration of thirty days.⁵ However, if a hearing is demanded, the board then has the option of rescinding its action or proceeding with the dismissal by filing a complaint in the superior court. This must be done within thirty days after the teacher's demand for a hearing "setting forth the charges . . . and asking that the court inquire into the charges and determine whether or not the charges are true, and if true, whether or not they constitute sufficient grounds for the dismissal of the employee."⁶

Provision is also made for the immediate suspension of a permanent employee charged with the commission of specific offenses such as immoral conduct or incompetency due to mental disability.⁷ Thus, whenever a permanent teacher is charged with the commission of a sex offense by complaint, information or indictment, the board must immediately place the employee on compulsory leave of absence pending judgment in the proceedings.⁸

INCOMPETENCY

In any proceedings looking toward the dismissal of a permanent teacher, special attention should be given to the provisions of section 13407 of the Educa-

¹ 21 Cal.App.2d 52, 68 P.2d 389 (1937).

² *Id.* at 55, 68 P.2d at 391.

³ CAL. ED. CODE §§ 13403-41.

⁴ CAL. ED. CODE § 13403.

⁵ CAL. ED. CODE § 13406.

⁶ CAL. ED. CODE § 13412.

⁷ CAL. ED. CODE § 13408.

⁸ CAL. ED. CODE § 13409.

tion Code. This section essentially provides that before any action is taken to dismiss a teacher for "incompetency," at least ninety days notice of the nature of the incompetency must be given the teacher in order to allow him "an opportunity to correct his faults and overcome his incompetence." This requirement of notice to enable a teacher to remedy correctible faults or defects within a specified time prior to the initiation of dismissal proceedings was contained in the original act by the addition of School Code section 5.652 during the 1931 regular session of the legislature.⁹ This section was amended in 1935 in order to prohibit any action by governing boards of school districts involving charges of incompetency "other than incompetency due to physical or mental disability" until after the teacher had been notified of the nature of the incompetency and given an opportunity to overcome the same.¹⁰

Thereafter, in *Fresno City High School District v. DeCaristo*,¹¹ the governing board of the Fresno City High School District charged a permanent teacher with, (1) failing to familiarize herself with the rules and regulations of the board; (2) failing to preserve order and discipline in the classroom; (3) absenting herself without consent and refusing to permit a substitute to act after requesting the appointment of a substitute; (4) committing acts of unprofessional conduct by initiating disputes with other teachers in the presence of pupils; and (5) evidencing unfitness for service by engaging in fits of temper and rage in and out of the classroom and by publicly making unwarranted statements. After demand for a hearing, a complaint was filed in the superior court and judgment was entered in the trial court authorizing the dismissal. On appeal, the court concluded that the term "incompetency" as employed in School Code section 5.652, as amended in 1935, was used "in its broad sense and not in the restricted meaning employed in section 5.650 [Now Ed. Code section 13403]," and since the school board had not given the accused the required notice and opportunity to correct her faults before taking action the prosecution was rendered fatal by reason of this failure.¹²

Following this decision, School Code section 5.652 was again amended at the next regular session of the legislature. The amendment deleted the words "other than incompetency due to physical or mental disability" which had been added by Chapter 691 of the Statutes of 1935, and added the following sentence: "The term 'incompetency' as used in this section means, and refers only to, the incompetency particularly specified as a cause for dismissal in School Code Section 5.650 and does not include any other cause for dismissal specified in School Code section 5.650."¹³

Since section 13407 of the Education Code now reads essentially the same as the amended School Code section 5.652, it appears that under existing law notice to remedy correctible faults or defects prior to filing charges is not required except in instances of "incompetency" in its restricted sense.

⁹ Stats. 1931, c. 657.

¹⁰ Stats. 1935, c. 691.

¹¹ *Fresno City High School District v. De Caristo*, 33 Cal.App.2d 666, 92 P.2d 668 (1939).

¹² *Id.* at 673, 92 P.2d at 672.

¹³ Stats. 1941, c. 1041.

Support for this conclusion may be found in *Board of Education v. Weiland*¹⁴ even though the court there made no reference to the legislative history of the section.¹⁵ Here, the teacher was charged with immoral conduct, unprofessional conduct, dishonesty and evident unfitness for service. In response to the assertion that the failure to give notice to remedy rendered the charges defective, the court stated: "The charges or anything charged in this case did not include incompetency and the section was not applicable."¹⁶

As in the cases of *Board of Education v. Swan*¹⁷ and *Laguna Beach School Dist. v. Lewis*,¹⁸ it is not infrequent that a complaint alleging several causes for the dismissal of a permanent teacher will be met with the argument that each cause of action should be separately stated in different causes of action. This was also recognized in the following dissertation: "A complaint that sets forth several specifications of alleged unprofessional conduct states only one cause of action. It is not, therefore, subject to demurrer on the ground of improper joining of several causes of action or of failure to state causes separately."¹⁹

UNPROFESSIONAL CONDUCT

The most recent case on the subject of the dismissal of a permanent teacher is *Board of Trustees v. Owens*.²⁰ In that case, the teacher caused to be published in the local newspaper a series of letters which the majority opinion described as "somewhat intemperate." These letters were made the basis for numerous charges, including, among other things, unprofessional conduct. The trial court concluded that the publication of the letters constituted unprofessional conduct and entered judgment accordingly. On appeal, the court stated generally that trial courts "enjoy a great deal of discretion" in determining what constitutes unprofessional conduct, but are "bound by the limits placed by the appellate courts upon the concept of the scope of 'unprofessional conduct'."²¹ The court then stated:

Thus, the trial court's primary inquiry in the present case where the sole basis of the charges were letters critical of education should have been to the questions of whether there had been any disruption or impairment of discipline or the teaching process as a result of defendant's letters.²²

After stating that during the trial the plaintiff seemed to be predisposed to fault finding and placing the burden of justification on the defendant, the court said that "The plaintiff might more profitably spend its time in attempting to establish what effect harmful to education in Lassen County had been engendered by the letters."²³

Therefore, the question arises whether the *Owens* case is authority for the proposition that in cases of unprofessional conduct it is necessary for the plaintiff

¹⁴ 179 Cal.App.2d 808, 813, 4 Cal.Rptr. 286, 289 (1960).

¹⁵ CAL. ED. CODE § 13407.

¹⁶ *Board of Education v. Weiland*, 179 Cal.App.2d 808, 813, 4 Cal.Rptr. 286, 289 (1960).

¹⁷ 41 Cal.2d 546, 261 P.2d 261 (1953).

¹⁸ 146 Cal.App.2d 463, 304 P.2d 59 (1956).

¹⁹ 44 CAL. JUR.2d *Schools* § 514 (1958).

²⁰ 206 A.C.A. 162, 23 Cal.Rptr. 710 (1962).

²¹ *Id.* at 172, 23 Cal.Rptr. at 717.

²² *Ibid.*

²³ *Id.* at 173, 23 Cal.Rptr. at 718.

to prove that the conduct, which is the basis for the charge, did in some manner adversely affect the educational program of the employing school district.

In answer to the query, it could be argued that the broad discretion formerly vested in the school authorities to dismiss a permanent teacher for one of the enumerated causes²⁴ is, as stated in the *Ballou* case, a "duty essentially administrative [which] has been withdrawn from administrative officials and imposed upon officials exercising judicial functions."²⁵ More particularly, this discretion is now vested in the superior court of the county in which the school district is located. Therefore, in the absence of abuse of discretion, the trial court's decision in the matter is final. In other words, it could be argued that it was the intention of the legislature in the enactment of the original 1931 act²⁶ to substitute the superior court for the school board in proceedings looking toward the dismissal of a permanent teacher and, therefore, the trial courts retain the same broad discretion as was formerly vested in school boards, subject to review only for abuses of discretion.

*Robley E. George**

* LL.B., University of Michigan, 1930. Member, Indiana and California Bars; Assistant County Counsel, San Joaquin County, California; former Assistant Administrative Adviser, State Department of Education, 1948-53.

²⁴ See *Goldsmith v. Board of Education*, 66 Cal.App. 157, 172-73, 225 Pac. 783, 789 (1924).

²⁵ *Board of Education v. Ballou*, 21 Cal.App.2d 52, 55, 68 P.2d 389, 391 (1937).

²⁶ Stats. 1931, c. 657.