

LEGISLATIVE HISTORY OF R.S. 18A:27-10, 11, 12, 13
(Continuation and Termination of Non-tenure Employment; excludes
Teachers at Community Colleges)

Previous bills:

A169, 1968 (copy enclosed)
Passed Assembly
Died in Senate

S238, 1969 (Identical to original S470, 1970)
Died in Assembly.

A475, 1970 (Identical to original S470, 1970)

L.1971, chapter 436, S470

Introduced January 29, 1970 by Del Tufo, Maturri, Guiliano,
Dumont, Wallwork, Waldor and La Corte.

Statement. (copies of original bill and statement enclosed)
Passed in Senate, amended on April 2, 1970. (copy of amend-
ments enclosed).

Passed in Assembly, amended on March 8, 1971. (copy of Assembly
amendments enclosed).

Assembly amendments passed in Senate on March 15, 1971.
(2nd OCR enclosed)

Returned by Governor with conditional veto on November 15, 1971.
(copy of veto enclosed)

Amended by Senate as recommended on November 15, 1971.
(copy of amendments enclosed).

Re-enacted in Senate (27-0) on December 2, 1971.

Re-enacted in Assembly (47-0) on January 11, 1972.

Signed by Governor on February 10, 1972. (copy of 3rd OCR enc.)

Background.

1 NOLPE School Law Journal 103 (Fall 1970)
"The Legal Rights of the Un-tenured Teacher" by
Irving C. Evers. (copy enclosed).

Further developments

S719, 1972 (Would require every non-tenure teaching staff
member to be observed and evaluated at least four times
in each school year, and if the board fails, it would
have to offer employment for the next school year).

Passed Senate.

Died in Assembly. (copy enclosed)

See newspaper clippings from New Jersey Education Vertical File--
Teachers--Tenure. (copies enclosed).

Original from Library

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 470

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Senators DELTUFO, MATTURRI, GIULIANO, DUMONT,
WALLWORK, WALDOR and LACORTE

Referred to Committee on Education

AN ACT concerning education and providing for continued employ-
ment of nontenure teaching staff members and supplementing
Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 *****[1.** Every board of education in this State shall cause each
2 nontenure teaching staff member employed by it to be observed and
3 evaluated at least twice in each school year, to be followed by a
4 conference between that teaching staff member and his or her
5 superior or superiors for the purpose of identifying any deficiencies,
6 extending assistance for their correction and improving instruc-
7 tion.]***

1 *****[2.]***** **1.***** On or before April 30 in each year, every
2 board of education in this State shall give to each nontenure teach-
3 ing staff member continuously employed by it since the preceding
3A September 30 either

4 a. A written offer of a contract for employment for the next
5 succeeding year providing for at least the same terms and condi-
6 tions of employment but with such increases in salary as may be
7 required by law or policies of the board of education, or

8 b. A written notice that such employment will not be offered.

1 ***[3.** Any teaching staff member who receives a notice of nonem-
2 ployment pursuant to section 2 of this article, may within 5 days
3 thereafter, in writing, request a statement of the reasons for such
4 nonemployment, which statement shall be given to the teaching staff
5 member in writing within 5 days after receipt of such request.]*

1 ***[4.** Any teaching staff member who has received such notice of
2 nonemployment and statement of reasons and who has been em-

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

3 ployed, or if said employment were continued to April 30 would
 4 be employed, in the district for the equivalent of more than 1
 5 academic year shall be entitled to a hearing before the board of
 6 education, provided a written request therefor is received in the
 7 office of the secretary of the board of education within 5 days after
 8 receipt by the teaching staff member of the statement of reasons.]*

1 ***[5.** The hearing provided for in section 4 of this article shall be
 2 conducted by the board of education in accordance with rules of
 3 procedures established by the State Board of Education and a
 4 determination as to the employment or nonemployment of said
 5 teaching staff member for the next succeeding year shall be made
 6 and a copy thereof served upon the teaching staff member on or
 7 before May 31. The determination of the board of education made
 8 and served within said time shall be conclusive.]*

1 ***[6.]** * *****[3.]***** ***2.***** Should any board of education fail
 2 to give to any nontenure teaching staff member *****[the evalua-**
 3 **tions set forth in section 1 of this act and]***** either an offer of
 4 contract for employment for the next succeeding year or a notice
 5 that such employment will not be offered ***[and upon request by the**
 6 **teaching staff member, a statement of reasons and a hearing, and in**
 7 **the event of such hearing shall fail to make and serve a copy of the**
 8 **determination]***, all within the time and in the manner provided by
 9 this ***[article]** * **act***, then said board of education shall be deemed
 10 to have offered to that teaching staff member continued employment
 11 for the next succeeding school year upon the same terms and condi-
 12 tions but with such increases in salary as may be required by law
 13 or policies of the board of education.

1 ***[7.]** * *****[4.]***** ***3.***** If the teaching staff member desires
 2 to accept such employment he shall notify the board of education of
 3 such acceptance, in writing, on or before June 1, in which event such
 4 employment shall continue as provided for herein. In the absence
 5 of such notice of acceptance the provisions of this article shall no
 6 longer be applicable.

1 *****[5.]***** ***4.***** *Notwithstanding the provisions of N. J. S.*
 2 *18A:64A-13 the provisions of this act shall not apply to teaching*
 3 *staff employees of county colleges.***

1 ***[8.** Any nontenure teaching staff member who receives a notice
 2 that his employment will be terminated pursuant to a provision
 3 contained in said contract shall be entitled to a statement of reasons
 4 and a hearing as provided for in sections 3, 4 and 5 of this article,
 5 except that a determination of the board of education shall be made
 6 and served before the expiration of the notice period provided for

7 in said contract. Should the board of education fail to comply
8 therewith, then said notice of termination shall be invalid and of
9 no force and effect and the employment of the teaching staff member
10 shall continue as if such notice had not been given.]*

1 ***[9.]*** ****[5.]**** *****[6.]***** **5.** This act shall take
2 effect September 1, ****[1970]**** *****[1971]***** **1972**.

S 470 *Gy.*

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Senators DELTUFO, MATTURRI, GIULIANO, DUMONT,
WALLWORK, WALDOR and LACORTE

Referred to Committee on Education

AN ACT concerning education and providing for continued employ-
ment of nontenure teaching staff members and supplementing
Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each
2 nontenure teaching staff member employed by it to be observed and
3 evaluated at least twice in each school year, to be followed by a
4 conference between that teaching staff member and his or her
5 superior or superiors for the purpose of identifying any deficiencies,
6 extending assistance for their correction and improving instruction.

1 2. On or before April 30 in each year, every board of education
2 in this State shall give to each nontenure teaching staff member
3 continuously employed by it since the preceding September 30 either

4 a. A written offer of a contract for employment for the next
5 succeeding year providing for at least the same terms and condi-
6 tions of employment but with such increases in salary as may be
7 required by law or policies of the board of education, or

8 b. A written notice that such employment will not be offered.

1 3. Any teaching staff member who receives a notice of nonemploy-
2 ment pursuant to section 2 of this article, may within 5 days there-
3 after, in writing, request a statement of the reasons for such non-
4 employment, which statement shall be given to the teaching staff
5 member in writing within 5 days after receipt of such request.

1 4. Any teaching staff member who has received such notice of
2 nonemployment and statement of reasons and who has been em-
3 ployed, or if said employment were continued to April 30 would
4 be employed, in the district for the equivalent of more than 1
5 academic year shall be entitled to a hearing before the board of

6 education, provided a written request therefor is received in the
7 office of the secretary of the board of education within 5 days after
8 receipt by the teaching staff member of the statement of reasons.

1 5. The hearing provided for in section 4 of this article shall be
2 conducted by the board of education in accordance with rules of
3 procedures established by the State Board of Education and a
4 determination as to the employment or nonemployment of said
5 teaching staff member for the next succeeding year shall be made
6 and a copy thereof served upon the teaching staff member on or
7 before May 31. The determination of the board of education made
8 and served within said time shall be conclusive.

1 6. Should any board of education fail to give to any nontenure
2 teaching staff member either an offer of contract for employment
3 for the next succeeding year or a notice that such employment will
4 not be offered and upon request by the teaching staff member, a
5 statement of reasons and a hearing, and in the event of such hearing
6 shall fail to make and serve a copy of the determination, all within
7 the time and in the manner provided by this article, then said board
8 of education shall be deemed to have offered to that teaching staff
9 member continued employment for the next succeeding school year
10 upon the same terms and conditions but with such increases in
11 salary as may be required by law or policies of the board of
12 education.

1 7. If the teaching staff member desires to accept such employ-
2 ment he shall notify the board of education of such acceptance, in
3 writing, on or before June 1, in which event such employment shall
4 continue as provided for herein. In the absence of such notice of
5 acceptance the provisions of this article shall no longer be
6 applicable.

1 8. Any nontenure teaching staff member who receives a notice
2 that his employment will be terminated pursuant to a provision
3 contained in said contract shall be entitled to a statement of reasons
4 and a hearing as provided for in sections 3, 4 and 5 of this article,
5 except that a determination of the board of education shall be made
6 and served before the expiration of the notice period provided for
7 in said contract. Should the board of education fail to comply
8 therewith, then said notice of termination shall be invalid and of
9 no force and effect and the employment of the teaching staff member
10 shall continue as if such notice had not been given.

1 9. This act shall take effect September 1, 1970.

STATEMENT

This bill would provide reasonable procedures governing the observation, evaluation, and nonrenewal of contracts of nontenure teachers.

It provides that any nontenure teaching staff member under contract for the school year shall:

- 1. Be observed and evaluated at least twice in each school year, to be followed by a conference with a superior to identify deficiencies, extend assistance, and improve instruction;
- 2. Be informed in writing by April 30 of the intention of the local board of education not to offer a contract for the succeeding school year.

The nontenure teaching staff member with more than 1 year of service shall, upon written request, be given the reason(s) for nonrenewal of contract and a hearing before the local board of education, which hearing shall be conclusive.

Any notice of termination shall be invalid and employment of the nontenure teaching staff member shall continue if the board of education fails to comply with the provisions concerning notification of nonrenewal of contract, requests for reasons in writing, and a hearing.

SENATE AMENDMENTS TO
SENATE, No. 470

STATE OF NEW JERSEY

ADOPTED MARCH 23, 1970

Amend page 1, section 3, lines 1-5, omit in their entirety.

Amend pages 1-2, section 4, lines 1-8, omit in their entirety.

Amend page 2, section 5, lines 1-8, omit in their entirety.

Amend page 2, section 6, line 1, omit "6", insert "3".

Amend page 2, section 6, line 2, after "member", insert "the evaluations set forth in section 1 of this act and".

Amend page 2, section 6, lines 4, 5, 6, after "offered", omit "and upon request by the teaching staff member, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination".

Amend page 2, section 6, line 7, omit "article", insert "act".

Amend page 2, section 7, line 1, omit "7", insert "4".

Amend page 2, section 8, lines 1-10, omit in their entirety.

Amend page 2, section 9, line 1, omit "9", insert "5".

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Senators DELTUFO, MATTURRI, GIULIANO, DUMONT,
WALLWORK, WALDOR and LACORTE

Referred to Committee on Education

AN ACT concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each
2 nontenure teaching staff member employed by it to be observed and
3 evaluated at least twice in each school year, to be followed by a
4 conference between that teaching staff member and his or her
5 superior or superiors for the purpose of identifying any deficiencies,
6 extending assistance for their correction and improving instruction.

1 2. On or before April 30 in each year, every board of education
2 in this State shall give to each nontenure teaching staff member
3 continuously employed by it since the preceding September 30 either

4 a. A written offer of a contract for employment for the next
5 succeeding year providing for at least the same terms and condi-
6 tions of employment but with such increases in salary as may be
7 required by law or policies of the board of education, or

8 b. A written notice that such employment will not be offered.

1 ***[3. Any teaching staff member who receives a notice of nonem-**
2 **ployment pursuant to section 2 of this article, may within 5 days**
3 **thereafter, in writing, request a statement of the reasons for such**
4 **nonemployment, which statement shall be given to the teaching staff**
5 **member in writing within 5 days after receipt of such request.]***

1 ***[4. Any teaching staff member who has received such notice of**
2 **nonemployment and statement of reasons and who has been em-**
3 **ployed, or if said employment were continued to April 30 would**
4 **be employed, in the district for the equivalent of more than 1**
5 **academic year shall be entitled to a hearing before the board of**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

6 education, provided a written request therefor is received in the
 7 office of the secretary of the board of education within 5 days after
 8 receipt by the teaching staff member of the statement of reasons.]*

1 ***[5.]** The hearing provided for in section 4 of this article shall be
 2 conducted by the board of education in accordance with rules of
 3 procedures established by the State Board of Education and a
 4 determination as to the employment or nonemployment of said
 5 teaching staff member for the next succeeding year shall be made
 6 and a copy thereof served upon the teaching staff member on or
 7 before May 31. The determination of the board of education made
 8 and served within said time shall be conclusive.]*

1 ***[6.]** *3.* Should any board of education fail to give to any non-
 2 tenure teaching staff member *the evaluations set forth in section 1*
 3 *of this act and* either an offer of contract for employment for the
 4 next succeeding year or a notice that such employment will not be
 5 offered ***[and upon request by the teaching staff member, a state-**
 6 **ment of reasons and a hearing, and in the event of such hearing**
 7 **shall fail to make and serve a copy of the determination]***, all
 8 within the time and in the manner provided by this ***[article]***
 9 *act*, then said board of education shall be deemed to have offered
 10 to that teaching staff member continued employment for the next
 11 succeeding school year upon the same terms and conditions but with
 12 such increases in salary as may be required by law or policies of
 13 the board of education.

1 ***[7.]** *4.* If the teaching staff member desires to accept such
 2 employment he shall notify the board of education of such accep-
 3 tance, in writing, on or before June 1, in which event such employ-
 4 ment shall continue as provided for herein. In the absence of such
 5 notice of acceptance the provisions of this article shall no longer be
 6 applicable.

1 ***[8.]** Any nontenure teaching staff member who receives a notice
 2 that his employment will be terminated pursuant to a provision
 3 contained in said contract shall be entitled to a statement of reasons
 4 and a hearing as provided for in sections 3, 4 and 5 of this article,
 5 except that a determination of the board of education shall be made
 6 and served before the expiration of the notice period provided for
 7 in said contract. Should the board of education fail to comply
 8 therewith, then said notice of termination shall be invalid and of
 9 no force and effect and the employment of the teaching staff member
 10 shall continue as if such notice had not been given.]*

1 ***[9.]** *5.* This act shall take effect September 1, 1970.

ASSEMBLY COMMITTEE AMENDMENTS TO

SENATE, No. 470

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED FEBRUARY 8, 1971

Amend page 2, after section 4, insert new section as follows:

“5. Notwithstanding the provisions of N. J. S. 18A:64A-13 the provisions of this act shall not apply to teaching staff employees of county colleges.”.

Amend page 2, section 5, line 1, change section number to “6”; after “September 1”, omit “1970”, and insert in lieu thereof “1971”.

SENATE, No. 470

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1970

By Senators DELTUFO, MATTURRI, GIULIANO, DUMONT,
WALLWORK, WALDOR and LACORTE

Referred to Committee on Education

AN ACT concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each
2 nontenure teaching staff member employed by it to be observed and
3 evaluated at least twice in each school year, to be followed by a
4 conference between that teaching staff member and his or her
5 superior or superiors for the purpose of identifying any deficiencies,
6 extending assistance for their correction and improving instruction.

1 2. On or before April 30 in each year, every board of education
2 in this State shall give to each nontenure teaching staff member
3 continuously employed by it since the preceding September 30 either

4 a. A written offer of a contract for employment for the next
5 succeeding year providing for at least the same terms and condi-
6 tions of employment but with such increases in salary as may be
7 required by law or policies of the board of education, or

8 b. A written notice that such employment will not be offered.

1 ***[3. Any teaching staff member who receives a notice of nonem-**
2 **ployment pursuant to section 2 of this article, may within 5 days**
3 **thereafter, in writing, request a statement of the reasons for such**
4 **nonemployment, which statement shall be given to the teaching staff**
5 **member in writing within 5 days after receipt of such request.]***

1 ***[4. Any teaching staff member who has received such notice of**
2 **nonemployment and statement of reasons and who has been em-**
3 **ployed, or if said employment were continued to April 30 would**
4 **be employed, in the district for the equivalent of more than 1**
5 **academic year shall be entitled to a hearing before the board of**
6 **education, provided a written request therefor is received in the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

7 office of the secretary of the board of education within 30 days after
8 receipt by the teaching staff member of the statement of reasons.]*

1 * [5.] The hearing provided for in section 4 of this article shall be
2 conducted by the board of education in accordance with rules of
3 procedures established by the State Board of Education and a
4 determination as to the employment or nonemployment of said
5 teaching staff member for the next succeeding year shall be made
6 and a copy thereof served upon the teaching staff member
7 before May 31. The determination of the board of education made
8 and served within said time shall be conclusive.]*

1 * [6.] *3.* Should any board of education fail to give to any non-
2 tenure teaching staff member *the evaluations set forth in section 1*
3 *of this act and* either an offer of contract for employment for the
4 next succeeding year or a notice that such employment will not be
5 offered * [and upon request by the teaching staff member, a state-
6 ment of reasons and a hearing, and in the event of such hearing
7 shall fail to make and serve a copy of the determination] *, all
8 within the time and in the manner provided by this * [article] *
9 *act* *, then said board of education shall be deemed to have offered
10 to that teaching staff member continued employment for the next
11 succeeding school year upon the same terms and conditions but with
12 such increases in salary as may be required by law or policies of
13 the board of education.

1 * [7.] *4.* If the teaching staff member desires to accept such
2 employment he shall notify the board of education of such accep-
3 tance, in writing, on or before June 1, in which event such employ-
4 ment shall continue as provided for herein. In the absence of such
5 notice of acceptance the provisions of this article shall no longer be
6 applicable.

1 **5. Notwithstanding the provisions of N. J. S. 18A:64A-13 the
2 provisions of this act shall not apply to teaching staff employees of
3 county colleges.**

1 * [8. Any nontenure teaching staff member who receives a notice
2 that his employment will be terminated pursuant to a provision
3 contained in said contract shall be entitled to a statement of reasons
4 and a hearing as provided for in sections 3, 4 and 5 of this article,
5 except that a determination of the board of education shall be made
6 and served before the expiration of the notice period provided for
7 in said contract. Should the board of education fail to comply
8 therewith, then said notice of termination shall be invalid and of
9 no force and effect and the employment of the teaching staff member
10 shall continue as if such notice had not been given.]*

1 * [9.] * * [5.] * * *6.* This act shall take effect September 1,
2 ** [1970] * * 1971 * *.

SENATE AMENDMENTS TO
SENATE, No. 470
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED NOVEMBER 15, 1971

- Amend page 1, section 1, lines 1 to 6, omit in its entirety.
- Amend page 1, section 2, line 1, delete "2", insert "1".
- Amend page 2, section 3, line 1, delete "3", insert "2".
- Amend page 2, section 3, lines 2 and 3, after "member", delete "the evaluations set forth in section 1 of this act and".
- Amend page 2, section 4, line 1, delete "4", insert "3".
- Amend page 2, section 5, line 1, delete "5", insert "4".
- Amend page 2, section 6, line 1, delete "6", insert "5".
- Amend page 2, section 6, line 2, delete "1971", insert "1972".

FISCAL NOTE TO
SENATE, No. 470

STATE OF NEW JERSEY

DATED: APRIL 2, 1970

Senate Bill No. 470 provides procedures for governing the observation, evaluation and nonrenewal of contracts of nontenure teachers; effective September 1, 1970.

The Department of Education states that such an evaluation should be conducted through existing personnel, and that, therefore, no additional expenditure should be required.

In compliance with written request received, there is hereby submitted a fiscal estimate for the above bill, pursuant to P. L. 1962, c. 27.

November 15, 1971

SENATE BILL NO. 470

to the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution,
I herewith return Senate Bill No. 470, with my objections, for reconsideration.

Senate Bill No. 470 provides for the observation and evaluation of
nontenure teachers by a board of education at least twice each year. In
addition, the proposal would require a board of education to notify non-
tenured teachers by April 30 as to whether they will be re-employed for the
following school year.

It is important that those teachers who will not be re-employed be
given adequate time to make application for other positions. The April 30
notification date is certainly fair from the point of view of nontenure
teaching staff members and does not place an undue burden on the local board.

I must object, however, to section 1 of the bill which mandates a
system of teacher evaluation. I do not believe that two evaluations per
year are sufficient to provide the necessary information upon which a board
should base its decision to grant tenure to a teacher through re-employment.
In my opinion, this provision would tend to detract from what should be,
and I believe now is, a continuing observation and evaluation of nontenure
personnel.

Accordingly, I herewith return Senate Bill No. 470, with the following
changes, for your consideration:

1. Page 1, Section 1, Lines 1 - 6: Omit in its entirety.
2. Page 1, Section 2, Line 1: Delete "2" insert "1".
3. Page 2, Section 3, Line 1: Delete "3" insert "2".
4. Page 2, Section 3, Lines 2 and 3: After "member" delete "the
evaluations set forth in section 1 of this act and".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 470

2

5. Page 2, Section 4, Line 1: Delete "4" insert "3".
6. Page 2, Section 5, Line 1: Delete "5" insert "4".
7. Page 2, Section 6, Line 1: Delete "6" insert "5".
8. Page 2, Section 6, Line 2: Delete "1971" insert "1972".

Respectfully,

/s/ William T. Cahill

GOVERNOR

[seal]

Attest:

Jean E. Mulford

Acting Secretary to the Governor

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1968

By Assemblymen CAPUTO, FIORE, HEILMANN, SELECKY
and HIRKALA

Referred to Committee on Education

AN ACT concerning education and providing for continued employ-
ment of nontenure teaching staff members and supplementing
Title 18A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each non-
2 tenure teaching staff member employed by it to be observed and
3 evaluated at least one time in each 3 months of employment, to
4 be followed by a conference between that teaching staff member
5 and his or her superior or superiors for the purpose of identifying
6 any deficiencies, extending assistance for their correction and im-
7 proving instruction.

1 2. On or before April 1 in each year, every board of education in
2 this State shall give to each nontenure teaching staff member
3 employed by it either

4 a. A written offer of a contract for employment for the next
5 succeeding year providing for at least the same terms and condi-
6 tions of employment but with such increases in salary as may be
7 required by law or policies of the board of education, or

8 b. A written notice that such employment will not be offered,
9 provided that such notice will be invalid and of no force and effect
10 if said teaching staff member has not been observed, evaluated
11 and conferred with as required by section 1 of this act.

1 3. Any teaching staff member who receives a notice of nonem-
2 ployment pursuant to section 2 of this article, may within 5 days
3 thereafter, in writing, request a statement of the reasons for such
4 nonemployment, which statement shall be given to the teaching
5 staff member in writing within 5 days after receipt of such request.

1 4. Any teaching staff member who has received such notice of
2 nonemployment and statement of reasons, shall be entitled to a

3 hearing before the board of education, provided a written request
4 therefor is received in the office of the secretary of the board of
5 education within 5 days after receipt by the teaching staff member
6 of the statement of reasons.

1 5. The hearing provided for in section 4 of this article shall be
2 conducted by the board of education in accordance with rules of
3 procedures established by the State Board of Education and a
4 determination as to the employment or nonemployment of said
5 teaching staff member for the next succeeding year shall be made
6 and a copy thereof served upon the teaching staff member on or
7 before May 15. The determination of the board of education made
8 and served within said time shall be conclusive.

1 6. Should any board of education fail to give to any nontenure
2 teaching staff member either an offer of contract for employment
3 for the next succeeding year or a notice that such employment
4 will not be offered and upon request by the teaching staff member,
5 a statement of reasons and a hearing, and in the event of such
6 hearing shall fail to make and serve a copy of the determination,
7 all within the time and in the manner provided by this article,
8 then said board of education shall be deemed to have offered to
9 that teaching staff member continued employment for the next
10 succeeding school year upon the same terms and conditions but with
11 such increases in salary as may be required by law or policies of
12 the board of education.

1 7. If the teaching staff member desires to accept such employ-
2 ment he shall notify the board of education of such acceptance,
3 in writing, on or before June 1, in which event such employment
4 shall continue as provided for herein. In the absence of such notice
5 of acceptance the provisions of this article shall no longer be ap-
6 plicable.

1 8. Any nontenure teaching staff member who receives a notice
2 that his employment will be terminated pursuant to a provision
3 contained in said contract shall be entitled to a statement of reasons
4 and a hearing as provided for in sections 3, 4 and 5 of this article,
5 except that a determination of the board of education shall be
6 made and served before the expiration of the notice period pro-
7 vided for in said contract. Should the board of education fail to
8 comply therewith, or should it have failed to observe, evaluate
9 and confer with said teaching staff member as required by section
10 1 of this article, then said notice of termination shall be invalid
11 and of no force and effect and the employment of the teaching staff
12 member shall continue as if such notice had not been given.

1 9. This act shall take effect September 1, 1968.

A169
(1968)

STATEMENT

This bill would provide reasonable procedures governing the observation, evaluation, and nonrenewal of contract of nontenure teachers.

It provides that any nontenure teaching staff member under contract for the school year shall:

1. Be observed and evaluated at least one time in each 3 months of employment, to be followed by a conference with a superior to identify deficiencies, extend assistance, and improve instruction;
2. Be informed in writing by April 1 of the intention of the local board of education not to offer a contract for the succeeding school year.

The nontenure teaching staff member shall, upon written request, be given the reason(s) for nonrenewal of contract and a hearing before the local board of education, which hearing shall be conclusive.

Any notice of termination shall be invalid and employment of the nontenure teaching staff member shall continue if the board of education fails to comply with the provisions concerning observation, evaluation, notification of nonrenewal of contract, requests for reasons in writing, and a hearing.

ASSEMBLY COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 169

STATE OF NEW JERSEY

ADOPTED JUNE 17, 1968

Amend page 1, section 1, line 3, delete "one time in each 3 months of employment", insert therefor "twice in each school year".

Amend page 1, section 2, line 1, delete "April 1", and insert "April 30".

Amend page 1, section 2, line 3, delete "employed by it either", and insert the following: "continuously employed by it since the preceding September 30 either".

Amend page 1, section 2, line 8, delete ",", insert "."

Amend page 1, section 2, lines 9, 10, 11, delete lines 9, 10 and 11 in their entirety.

Amend page 1, section 4, line 2, delete "," after the word "reasons", and insert the following: "and who has been employed, or if said employment were continued to April 30 would be employed, in the district for the equivalent of more than 1 academic year".

Amend page 2, section 5, line 7, delete "May 15", and insert "May 31".

Amend page 2, section 8, lines 8, 9, 10, delete "or should it have failed to observe, evaluate and confer with said teaching staff member as required by section 1 of this article,".

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1968

By Assemblymen CAPUTO, FIORE, HELLMANN, SELECKY
and HIRKALA

Referred to Committee on Education

AN ACT concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Every board of education in this State shall cause each nontenure teaching staff member employed by it to be observed and evaluated at least ***[one time in each 3 months of employment]*** **twice in each school year**, to be followed by a conference between that teaching staff member and his or her superior or superiors for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction.

2. On or before April ***[1]* *30*** in each year, every board of education in this State shall give to each nontenure teaching staff member ***[employed by it either]*** **continuously employed by it since the preceding September 30 either**

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or

b. A written notice that such employment will not be offered***[**, provided that such notice will be invalid and of no force and effect if said teaching staff member has not been observed, evaluated and conferred with as required by section 1 of this act**]***.

3. Any teaching staff member who receives a notice of nonemployment pursuant to section 2 of this article, may within 5 days thereafter, in writing, request a statement of the reasons for such nonemployment, which statement shall be given to the teaching

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

5 staff member in writing within 5 days after receipt of such request.

1 4. Any teaching staff member who has received such notice of
2 nonemployment and statement of reasons***[.]*** *and who has been*
3 *employed, or if said employment were continued to April 30 would*
4 *be employed, in the district for the equivalent of more than 1 aca-*
5 *demie year** shall be entitled to a hearing before the board of edu-
6 cation, provided a written request therefor is received in the office
7 of the secretary of the board of education within 5 days after
8 receipt by the teaching staff member of the statement of reasons.

1 5. The hearing provided for in section 4 of this article shall be
2 conducted by the board of education in accordance with rules of
3 procedures established by the State Board of Education and a
4 determination as to the employment or nonemployment of said
5 teaching staff member for the next succeeding year shall be made
6 and a copy thereof served upon the teaching staff member on or
7 before May **[15]*** *31**. The determination of the board of edu-
8 cation made and served within said time shall be conclusive.

1 6. Should any board of education fail to give to any nontenure
2 teaching staff member either an offer of contract for employment
3 for the next succeeding year or a notice that such employment
4 will not be offered and upon request by the teaching staff member,
5 a statement of reasons and a hearing, and in the event of such
6 hearing shall fail to make and serve a copy of the determination,
7 all within the time and in the manner provided by this article,
8 then said board of education shall be deemed to have offered to
9 that teaching staff member continued employment for the next
10 succeeding school year upon the same terms and conditions but with
11 such increases in salary as may be required by law or policies of
12 the board of education.

1 7. If the teaching staff member desires to accept such employ-
2 ment he shall notify the board of education of such acceptance,
3 in writing, on or before June 1, in which event such employment
4 shall continue as provided for herein. In the absence of such notice
5 of acceptance the provisions of this article shall no longer be ap-
6 plicable.

1 8. Any nontenure teaching staff member who receives a notice
2 that his employment will be terminated pursuant to a provision
3 contained in said contract shall be entitled to a statement of reasons
4 and a hearing as provided for in sections 3, 4 and 5 of this article,
5 except that a determination of the board of education shall be
6 made and served before the expiration of the notice period pro-
7 vided for in said contract. Should the board of education fail to

failed to observe evaluate

and confer with said teaching staff member as required by section 1 of this article,] then said notice of termination shall be invalid and of no force and effect and the employment of the teaching staff member shall continue as if such notice had not been given.

9. This act shall take effect September 1, 1968.

THE LEGAL RIGHTS OF THE UNTENURED TEACHER

By IRVING C. EVERS*

With the ever increasing recognition of the rights of teachers to engage in collective negotiations, the status of the untenured teacher becomes one of increasing importance and interest. It cannot be ignored and unless it is clearly understood, it poses very serious problems for the school administrator and for Boards of Education generally.

If, during the course of my discussion today, there appears to be heavy emphasis on New Jersey rulings, I trust you will understand that as a New Jersey attorney representing some 10 boards of education, my heaviest exposure has been to New Jersey rulings. This is not to suggest, however, that in the course of this presentation that rulings in other jurisdictions will be overlooked. They will not. When discussing general legal principles, however, it is well to bear in mind that with the Courts and administrative agencies of fifty states, interpreting the laws of each state, determinations may and do vary from state to state and to eliminate any doubts, it would be advisable to consult counsel in the state or states where a ruling is being sought for an opinion as to the law applicable in the State in question.

Before discussing the legal rights of the untenured teacher, it might be well to consider very briefly just what tenure is.

Tenure is a status, not a contractual right. It is subject to legislative change at any time, and may be contractually negotiated between teacher and local board, subject to law.¹ It is a legislative status provided as a public policy for the good order of the public school system and the welfare of its pupils. Its objectives are to protect competent and qualified professional staff members in the security of their positions during good behavior, and to protect them against removal for "unfounded, flimsy, or political reasons."

*New Jersey Chairman, NOLPE; President New Jersey Association of School Attorneys.
¹Phelps v. Board of Education of the Township of West New York, 57 S.Ct. 483, 300 U.S. 310, 81L. Ed. 674 (1957); Laba v. Board of Education of Newark, 23, N.J. 364 (N.J. Sup. Ct. 1957); Eltowich v. Bayonne Board of Education, 1967 New Jersey School Law Decisions 86 (N.J. State Board of Education.)

Its protection is not a personal privilege which is subject to forfeiture or abuse.²

The time which an employee must serve before acquiring tenure necessarily varies from State to State and the method of determining the services of a tenure employee also varies. In New Jersey, for example, it is provided that enumerated teaching staff members acquire tenure after employment in the district, (a) for three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose, or (b) three consecutive academic years together with employment at the beginning of the next succeeding academic year, or (c) the equivalent of more than three academic years within a period of any four academic years. Where tenure has been attained, a tenured individual cannot be dismissed or reduced in compensation except for inefficiency, or conduct unbecoming such a teaching staff member or other just cause and the in the manner prescribed in the Tenure Employees Hearing Law.³

With the rights of tenure employees being protected by Tenure laws, attention must necessarily be directed to the rights, if any, of the untenured employee particularly in the light of the various statutes providing for collective negotiations or collective bargaining. It would serve no purpose to attempt to analyze the laws of all 50 states relative to the subject matter of collective negotiations. They vary considerably. California, Connecticut, Minnesota, Nebraska, Oregon, Rhode Island and Washington all have separate statutes covering collective bargaining with teachers. Other states provide for collective bargaining with public employees generally. New Jersey, for example, provides for "collective negotiations" between all public employers and their employees on terms and conditions of employment.⁴ The Commonwealth of Massachusetts, for example, in its laws dealing with collective bargaining by State employees provides that such employees have the right to form and join vocational or labor organizations and to present proposals relative to salaries and other conditions of employment through representatives of their own choosing.⁵ Massachusetts State employees have the right to bargain collectively.

²Matter of Tenure Hearing of Joseph A. Maratea, 1966 New Jersey School Law Decisions, 77, 105 Commissioner of Education Decision; affirmed by State Board of Education 1966, N.J.S.L.D. 106; aff'd. by New Jersey Superior Court, Appellate Division, 1967 N.J.S.L.D. 351 (1967).

³N. J. R.S. 18A:28-5; 18A:6-10 et seq.

⁴Ch. 303 P.L. 1968-69; N.J.R.S.34:13A-1 et seq.

⁵Ch. 149 General Laws, Sections 178D and 178F.

"collective

The fact
gation to
by reason
I submit
up, for al
employment
it behoove
not find t
failure to
are empl
with all e
employees
exclusion
with refer

It can
I will use
untenured

If, then
son, or fe
of board
crystal
holding
boards ar
ney, the
me, nor
most of
fully as

With
ent that
dismiss
subject

Ed-
Educ
of N.J.
San L
90, B

While some persons may attempt to argue that there is a distinction between engaging in "collective bargaining" as opposed to "collective negotiations," I submit that this is a distinction without a difference.

The fascinating question which presents itself is: "With the obligation to either engage in collective bargaining or collective negotiations, does the untenured employee gain a status akin to tenure by reason of the obligations to bargain or negotiate collectively?" I submit that unless extreme care is taken in connection with collective negotiations, untenured employees could conceivably wind up, for all practical purposes, with tenure from the date of employment. This possibility is not as far fetched as it may seem and it behooves administrators to make certain that their Boards do not find themselves with albatrosses around their necks because of failure to properly safeguard their positions. Untenured teachers are employees and if a statute calling for collective bargaining with all employees does not expressly exclude probationary employees (and I believe that most statutes do not provide for such exclusion) boards must be certain not to bargain away their rights with reference to the untenured individual.

It can be stated rather persuasively (subject to exception which I will discuss shortly) that a board of education may discharge an untenured employee for any reason or for no reason at all.⁶

If, then, an untenured employee can be discharged for any reason, or for no reason at all, why the concern about the possibility of boards bargaining away their rights? The answers become crystal clear in the light of some very recent discussions clearly holding that what were formerly regarded as sacrosanct rights of boards are no longer sacrosanct. I might say that as a Board attorney, the decisions which I will call to your attention do not bother me, nor do I entertain any serious disagreements with respect to most of them. My concern is that administrators and Boards be fully aware of them and that they act accordingly.

With specific laws guaranteeing certain rights, it is quite apparent that a general statement that a probationary employee may be dismissed for any reason or for no reason at all must necessarily be subject to the express provisions of other laws. This means, for

⁶Edmund v. Bd. of Ed. of the Shore Regional H.S. Dist. Dec. of N.J. Commissioner of Education 2-21-69; Ruch v. Bd. of Ed. of Greater Egg Harbor Regional H.S. Dist. Dec. of N.J. Commissioner of Education 1/29/68; A.F. of Teachers, Local 1713 AFL-CIO v. San Lorenzo Unified School Dist. 61 L.C. P52,154 (C.C.H.); (Cal.Ct. of Appeals 9-16-69); Helsby v. Bd. of Ed. 60 L.C. P-52,135 (N.Y. Sup. Ct. 6-11-69).

example, among other laws, laws expressly guaranteeing the rights of public employees to engage in collective bargaining or collective negotiations.

The United States District Court for the southern District of Indiana has ruled that the right of teachers to associate together through a chosen representative for the purpose of negotiating on an equal basis with their employer with respect to their economic and professional interests is a federally protected right and privilege and that to deny such rights is to deny the rights of free speech, association, petition, equal protection and due process of law guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.⁷

Where a school board dismissed one teacher and refused to hire a second because of their association with a union, the employees were deprived of their rights of association under the First and Fourteenth Amendments to the U. S. Constitution in violation of the Civil Rights Act of 1871. The First Amendment confers the right to form and join a labor union, and the Civil Rights Act gives the employees a remedy if their contracts were not renewed because of the exercise of those rights, even though they did not have tenure.⁸

It is firmly established that those in charge of public school systems may not constitutionally discriminate against teachers for racial reasons.⁹

My esteemed fellow panelist, Mr. Freedman, established the principle that a teacher may not be denied due process by being summarily dismissed because of the wearing of a beard and I will leave to him the discussion of the case of Lucia v. Duggan.¹⁰ While the trial judge in that case would not pass upon the constitutional right of a teacher to wear a beard, a United States District Court in Florida has held that the wearing of a beard by a teacher is a constitutionally protected liberty under the due process clause of the Fourteenth Amendment to the Constitution of the United States.¹¹

⁷Indianapolis Education Assn. v. Lewallen, 60 L.C. P10,198 (C.C.H.) (June 19, 1969).

⁸McLaughlin v. Tilendis, 59 L.C.P13,219 (C.C.A. 7th Cir. 1968); American Federation of State, County and Municipal Employees AFL-CIO v. Woodward, 59 LC P13,213 (CCA 8th Cir. 1969); Cf. Orr v. Thorp, 38 L.W. 2384 (U.S.D.C.S. Fla. 12-10-69).

⁹McBeth v. Board of Education of the Dealls Bluff School Dist. No. 1, 61 L.C.P. 9343 (C.C.H.) U.S.D.C.E.D. of Ark, Western Div. 6-20-69).

¹⁰61 L.C. P 9330 (C.C.H.) (U.S.D.C.D.Mass. 8-26-69).

¹¹Braxton v. Bd. of Public Instruction of Duval County, 61 L.C. P 9362 (C.C.H.) (U.S.D.C. Middle Dist. of Fla., Jacksonville Division, 6-6-69).

It is
teacher
teacher
tionally
titled to

The C
ruled th
been di
be proc

New
has rul
tenured
union a

New
the cou
alleged
for dis
the Tay
did not
appoin
termin
statute
Howev
giving
cases
courts
er's un

Whi
not to
tenure
cases
establ
unten
effect

12Ed
Commis
13M
11-21-6
P.E.R.
1411
15Ca
69).

It is thus obvious that if the true reasons for the dismissal of teachers not under tenure or the failure to renew contracts of such teachers are solely the exercise by such teacher of either constitutionally or statutorily guaranteed rights, then such teachers are entitled to be reinstated to their positions.

The Commissioner of Education of the State of New Jersey has ruled that he lacks jurisdiction to hear a claim that a teacher has been discriminated against. Such a charge, he has ruled, should be processed under New Jersey's Civil Rights Act.¹²

New Jersey's Public Employees Relations Commission (PERC) has ruled that it has jurisdiction to hear a charge that an untenured teacher was denied reemployment because of alleged union activity in violation of State law.¹³

New York has had some interesting rulings in connection with the courses of action open to an employee where discrimination is alleged as the reason either for the failure to renew a contract or for dismissal. In one case it was held (prior to an amendment to the Taylor law) that the Public Employees Fair Employment Act did not repeal the provisions of the state education law that the appointment of a school teacher who did not have tenure may be terminated by a board of education. Thus the P.E.R.B. had no statutory power to hold hearings and to reinstate the teacher.¹⁴ However, upon an amendment being enacted to the Taylor Law giving to P.E.R.B. the exclusive non-delegable jurisdiction over cases involving improper labor practices, it was held that state courts do not have jurisdiction over a charge of a public employer's unfair labor practices.¹⁵

While I have always advised the boards of education I represent not to give reasons for the failure to renew the contracts of non-tenure employees, it must be apparent from a consideration of the cases I have already discussed that boards must be prepared to establish that in any event, the failure to renew the contracts of untenured teachers was not due to discriminatory reasons. In effect, it seems that such teachers may be able to force the giving

¹²Edmond v. Bd. of Ed. of the Shore Regional High School District. Dec. of N.J. Commissioner of Education, 2-21-69.

¹³Matter of West Deptford Twp. Bd. of Ed. and Caroline L. Ford, P.E.R.C. No. 26, 11-21-69; Cf. Burlington County Evergreen Park Mental Hospital and Dorothy Cooper, P.E.R.C. No. 14, 9-19-69.

¹⁴Helsby v. Bd. of Education, 60 L.C. P 52135 (C.C.H.) N.Y. Sup. Ct. 6-11-69).

¹⁵Carnegie v. N.Y.C. Transit Authority, 61 L.C. P 52,179 (C.C.H.) (N.Y. Sup. Ct. 11-6-69).

of reasons by alleging discrimination either by reasons of race, religion, or union activity.

Boards should be extremely careful in negotiating Agreements with their teachers to try and exclude from the grievance procedure altogether any matters dealing with the failure to renew the contract of a non-tenure teacher. In all contracts which I have negotiated I have insisted upon the following language immediately after the definition of the term "grievance":

"The term 'grievance' and the procedure relative thereto shall not be deemed applicable in the case of the failure or refusal of the board to renew the contract of a non-tenure employee."

Failure to insist on such language or language similar to it could, in my opinion, give a non-tenure employee the right to file a grievance upon the grounds that the failure or refusal to renew the contract was arbitrary, capricious, or unreasonable. In the event of such a finding the board might find that the employee, for all practical purposes, had tenure. No board should permit itself to be placed in such a position.

While considering the legal rights of the untenured teacher, it might indeed be appropriate to consider what additional rights those teachers are seeking to acquire.

Teachers will insist that fair play dictates that they should have the right to a hearing in cases where a contract is not to be renewed. The request for "fair play," while intended to tug at the heart strings, may in reality be a plea for immediate tenure. Anyone who has ever tried to get rid of a tenure employee knows what headaches are involved. I see no point in inviting Excedrin headache No. 251.

The New Jersey Education Association which, in my opinion, has the most powerful lobby in the Garden State, has for some time now been attempting to get a bill through the New Jersey Legislature which has been captioned "An Act concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes."¹⁶

This Bill would require the following:

(a) The observation and evaluation of each non-tenure teaching staff member at least twice a year, to be followed by a conference

¹⁶Assembly Bill No. 238, 1969 Session, New Jersey Legislature.

for the purp

(b) On or
tract of emp
from the
increases in
board of ed

(c) A wh

If a teach
he may, wit
of reasons
given him w

The bill p
fore the bo
the office of
by the teach

After the
ment or non
upon the te
termination
time is decl

Failure t
an offer of
that such e
teaching st
in the even
the determ
in the Bill
teaching s
ceeding s
such incre
the board

If the te
he shall a
ing, on c
continued
acceptanc

Any ne
that his

for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction.

(b) On or before April 30 of each year a written offer of a contract of employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education; or

(c) A written notice that such employment will not be offered.

If a teaching staff member receives a notice of non-employment he may, within 5 days thereafter, in writing, request a statement of reasons for such non-employment, which statement shall be given him within 5 days of such request.

The bill provides that an employee is entitled to a hearing before the board provided a written request therefor is received in the office of the secretary of the board within 5 days after receipt by the teaching staff member of the statement of reasons.

After the hearing is conducted a determination of the employment or non-employment shall be made and a copy thereof served upon the teaching staff member on or before May 31st. The determination of the board of education made and served within said time is declared to be conclusive.

Failure to give to any non-tenure teaching staff member either an offer of employment for the next succeeding year or a notice that such employment will not be offered and upon request by the teaching staff member a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided in the Bill, then the board shall be deemed to have offered to the teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.

If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance in writing, on or before June 1, in which event such employment shall continue as provided in the Bill. In the absence of such notice of acceptance, the provisions of this article are no longer applicable.

Any non-tenure teaching staff member who receives a notice that his employment will be terminated pursuant to a provision

contained in a contract shall be entitled to a statement of reasons and a hearing as provided in the Bill except that a determination of the board of education shall be made and served before the expiration of the notice provided for in the contract. Should the board of education fail to comply therewith, then the notice of termination is invalid and of no force and effect and the employment of the teaching staff member shall continue as if such notice had not been given.

It does not require any great imagination to determine who were among the principal sponsors of the above described Bill. Of six sponsors, the first named on the Bill is listed as an educator in the Newark public schools, a member of the N.J.E.A. and the Newark Teachers Association. The second named sponsor is listed as a school teacher in the Newark school system, and a member of St. Thomas Aquinas Teaching Guild.¹⁷ The Bill in question was referred to the Education Committee where it remained interred.

I suppose that the teachers will argue that since the Bill expressly provides that after the hearing is held the determination of the board of education is conclusive, therefore there should be no concern about a fear of immediate tenure.

As an attorney, I must say that in all candor I do indeed fear the possibility of a determination that could easily result in tenure before the time set in New Jersey's tenure laws. I believe that notwithstanding the provisions of the Bill there is nothing to stop a teacher from claiming that a board was capricious, arbitrary, or unreasonable in its determination and thus drag boards through the courts with the possibilities of rulings sustaining the teachers' positions emanating from the Courts.

Although the N.J.E.A. was not successful in getting its Bill through the legislature, it most certainly has not given up the idea at all. In 1969 it recommended to its affiliates that they seek to have included in contracts negotiated with Boards a so-called "Fair Dismissal Procedure" which procedure incorporated virtually every provision of the Bill which could not be passed in the Legislature. Needless to say, I have urged the Boards I represent to avoid this procedure as they would the plague.

I have commented previously on the advisability of boards excluding from the grievance procedure claims dealing with the failure or refusal to renew the contracts of non-tenure teachers.

¹⁷New Jersey Legislative Index, Jan. 13, 1970 P. 17.

New York
complete

In one
strict and
providing
tract del
interpret
contract.
of termi
provisio
mination
then mac
tract rec
The Boa
outside
the cont
teacher.
preme C
lunge in
does not
ing the

In com
once a
tration.
which is
Where
or inter
contract
presum
cedural

I anti
ments.
the righ
ber of
bargain

18 Assn
L.C.P.
Special T
19 Cent
Sullivan
Onondag

New York has a most interesting decision which points out the complete desirability of heeding this admonition.

In one case, there was a contract in effect between a school district and a teachers' association. The contract contained a clause providing for the submission of grievances to arbitration. The contract defined the term "grievance" as a claim which involves the interpretation and application and provisions of the terms of this contract. The contract also included a provision for giving notice of termination of employment to a non-tenure employee which provision required notice to be given by March 1st. Notice of termination was given to a teacher on May 1, 1969 and a demand was then made for arbitration on the ground that the article of the contract requiring notice to be given by March 1st had been violated. The Board resisted arbitration on the ground that the matter was outside the scope of the grievance procedure under a provision of the contract which provided that in the case of a non-tenure teacher, termination shall not be grievable. The New York Supreme Court held that while a non-tenure teacher may not challenge in arbitration grounds for termination of employment, that does not mean that a non-tenure teacher is barred from challenging the "procedure" used in terminating employment.¹⁸

In connection with this question it should be kept in mind that once a valid agreement has been entered into providing for arbitration, any controversy arising between the parties to the contract which is within compass of those provisions must go to arbitration. Where an issue involved in a contract is solely one of construction or interpretation, it is for arbitrators to decide the meaning of the contract. Labor disputes under collective bargaining contracts are presumptively arbitrable and it is for arbitrators to determine procedural and substantive issues of arbitrability.¹⁹

I anticipate that as time passes there will be numerous arguments, determinations and requests for broader consideration of the rights of the untenured teacher. With the ever increasing number of jurisdictions requiring collective negotiations or collective bargaining between public employers and public employees, per-

¹⁸Associated Teachers of Huntington v. Bd. of Ed. Union Free School Dist. No. 3, 61 L.C.P. 52,193 (C.C.H.) 162 N.Y.L.J. Aug. 12, 1969 (P. 12) (N.Y. Sup. Ct., Suffolk Co., Special Term, Part I).

¹⁹Central School Dist. No. 1 of the Towns of De Witt, et al. Onondaga County and Sullivan, Madison County v. Litz, 304 N.Y.S. 2d. 372 (N.Y. Sup. Ct., Special Term, Onondaga Co. 10-16-69).

haps there may be a hue and cry by Boards for the elimination of tenure altogether. I feel that a good case can now be made out for the elimination of it in those states where collective bargaining or collective negotiations is a must. Until such time, however, as tenure is abolished, I urge extreme caution in negotiations and fervently hope that not too many boards will give away the store insofar as the untenured employee is concerned.

Editor's Note: For more recent cases on this matter see *Justin v. Orr*, Civil Action 70-163, U.S. District Court, Southern District of Ohio, Eastern Division which supports *Lucia v. Duggan*, and *DeCanio v. School Committee of Boston*, 260 NE 2d 676 (Massachusetts, 1970) and *Thaw v. Board of Public Instruction of Dade County, Florida*, U.S.C.A. Cause No. 29488 on appeal from the U. S. District Court for the Southern District of Florida, dated September 22, 1970, which reaches the opposite conclusion on similar factual situations.

Volume 1

EXHAUSTIVE
INSTI

SEARCH AN

JUDICIAL I

THE OTHER
IN A

A Special
Significan

Nation

SENATE, No. 719

STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1972

By Senators AZZOLINA, DUMONT, TANZMAN, GIULIANO,
BROWN, TURNER, SCHLUTER, PARKER and McGAHN

Referred to Committee on Education

AN ACT to amend and supplement "An act concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes," approved February 10, 1972 (P. L. 1971, c. 436.)

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each non-
2 tenure teaching staff member employed by it to be observed and
3 evaluated at least twice in each school year, to be followed by a
4 conference between that teaching staff member and his or her
5 superior or superiors for the purpose of identifying any deficien-
6 cies, extending assistance for their correction and improving
7 instruction.

1 2. Section 2 of P. L. 1971, c. 436 (C. 18A:27-11) is amended to
2 read as follows:

3 2. Should any board of education fail to give to any nontenure
4 teaching staff member *the evaluations set forth in section 1 of this*
5 *amendatory and supplementary act and either an offer of contract*
6 *for employment for the next succeeding year or a notice that such*
7 *employment will not be offered all within the time and in the manner*
8 *provided by this act, then said board of education shall be deemed*
9 *to have offered to that teaching staff member continued employ-*
10 *ment for the next succeeding school year upon the same terms and*
11 *conditions but with such increases in salary as may be required*
12 *by law or policies of the board of education.*

1 2. This act shall take effect September 1, 1972.

SENATE COMMITTEE AMENDMENT TO
SENATE, No. 719

STATE OF NEW JERSEY

ADOPTED MARCH 23, 1972

Amend page 1, section 1, line 3, after "at least", omit "twice", and insert "four times".

[OFFICIAL COPY REPRINT]

SENATE, No. 719

STATE OF NEW JERSEY

INTRODUCED MARCH 9, 1972

By Senators AZZOLINA, DUMONT, TANZMAN, GIULIANO,
BROWN, TURNER, SCHLUTER, PARKER and McGAHN

Referred to Committee on Education

AN ACT to amend and supplement "An act concerning education and providing for continued employment of nontenure teaching staff members and supplementing Title 18A of the New Jersey Statutes," approved February 10, 1972 (P. L. 1971, c. 436.)

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Every board of education in this State shall cause each non-
2 tenure teaching staff member employed by it to be observed and
3 evaluated at least ***[twice]*** **four times** in each school year, to be
4 followed by a conference between that teaching staff member and
5 his or her superior or superiors for the purpose of identifying any
6 deficiencies, extending assistance for their correction and improv-
7 ing instruction.

1 2. Section 2 of P. L. 1971, c. 436 (C. 18A:27-11) is amended to
2 read as follows:

3 2. Should any board of education fail to give to any nontenure
4 teaching staff member *the evaluations set forth in section 1 of this*
5 *amendatory and supplementary act and either an offer of contract*
6 *for employment for the next succeeding year or a notice that such*
7 *employment will not be offered all within the time and in the manner*
8 *provided by this act, then said board of education shall be deemed*
9 *to have offered to that teaching staff member continued employ-*
10 *ment for the next succeeding school year upon the same terms and*
11 *conditions but with such increases in salary as may be required*
12 *by law or policies of the board of education.*

1 2. This act shall take effect September 1, 1972.

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.