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TENURE UNDER ATTACK

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Tenure, often called the "Holy Grail" of the teaching profession, ensures both academic freedom and job security for teachers and administrators. It is the result of a long and hard fought battle which began in the late 1800's, around the same time as labor struggles in industry and manufacturing. While steel and auto workers rallied against unsafe working conditions and poverty level wages, educators began to demand protection from termination for race, creed, favoritism, political affiliation or inclusion of "controversial" materials in reading lists (Huck Finn, for example). Women educators fared even worse than their male counterparts, facing termination for getting married, becoming pregnant or wearing pants.

The following chart sets forth a timeline of highlights in the struggle for protection from the foregoing through tenure.

Tenure Timeline	
1885 -	National Education Association demands political action to protect teachers.
1886 -	Massachusetts becomes the first state to pass pre-college tenure law.
1909 -	New Jersey passes the first comprehensive tenure law protecting all K-12 teachers.
1930's -	During the "Great Depression," prominent teacher unions formed to fight for job protection and benefits.

1950's -	80% of all K-12 teachers are tenured.

Fast forward to the present; tenure has become a controversial topic, being blamed by many for substandard educators and substandard education. Others disagree, arguing that teachers and administrators are being made scapegoats for problems originating outside the classroom, that is, underfunding, poverty and socio-economic inequality. Further, when classroom time itself, once devoted to teaching how to learn, that is, how to reason and how to think, is replaced with how to take government mandated tests, as well as dealing with discipline once taught at home, the education failure is not that of school-based personnel, but rather the educational system itself.

School-based leadership, that is, principals and assistant principals, are also targets in the tenure blame game. Principals and assistant principals, at the helm, leading the school through the foregoing troubled waters of the educational system are, arguably, akin to commanders ordered to sail anchored ships through rough, mine laden seas.

Historically, school-based leaders served as building and personnel managers. Today, principals are required to continue doing these "managerial" duties, as well as oversee instruction, process overwhelming accountability paperwork, write up multiple evaluation reports for each adult they supervise, manage budgets, participate in recruitment and hiring, supervise construction, attend extracurricular activities, be on call 24-7 and attend conferences and workshops. This list is not all inclusive. Finally, it should be noted that in the business world, supervisors have, on the average, 10 employees in their "span of control," while principals and assistant principals oversee as many as 30 teachers each.

It is disingenuous to blame school-based educators, be they teachers, principals or assistant principals, for the woes of today's educational system. Doing away with tenure will not "fix" education, because school-based educators are not the source of the problem. This is not to say that there are no substandard or even incompetent educators, but they are not the cause of the perceived broken education system. While performing surgery, it is best to avoid removing the wrong limb, or perhaps more on point, during liposuction to remove fatty tissue, don't mistakenly remove the heart.

As California's Superintendent of Public Instruction Tom Torlakson so aptly stated, "We do not fault doctors when the emergency room is full. We do not criticize the firefighter whose supply of water runs dry. Yet while we crowd our classrooms and fail to properly equip them

with adequate resources … [some] seek to blame [educators] who step forward every day to make a difference for our children."

Tenure Rules Are in a State of Flux Across the Nation

Dozens of states have changed their tenure laws in the last few years. A survey of recent tenure modifications are charted (*see next page*) as indicative of the trend.

1. Florida – eliminated continuing contracts for teachers.
2. South Dakota – got rid of tenure for new hires, but will grandfather those hired until 2016 into the previous tenure system.
3. Idaho – gave school districts the option of foregoing tenure, but voters overturned that decision in a referendum.
4. Louisiana – Governor Bobby Jindal spearheaded a sweeping reform of the state education system, making it harder to earn and retain tenure. The changes were upheld by the Louisiana Supreme Court.
5. North Carolina – a judge struck down a law that would eliminate teacher tenure.
6. Oregon – abolished tenure and replaced it with 2-year renewable contracts and a rehabilitation program for underachieving instructors.
7. Colorado and Nevada – passed laws whereby tenure can be taken away after multiple "ineffective ratings."
8. Rhode Island – policies state that teachers with 2 years of ineffective evaluations will be dismissed.
9. Florida – tenure protections are now essentially null and void due to policy changes completely eliminating tenure like benefits for new teachers and providing dismissal of ALL teachers with multiple poor evaluations.
10. California – in 2014 a judge ruled tenure laws unconstitutional under California's Constitution's guarantee of rights to equal education because children from disadvantaged and minority schools often have the least effective teachers, due in part, to budgetary teacher layoffs of non-tenured teachers only. (It should be noted that California has a two-year probationary period before tenure, while most states have increased the time period to more than two). Governor Jerry Brown has appealed this decision.
11. New York – California type lawsuit filed against city and state education officials by 11 students whose parents belong to a group known as New York City Parents' Union, claiming tenure violates New York State Constitution's guarantee

<u>Maryland Tenure Law</u>: Section 6-202 of the Education Article of the Maryland Code

In 2010 Maryland changed the probationary period to earn tenure from two to three years, with a one year renewable contract. Pursuant to Section 6-202 of the Education Article, the county board is to evaluate the non-tenured employee annually, based on "established performance evaluation criteria." If the non-tenured employee is not on track to qualify for tenure at any yearly evaluation point, a mentor is to be assigned for guidance and instruction and additional professional development is to be provided.

Under the Maryland State Department of Education's newly "established performance criteria" for teacher and principal evaluations, fifty percent (50%) of the evaluation is to be based on indicia of "student growth" and fifty percent (50%) on indicia of "professional practice." The State Department of Education has also set forth the following evaluation scheduling requirements for local school systems:

- Every teacher and principal shall be evaluated at least once annually.
- Each annual evaluation of a principal shall include all of the components of the evaluation system.
- Tenured teachers will be evaluated at least once annually on a three-year evaluation cycle. **In the first year** of the evaluation cycle, tenured teachers shall be evaluated on both professional practice and student growth. If, in the first year of the evaluation cycle, a tenured teacher is determined to be highly effective or effective, **then in the second year** of the evaluation cycle, the tenured teacher shall be evaluated using the professional practice rating from the previous year and student growth based on the most recent available data. If, in the second year of the evaluation cycle, a tenured teacher is determined to be highly effective or effective, **then in the third year** of the evaluation cycle, the tenured teacher shall again be evaluated using the professional practice rating from the previous year and student growth based on the most recent available data. At the **beginning of the fourth year,** the evaluation cycle will begin again.
- All non-tenured teachers and all teachers rated as ineffective shall be evaluated annually on professional practice and student growth.
  (Maryland State Department of Education publication, "Maryland Classroom")

SCHOOL BASED UNIONS

By Rick Kovelant, AEL Executive Director and General Counsel

PART II: NEGOTIATIONS AND CONTRACT CONTINUATION

For those of you who may remember, in 2010 the Advocate discussed the statutory parameters of negotiations with the BOE. In this discussion, the conundrum of "mandatory," "prohibited," and "permissive" subject matters of negotiations was identified. The conclusion reached was that there is no bright line test to determine where the "mandatory" negotiation of salaries, wages, hours and working conditions ends and "prohibited" negotiation of school policy and administration of the school system begins. In many cases, the failure to resolve this "border dispute" results in a standoff, better known as an impasse. While an impasse that occurs while a contract is in full force and effect can be problematic, the bigger problem occurs when the impasse is reached after the contract has expired. The questions to be resolved are whether an impasse that exists at the termination point of a contract leaves the parties without a negotiated agreement and whether the lack of an agreement gives an unfair advantage to the Board of Education with a corresponding distinct disadvantage to the union.

It has been long recognized that "impasse" is an imprecise term of art. In a judicial sense, the best that can be said is, "An impasse is a 'state of facts' in which the parties, despite good faith bargaining, are simply deadlocked." While we are not currently in an impasse situation, the resolution of our current contract negotiations remains a constant challenge. Both sides are required to bargain in good faith. The factors involved in good faith bargaining include the frequency of meetings, the exchange of proposals, the reasonable consideration of the opponent's position and the compromising of positions that are brought forth. The issue of the contractual status quo arises when the contract ends and a new agreement has not been reached.

In the private sector, the courts have recognized that contractual terms outlive the contract termination date. In fact, the failure to honor the terms and conditions of an expired collective bargaining agreement pending the negotiation of a new collective bargaining agreement constitutes bad faith bargaining in violation of the National Labor Relations Act. Although the case law recognizing this as "Bad Faith" is applicable to private unions and employers, it would only stand to reason that in the public sector, the failure to recognize the terms and conditions of an expired collective bargaining agreement during the course of continued negotiations would be similarly construed as "Bad Faith" and prohibited. By bargaining in bad faith and thereafter failing to honor the previously agreed upon terms and conditions of employment by the BOE would amount to a prohibited "contractual lock out." The law appears to promote the timely and fair resolution of negotiated agreements. To permit one party to take advantage of the process and thereby derive the benefit of solely controlling the

terms of employment would thwart the spirit and intent of the collective bargaining process. Past practices would indicate that the BOE has recognized the continuation of extended contractual rights in the past. We trust it will continue this practice in the future. It is not only the right thing to do, but it is required.