

Industry of U.S. and Canada v. Henley & Beckwith, Inc., 66 So.2d 818 (Fla. 1953), and Schermerhorn v. Local 1626 of Retail Clerks Intern. Ass'n., AFL-CIO, 141 So.2d 269 (Fla. 1962), striking down contracts between an employer and a labor union for violation of this constitutional inhibition.

It might be noted, however, that additional legislation is needed in one area: that of collective bargaining by public employees. Under Art. I, §6, State Const., public employees have the same rights of collective bargaining as are held by private employees, with the exception of the right to strike. It was so held in Dade County CTA v. Ryan, 225 So.2d 903 (Fla. 1969), in which the court said also that

In the sensitive area of labor relations between public employees and public employer, it is requisite that the Legislature enact appropriate legislation setting out standards and guidelines and otherwise regulate the subject within the limits of said Section 6. A delicate balance must be struck in order that there be no denial of the guaranteed right of public employees to bargain collectively with public employers without, however, in any way [en]trenching upon the prohibition against public employees striking either directly or indirectly or using coercive or intimidating tactics in the collective bargaining process.

Accord: Bassett v. Braddock, 262 So.2d 425 (Fla. 1972), in which the court observed that "[i]mplementing legislation unfortunately has not yet been passed to give guidance and meaning to this vital constitutional protection."

The Legislature in the 1972 Session did provide appropriate guidelines for one group of public employees—members of fire departments—by adopting the Fire Fighters Bargaining Act, Ch. 72-275, Laws of Florida (§§447.20-447.35, F. S.). Additional legislation to fix appropriate guidelines for other groups in the public sector should also be adopted.

073-87—March 28, 1973

JUDGES

RETIREMENT—LENGTH OF SERVICE

To: David H. McClain, Senator, 21st District, Tampa

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

Is a circuit judge who served two years as judge of a civil and criminal court of record prior to serving eighteen years as circuit judge entitled to retire at two-thirds of his total salary, regardless of his age?

SUMMARY:

To be eligible to retire, regardless of age, as authorized by §123.04(1), F. S., a circuit judge must have been serving as such on July 1, 1955, and have completed twenty years of aggregate service prior to the expiration of his term of office in January of 1961.

You state that the circuit judge in question assumed the duties of that office (presumably for a six-year term) on January 4, 1955, and has served as such continuously since that date. He had served for two years as judge of the civil and criminal court of record immediately prior to assuming the duties of circuit judge. It is assumed that he elected to comply with the provisions of Ch. 123, F. S., referred to hereafter.

The statute which determines his eligibility to retire, regardless of age, after twenty years of service is §123.04(1), F. S., reading as follows:

. . . any person electing to take the benefits of this chapter who, without regard to his age, was serving in an elected term of office as supreme court justice or circuit judge on July 1, 1955, and thereafter *during said term of office* completed at least twenty years of service in the aggregate, may resign or retire with the right to be paid . . . retirement compensation in accordance with the table of benefits provided in this chapter or as provided in §123.13. (Emphasis supplied.)

A similar provision was included in Ch. 29838, 1955, Laws of Florida, the act creating a Supreme Court Justices' and Circuit Judges' Retirement System (carried forward as Ch. 123, F. S.). Prior to 1955, the legislature had provided separate retirement systems for these judicial posts; and the provision in question was apparently included in Ch. 123 as the counterpart of §25.121, F. S. 1955 (relating to supreme court justices' retirement), now §25.112, F. S., and §38.14, *id.*, (relating to circuit judges' retirement). Section 25.121, *supra*, provided for retirement pay to a supreme court justice at the rate of two-thirds of the annual salary of these justices when he had served "as a circuit judge of the state and as a justice of said supreme court for an aggregate period of twenty years or more and shall have elected to take the benefits of this law" Section 38.14, *supra*, authorized a circuit judge to be paid two-thirds of the compensation being paid to such judge at the time of his resignation and retirement when he has served "as such judge for twenty years or more, continuously or otherwise"

As originally included in the 1955 act, §4 of Ch. 29838, *supra*, read as follows:

Any person electing to take the benefits of this act . . . who has *heretofore* served as a Supreme Court Justice or Circuit Judge, or both, for at least twenty (20) years in the aggregate without regard to his age, may resign or retire with the right to be paid . . . retirement compensation in accordance with the table of benefits provided in this act. (Emphasis supplied.)

Section 13 of this same act provided that any supreme court justice or circuit judge who elected to come under the 1955 act and who had *theretofore* accepted the provisions of either §25.121 or §38.14

. . . shall be entitled to receive and shall upon retirement receive as retirement compensation . . . two-thirds of the total salary being paid to such justice or judge at the time of his retirement, or at his option receive the retirement compensation provided under the terms of this Act.

Section 123.04(1), as it presently reads, was adopted in 1957 as a part of Ch. 57-422, Laws of Florida—which, among others, extended the provisions of Ch. 123 to include judges of district courts of appeal. When read in the light of the original section (§4 of Ch. 29838, *supra*) and §25.121, *supra*, it is reasonable to infer that the "aggregate" service referred to would include only service as a supreme court justice and a circuit judge and would not include service as the judge of a civil and criminal court of record or other inferior court. I understand that the statute has been so interpreted by the Division of Retirement of the Department of Administration; and, as you know, the administrative interpretation of a statute is entitled to great weight and will not be departed from by the courts except where clearly erroneous and for the most cogent reasons. *See Gay v. Canada Dry Bottling Co.*, 59 So.2d 788 (Fla. 1952).

In any event, it is clear that in order to come within the provisions of §123.04(1), quoted above, the judge in question must have completed his twenty-year period of aggregate service during the term of office that began on

January 4, 1955. It was expressly so provided by the legislature in plain and unambiguous language for the obvious purpose of preserving to incumbent supreme court justices and circuit judges who elected to come under the new joint retirement system a right to retire regardless of age that would have vested under §25.121, *supra*, during their current terms of office.

It is clear from your question that the judge would not have completed twenty years of service prior to January of 1961 (the expiration date of his term of office beginning on January 4, 1955) even if the two years served as judge of the civil and criminal court of record were to be counted as part of his aggregate service.

Accordingly, your question must be answered in the negative.

073-88—March 28, 1973

PUBLIC FUNDS

STATE CONTRIBUTION TO RETIREMENT FUND FOR VOLUNTEER FIREMEN

To: Jerry Melvin, Chairman, House Committee on Retirement, Personnel and Claims, Fort Walton Beach

Prepared by: Rebecca Bowles Hawkins, Assistant Attorney General

QUESTION:

May the legislature validly appropriate state funds to assist in financing a volunteer firemen's retirement fund?

SUMMARY:

State funds may validly be appropriated for the purpose of assisting in the financing of a volunteer firemen's retirement fund.

The proposed act is entitled the Florida Volunteer Firemen's Supplemental Pension Act. It declares that volunteer firemen "perform state, county and municipal functions" and that "it is a proper and legitimate state purpose to provide a uniform supplemental retirement system for the benefit of volunteer firemen hereafter defined." As defined in the act, volunteer firemen are those who are

appointed and regularly enrolled as volunteers in any fire department of the State of Florida, or any political subdivision or municipality thereof, or any State chartered volunteer fire department which holds drills and meetings of not less than eight hours monthly, and which owns or has leased fire apparatus and equipment of the value of \$10,000 or more, and which is recognized by the Insurance Services Office as not less than a rating of a class 9 fire department, and who attend not less than 75 per cent of all drills, meetings, and 50 per cent of all fires in every calendar year.

The pension fund in question would be administered by a board of trustees appointed by the governor, and by an executive secretary named by the board. The volunteer firemen would contribute from five to ten dollars monthly (depending upon the rating of the fire department) to the fund, and matching or greater amounts would be contributed from the state's "general fund" monthly. In addition, the state is required to contribute to the fund "all supplemental amounts needed to keep the fund actuarially sound." Volunteer firemen would be eligible to retire after serving twenty years and reaching the age of sixty, upon application to and approval by the board, and would receive retirement pay of from fifty to seventy-five dollars monthly thereafter.

There is some question as to the actuarial soundness of the proposed pension