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UNEMPLOYMENT COMPENSATION BOARD OF REVIEW—
REFEREES—SUBJECTED TO PROVISIONS, SECTION 486-7a,
486-7b, 486-7c, 486-7d G. C.—SECTION 1346-3 G. C., AM. S. B.
336, 98 G. A., REPEALED BY AM. SUB. H. B. 450, 99 G. A.

SYLLABUS:

By the provisions of Amended Substitute House Bill No. 450 of the 99th General Assembly, the referees of the Unemployment Compensation Board of Review were subjected to the provisions of Sections 486-7a, 486-7b, 486-7c and 486-7d, General Code. The provision of Section 1346-3, General Code, as amended by Senate Bill No. 336 of the 98th General Assembly, fixing the salaries of said referees, is repealed by said Amended Substitute House Bill No. 450.

Columbus, Ohio, September 5, 1951

The Hon. Ralph W. O'Neill, Chairman Board of Review
Bureau of Unemployment Compensation, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Board of Review, Bureau of Unemployment Compensation, requests your opinion in regard to the matters hereinafter set forth.

“The 98th General Assembly enacted Amended Substitute House Bill No. 382 relating to the standardization of salaries and wages of employes in state service. This act also amended Section 1346-3 relating to the salaries of the Referees of the Board of Review. Said act was passed July 15, 1949 as an emergency measure and was approved by the Governor July 28, 1949 and became effective immediately.

“The 98th General Assembly also enacted Amended Senate Bill No. 336, which also amended Section 1346-3 relating to the salaries of the Referees of the Board of Review. This act was passed, notwithstanding the objections of the Governor, on July 29, 1949, and was filed in the office of the Secretary of State on July 30, 1949.

“Amended Substitute House Bill No. 382 did not except from its provisions the Referees of the Board of Review and in view of the apparent conflict between it and Amended Senate Bill No. 336, the Board of Review requested an opinion of the Attorney General. On November 16, 1949, in an Opinion No.

1196, the then Attorney General, Herbert S. Duffy, concluded that as Amended Senate Bill No. 336 was enacted into law after Amended Substitute House Bill No. 382, that it superseded it on its effective date.

"The 99th General Assembly enacted into law substitute House Bill No. 450 which amended Sections 486-7a, 486-7b, 486-7c, 486-7d. of the General Code relating to standardization and classification of positions, titles, classes, salaries and wages of employes in the state service.

"Section 486-7a. of said enactment provides in part: 'All positions, offices and employments paid in whole or in part by the state of Ohio * * *, except those hereinafter excluded, are classified hereby as follows: * * *.'

"Paragraph 11 thereof sets forth the persons, positions, offices, and employments to which the provisions of said act do not apply. The Referees of the Board of Review are not excluded from the provisions of said act. The above facts and circumstances raise the following questions:

"(1) Are the References of the Board of Review entitled to be classified by the Civil Service Commission in one of the classifications set forth in Section 486-7a 1. of Substitute House Bill No. 450, and assigned to a pay range provided in Section 486-7b of said act within the limitations prescribed by Amended Senate Bill No. 336 (98th General Assembly)?

"(2) Are Referees of the Board of Review entitled to adjustments in their salaries in recognition of length of service as provided in Section 486-7a 4. of Substitute House Bill No. 450 (99th General Assembly)?

"(3) Are Referees of the Board of Review entitled to benefits of the so-called 'cost of living' adjustment as provided in Section 486-7d, of Substitute House Bill No. 450 (99th General Assembly)?

"(4) If Question (3) is answered in the affirmative, will the fact that the Referee's total salary may exceed \$6000.00, when the 'cost of living' adjustment is added to his base salary, in any way effect his right to said 'cost of living' adjustment?

"The Civil Service Commission assigned the Referee of the Board of Review to Classification No. 2050 and established the following monthly salary schedule: Step I—\$416.66; Step II—\$437.50; Step III—\$458.33; Step IV—\$479.16; and Step V—\$500.00. You will note that the classification number assigned to the Referees is not one of the classification numbers provided in Section 486-7a and that the salary steps established within said

salary range do not coincide with any of the salary steps within any pay range in Section 486-7b.

“The contention has been made that Amended Senate Bill No. 336 (98th General Assembly) merely has the effect of establishing a minimum and maximum base salary for the Referees of the Board of Review and that it is not only proper but the Civil Service Commission should assign the Referees of the Board of Review to one of the classifications established by Section 487-7a 1. (sic.) and to a salary range provided in Section 486-7b 1., consistent with the minimum and maximum salary range established by the Amended Senate Bill No. 336 (98th General Assembly).”

Your request raises some rather involved questions, and for purposes of clarity the exact statutory provisions involved should be set out. So far as pertinent here Amended Substitute House Bill No. 382 of the 98th General Assembly provided as follows:

“* * * Section 486-7a. All positions, offices and employments in the state service, except as hereinafter excluded, are classified hereby as follows:

“* * * The provisions of this act shall not apply to the following persons, positions, offices and employments:

“(1) Elected officials;

“(2) Legislative employes and employes of the legislative reference bureau; employes in the office of the governor; and employes of the supreme court;

“(3) All commissioned and non-commissioned officers and enlisted men in the military service of the state, including military appointments in the office of the adjutant general;

“(4) The following appointive state officers and officials: adjutant general and the assistant adjutant general; director of the department of finance; director of the department of commerce; director of the department of highways; director of the department of public works; director of the department of health; director of the department of industrial relations; director of the department of education; director of the department of public welfare; administrator of the bureau of unemployment compensation; members of the industrial commission; members of the public utilities commission; commissioner of the department of taxation; director of the department of liquor control; the superintendent of the Ohio soldiers' and sailors' home and the Ohio soldiers' and sailors' orphans' home; the director of aviation; members of the civil service commission; and members of all boards, commissions, and councils.

“(5) All officers and employes of state supported colleges and universities and the administrative and research staffs of the agricultural experiment station; provided, however, that with respect to the non-teaching staff such educational institutions shall conform as closely as possible with the classifications and salary scales herein provided.

“* * * Section 1346-3. There is hereby created an unemployment compensation board of review * * *.

“* * * The board, subject to the civil service laws of the state and to the approval of the governor, shall appoint such referees as may be deemed necessary * * *.”

This Act was approved by the Governor July 28, 1949 and became effective immediately as an emergency measure.

So far as pertinent, Amended Senate Bill No. 336 of the 98th General Assembly provided as follows:

“Section 1346-3:

“* * * The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, but the base salary so fixed for any such referee shall not be less than five thousand nor more than six thousand dollars per annum and any promotions of such referees or any increase in compensation of such referees may be ordered by the board subject to classifications as may be made by the civil service commission.”

This Act was passed over the Governor's veto on July 29, 1949, was filed in the office of the Secretary of State, July 30, 1949, and became effective October 29, 1949.

The effect of these two inconsistent provisions was presented to my predecessor for his ruling, and in Opinion No. 1196, Opinions of the Attorney General for 1949, page 824, he ruled as indicated by the first branch of the Syllabus:

“1. Amended Senate Bill No. 336 of the 98th General Assembly will, upon its effective date supersede the provisions of Amended Substitute House Bill No. 382 of the same General Assembly in fixing the salaries and classifying the referees of the Unemployment Compensation Board of Review.”

This conclusion was reached by the following reasoning which appears at page 828:

"It is readily observed that Amended Substitute House Bill No. 382 is irreconcilable with Amended Senate Bill No. 336, for the former besides amending Section 1346-3, General Code, enacted new sections 486-7a, 486-7b and 486-7c, General Code, providing for the standardization of all positions, titles, classes, salaries and wages of employes in the state service, while the latter amends Section 1346-3 relative to the salary and classification of referees and certain employes of the Unemployment Compensation Board of Review.

*"The question resolves itself into a determination of which of these two enactments are (sic) the later in point of time. * * *"*
(Emphasis added.)

Amended Substitute House Bill No. 450 of the 99th General Assembly provided in part as follows:

" * * Section 486-7a. I. All positions, offices and employments paid in whole or part by the state of Ohio or paid out of any rotary fund of any state department or state institution, except those hereinafter excluded, are classified hereby as follows:*

" * * The provisions of this act shall not apply to the following persons, positions, offices and employments:*

*"(1) * * **

*"(2) * * **

*"(3) * * **

*"(4) * * **

"(5) Such officers and employes of state-supported colleges and universities as are designated in paragraph 7 of section 486-8 of the General Code; and seventy members of the administrative and research staffs of the Ohio agricultural experiment station, in addition to those employes whose duties include teaching at the state-supported colleges and universities."

You have raised the question of the present status of the referees of the unemployment compensation board of review in light of the recent enactment of Substitute House Bill No. 450. In order to determine this status it is necessary for me, as it was for my predecessor, to attempt to discern the intent of the legislature by the construction of two inconsistent statutes which express that intent; and the conclusion which I reach must necessarily depend upon which of several principles of construction I find to be applicable.

It is a well established principle of statutory construction that in cases of conflict, special or specific provisions prevail over general or broad ones. For a general discussion of this principle see 50 American Jurisprudence, Statutes, Section 561, et seq., page 562, et seq. Since this principle might have some application to the problem which you have presented, the statutes in question should be examined to determine if one of them can properly be characterized as special and the other as general.

It is true that Sections 486-7a, 486-7b, 486-7c and 486-7d, General Code, as enacted by House Bill No. 382 and as amended by House Bill No. 450 deal with all positions in the state service, and to that extent are general statutes. Section 1346-3, General Code, as amended by Senate Bill No. 336 deals only with the particular position of referee, and to that extent is a special statute. I do not believe, however, that such an analysis is broad enough to be dispositive of the question involved.

It seems to me to be clear that in enacting House Bill No. 382 the General Assembly provided for the classification of all state employees, and then with great particularity specified those who should be exempt from the provisions of the classification act. I have set out above the full list of the exemptions so as to emphasize the particularity with which the General Assembly dealt with the subject of exemptions. In Senate Bill No. 336 the General Assembly dealt with equal particularity with the single position of referee, and the later act was held to prevail. Now the General Assembly, by the enactment of House Bill No. 450, has again considered the question of exemptions and has, as indicated above, made certain changes in the language of coverage and in the specific exemptions granted.

It is my opinion that the classification act as so enacted by House Bill No. 382 and as so amended by House Bill No. 450 should not be held to be a general act which, as a matter of law, is superseded by any special enactment in the same field. Rather, I feel that because of its many listed and specific exemptions, it should be treated the same, so far as particularity is concerned, as the amendment to Section 1346-3, General Code, by Senate Bill No. 336. This conclusion is strengthened by what seems to me to be the clear intention of the General Assembly that the whole subject of classification and exemptions therefrom should be contained within the four corners of the classification law. It follows, there-

fore, in my opinion, that the provisions of Section 1346-3 do not prevail over the provisions of Section 486-7a, et seq. on the grounds that the former is special and the latter is general.

When we thus consider the two statutes on an equal footing, another established principle of statutory construction is brought into play. That principle is stated in Horack's Sutherland on Statutory Construction, Third Edition, Volume I, page 515, as follows:

"Section 2036. The re-enactment of a statute is a continuation of the law as it existed prior to the re-enactment in so far as the original provisions are repeated without change in the re-enactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the re-enactment of the original statute, but is construed as being continued in force to modify the re-enacted statute in the same manner that it did the original enactment. *However, this immunity from repeal is extended only to those provisions of intermediate acts which are consistent with the re-enactment, and therefore, any provisions in the intermediate act which are inconsistent with the re-enactment are repealed.*" (Emphasis added.)

The cases cited in the footnotes to the text carry out the principle as stated.

It is my opinion that the application of this principle is dispositive of the question involved here. A classification act which included the referees of the unemployment compensation board of review was originally enacted; later an inconsistent intermediate act was passed; now the classification act with some amendments has been re-enacted, again covering the referees, and the inconsistent provisions of the intermediate act must be held to be repealed. It follows, therefore, that the referees in question are governed by the provisions of House Bill No. 450 of the 99th General Assembly.

Some question might be raised as to my holding all of the provisions of Senate Bill No. 336 to be repealed by implication without attempting to reconcile those provisions with House Bill No. 450. That question is best answered by a consideration of your request herein. The specific questions which you have asked are based upon an attempt to reconcile the two acts, and give some preview of other questions that could be raised. A similar set of questions as to these referees would be raised every time some change was made in the classification law or the rules of the Civil

Service Commission. I suppose it would be possible, by a process more of legislation than of construction, for me to answer your questions on a basis of reconciling the two acts. I do not believe, however, that the rule of attempted reconciliation of all legislative acts must be slavishly followed to such an extreme; and I, therefore, hold that in this case the two acts are too inconsistent in application to be reconciled. In so holding I am also following the opinion of my predecessor, cited above, in which he, too, found the acts to be irreconcilable.

There is another reason which leads me to the conclusion set out above. Section 486-7a, General Code, both before and after its recent amendment by House Bill No. 450 provided in part as follows:

“* * * 6. The commission shall have the authority to establish, temporarily new or additional classifications, if such becomes necessary; and, within the appropriations available, to assign such classes or to re-assign any classes to the proper pay range or ranges as set forth in section 486-7b of the General Code, provided, however, the commission first conducts a public hearing concerning the proposed action * * *”

It was this procedure which the Civil Service Commission followed in assigning the referees to classification No. 2050 as outlined in your request.

Section 486-7a, General Code, both before and after amendment also provided in reference to such temporary classifications as follows:

“* * * Such temporary classifications and such assignments and re-assignments of classes to pay ranges shall continue only until the adjournment of the next regular session of the General Assembly unless provision otherwise is made by the General Assembly in said session.”

The recently concluded session of the General Assembly, however, did not make provision in House Bill No. 450 for said classification No. 2050, and it has therefore ceased to exist. This, in my opinion, comports with my conclusion, previously reached, that the General Assembly did not intend for the referees to be governed by a special classification but intended to put them under the general classification law.

On the question of the mechanics of applying the provisions of House Bill No. 450 to these referees, I refer you to my Opinion No. 480 rendered to the Civil Service Commission under date of July 6, 1951, relative to the employes of the state supported colleges and universities. These

employees; previously exempt, were brought under the classification act by House Bill No. 450.

In view of the above and in answer to your question, it is therefore my opinion that by the provisions of Amended Substitute House Bill No. 450 of the 99th General Assembly the referees of the unemployment compensation board of review were subjected to the provisions of Sections 486-7a, 486-7b, 486-7c and 486-7d, General Code. The provision of Section 1346-3, General Code, as amended by Senate Bill No. 336 of the 98th General Assembly, fixing the salaries of said referees, is repealed by said Amended Substitute House Bill No. 450.

Respectfully,

C. WILLIAM O'NEILL

Attorney General