State Supreme Court decision on teacher's pension case under fire

BY TIM RICHARD STAFF WRITER

Both sides throw verbal har-poons when the Michigan Supreme Court decided a teacher or pension case in favor of the teacher and against school dis-

or pension case in layor of the teacher and against school districts.

The high court split 4-3 along party lines in deciding that Adriant teacher Bessio Traylor was entitled to pension credits for the year she lost from work due to a broken hip and collected workers comp benefits.

At issue is the philosophy of judicial activism that helped Traylor.

In the opinion, Justice Marilyn Kelly of Bloomfield Township said, Traylor should get pension credit for the time she received worker's comp. That will give her, 30.8 years of seniority and an extra \$250 a month in her pension check.

GOP/Dem split

GOP/Dem spitt
Siding with Kelly were
Michael Cavanagh, Patricia
Boyle and Chief Justice Conrad
Mallett Jr. of West Bloomfield.
Kelly and Cavanagh, both
Democrata, are expected to seek
re-election this year. Boyle is

re-election this year. Boyle is retiring.
Justice Clifford Taylor, a Republican also running this year, penned a sharp dissent. Dissenters argued the teacher should get just the 29.8 years of credit she accumulated at the time of her fall. Taylor said

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workers comp shouldn't have been counted, and doing so will throw off all school districts' pension calculations.

Taylor has been on the high court a year as a Gov. Engler appointee and is expected to get the Republican nomination Aug. 28 to finish the rest of the term. Agreeing with him were James Brickley and Elizabeth Weaver. Kelly wrote that the law said "compensation" includes investments in annutities, longevity pay, overtime pay, vacation pay, loliday pay and sick leave pay while absent from work. But the law doesn't mention worker's comp benefits.

law doesn't mention worker's comp benefits.
Kelly then noted that the state pension board, Ingham Circuit Court and a Court of Appeals panel came to different conclusions as to whether worker's comp should be counted. Should the Supreme Court decide the issue? Yes, she said, because if reasonable minds can differ regarding its meaning, then judicial construction is appropriate. In this case, we find that reasonable minds can differ*

To determine the law's meaning, Kelly said, the retirement board looked at a legislative analysis of a 1980 law. That analysis said, "Outstate means the right to count time spent on subbatical leave and time receiving worker's compensation as service credit. Both these benefits are now enjoyed by Detroit members." Kelly and the

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Democrats sided with the pension board's analysis.
Meanwhile, Kelly said, as this case was pending, the Legislar ture in 1996 amended the law specifically to include worker's comp benefits in calculating pension time.

comp senents in calculating pension time.

Taylor said the majority erred "by failing to fulfill its duty to apply the statute as written."

If the law didn't specifically mention "worker's comp" as part of the pension base, then the court shouldn't add it, Taylor wrote, because "We do not have authority to expand, or contract, its definitions." He dipped into Latin for the legal rule: "Expressio unius set exclusio diterius" on that is, "the express mention of one thing is the exclusion of

another."

Quoting a 'guru'

Taylor also quoted the top guru of legal conservatives, U.S.

Supreme Court Justice Antonia Scalia, in a 1937 book 'A Matter of Interpretation." Scalia bits ters courts of the 1960-8-50s for even considering "supposed legislative intent" which he calls "a handy cover for judicial intent."

The Michigan Education Association, bargaining agent for school employees, filed an amicus brief on behalf of Traylor and the state pension board.

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Source: Adrian School District v. Michigan Public School Employees' Retirement System, docket 107733, decided July 28.

Oakland's personal protection office moves

Order (PPO) Office that was located in the west wing of the Oakland County Circuit Court has moved. It is now located off the Juvenile Intake lobby on the ground floor in the cast wing of the courthouse. The relocation is a result of the collaborative efforts of the Oakland County probate and circuit courts and the Women's Survival Center. Center.

The relocation is designed to make the courthouse more user-friendly and should trim the time it takes for a citizen to obtain a personal Protec-tion Order.

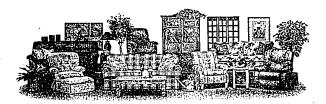
Kathryn s is the Personal Protection Order Coordinator for the Women's Survival Center. She has been working with PPOs for three years at the courthouse. Volunteers from the National Council of Jewish Women assist her in helping several thousand PFO petitioners each year.

The new PPO Office consists of a main office and an additional room available for confidential conferences. This is a significant upgrade from the previous.

The Juvenile Casework Unit gave up part of its office space to make the relocation possible.

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