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“WORKING TO THE CONTRACT” IN VIRGINIA: LEGAL CONSEQUENCES OF TEACHERS’ ATTEMPTS TO LIMIT THEIR CONTRACTUAL DUTIES

I. INTRODUCTION

In 1980, there were 233,000 local government employees in Virginia.¹ Of this number, 60,588 were public school teachers employed by local school boards for the 1980-81 school year.² Characterized as both professionals and public employees, public school teachers not only “teach the children” but perform many other duties crucial to the efficient operation of the schools. These additional responsibilities are generally assigned by the teacher’s immediate supervisor, usually the school principal, under authority granted by the local school board.³ Like other state and local government employees in Virginia, teachers have no power to collectively negotiate their contractual duties⁴ which they contend are ill-defined and often are performed without compensation.⁵

This comment will analyze the teachers’ express and implied contractual duties and the force and validity of teacher organizational efforts to define these duties through the “work to the contract” action. The purpose of this analysis is to determine the effectiveness of “working to the contract” as an attempt by one large sector of Virginia’s public employees to protect its interests by formulating its own solution in the absence of a

1. DIVISION OF RESEARCH AND STATISTICS, VA. DEPT. OF LABOR AND INDUSTRY, ANN. REP. FOR 1980, at 43. The number of state and local government employees was 351,500 in 1980. Of this number, 182,900 were employees in the field of education at state and local levels. *Id.*

2. Interview with Harold Gruver, Director of Management Information Service, Virginia Department of Education, in Richmond, Virginia (Oct. 8, 1981) (information to be published in DIVISION OF MANAGEMENT INFORMATION SERVICE, VA. DEPT. OF EDUCATION, VIRGINIA SUPPLY OF PUBLIC SCHOOL INSTRUCTIONAL PERSONNEL (1980-1981). This number includes public school classroom teachers, librarians, and guidance counselors.

3. *See, e.g.,* ALLEGHANY COUNTY SCHOOL BOARD, POLICY MANUAL § 5.39 (May 28, 1974): “The school principal has the authority to assign teachers to extracurricular activities and the teacher assigned is expected to fulfill all of the obligations pertaining thereto.” Similar provisions found in most Virginia school division policy manuals grant school principals authority to effectively operate their individual schools.

4. The Virginia Supreme Court has ruled that local school boards do not have the power to bargain collectively with teachers absent statutory authority. *Commonwealth v. County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977). The Virginia Code is silent on the question of collective bargaining by public employees. The one exception is that public transit employees have been granted statutory bargaining rights. VA. CODE ANN. § 15.1-1357.2 (Repl. Vol. 1981). *See generally* 11 U. RICH. L. REV. 431 (1977) for an overview of public sector collective bargaining in Virginia.

5. Interview with Suzanne Kelly, Director of Issue Organizing, Virginia Education Association, in Richmond, Virginia (Sept. 17, 1981) [hereinafter cited as Interview].

workable legislative response to its concerns. The effectiveness of "working to the contract" as an attempt to protect teachers' rights, depends pragmatically upon whether the action violates the law. However, an underlying purpose of the strategy is to draw attention to the need for public employee collective bargaining in Virginia.⁶ For this underlying purpose, the effectiveness of "working to the contract" is analyzed from a practical, as well as legal, standpoint.

II. THE CONTRACT OF EMPLOYMENT

Each teacher employed in Virginia's public school system, except those temporarily employed as substitute teachers, is required to sign a written contract with the local school board which hires him.⁷ Teachers' contracts follow forms prescribed by the State Board of Education and expressly provide that teachers "shall comply with all school laws . . . and all rules and regulations made by the [school board]."⁸ These contracts further provide that teachers "shall perform such duties as are deemed necessary by the school board and superintendent for the efficient and successful operation of the school system."⁹

The employment contracts do not specifically identify teachers' rights and responsibilities; they must be inferred from general language in the teaching contract.¹⁰ Teachers are presumed to know these implied contractual terms. Therefore, they are bound by local school board bylaws, policies and regulations which give the board considerable discretion in determining what teachers are required to do pursuant to their contracts.¹¹

III. "WORK TO THE CONTRACT"—THE STRATEGY

The Virginia Education Association (VEA) is a statewide teacher or-

6. *Id.*

7. VA. CODE ANN. § 22.1-302 (Repl. Vol. 1980).

8. Division of Teacher Certification, Va. Dept. of Education, Form No. C-3, Annual Contract With Professional Personnel, cl. 3 (rev. ed. Apr., 1980) & Form No. CC3, Continuing Contract With Professional Personnel, cl. 6 (rev. ed. Apr., 1980).

9. Division of Teacher Certification, Va. Dept. of Education, Form No. C-3, Annual Contract With Professional Personnel, cl. 2 (rev. ed. Apr., 1980) & Form No. CC3, Continuing Contract With Professional Personnel, cl. 4 (rev. ed. Apr., 1980).

10. [T]he law of contracts in most, if not all, jurisdictions long has employed a process by which agreements, though not formalized in writing, may be implied Explicit contractual provisions may be supplemented by other agreements implied from the promisor's words and conduct in light of the surrounding circumstances And, the meaning of [the promisor's] words and acts is found by relating them to the usage of the past.

Perry v. Sindermann, 408 U.S. 593, 602 (1972).

11. See County School Bd. v. McConnell, 215 Va. 603, 607-08, 212 S.E.2d 264, 268 (1975). The general powers and responsibilities of local school boards are set out in VA. CODE ANN. §§ 22-1 to -345 (Repl. Vol. 1980).

ganization with local chapters in every school division. In the 1980-81 school year, 43,000 teachers were members of this organization.¹² The VEA's Division of Issue Organizing has proposed a collective action strategy commonly referred to as "working to the contract."¹³ Teachers who adhere to this strategy limit their workdays to include only those responsibilities "literally required by their formal obligations as employees."¹⁴ They "arrive for work at the last possible moment, leave for home at the first possible moment, and perform no extra duties in between."¹⁵ A VEA handbook lists the following tactics as the basic components of the strategy:

- (1) Teachers arrive at and leave school at the contractual times each day
- (2) Teachers participate in extracurricular duties outside the regular work day only if paid or granted compensatory time. They do not volunteer for non-compensated duties such as chaperoning dances, athletic events and field trips.
- (3) They do all work-related tasks during the contractual school day. They grade papers, do lesson plans, reports, make-up tests, etc., at school; work is not carried home. They do not do clerical chores unless directly ordered to do so, and they do not go "above and beyond" as in the past—no lengthy comments on report cards, parent conferences or telephone calls after school hours.
- (4) Teachers refuse to purchase any school materials with personal funds.¹⁶

According to the VEA handbook, "working to the contract" is designed to "persuade the policy-makers to the teachers' cause and resolve conflicts, attract media attention and let the public know what teachers *really* do, develop collective spirit among the teachers and raise the level of advocacy and militancy among them, and win support for education."¹⁷ Beyond these stated purposes, the strategy appears to be an attempt by teachers, through organizational efforts, to define their contractual duties, not only for themselves, but for educational policy-makers and the public

12. Interview, *supra* note 5.

13. *Id.*

14. R. CHANIN & D. WOLLETT, *THE LAW AND PRACTICE OF TEACHER NEGOTIATIONS* 6:110 (1974).

15. *Id.*

In illustrative terms, the teacher who is working [to the contract] will not arrive half an hour before the start of the school day in order to provide extra instruction to a pupil having difficulty in mathematics, he will not give up his preparation period during the school day to work with a member of the debating team, he will not stay after the end of the school day to meet with the history club of which he is a faculty advisor, he will not meet with a parent at 5 p.m. for the purpose of discussing his son's behavioral problems, he will not be in the gymnasium Friday night to chaperone a dance, etc.

Id.

16. DIVISION OF ISSUE ORGANIZING, VIRGINIA EDUCATION ASSOCIATION, *WORK TO THE CONTRACT — A HANDBOOK FOR ASSOCIATION LEADERS 2* (n.d.) [hereinafter cited as *WORK TO CONTRACT*].

17. *Id.*

as well,¹⁸ while ensuring that their salaries are commensurate with all work performed.¹⁹

The VEA views the proposed strategy as a lawful protest.²⁰ However, teachers who adhere to the strategy "on the job" are, in practice, defining their contractual duties for themselves²¹ in derogation of the school boards' exclusive authority to determine these contractual duties.²²

IV. THE SCHOOL BOARDS' AUTHORITY TO DETERMINE TEACHERS' CONTRACTUAL OBLIGATIONS

By Virginia law, "[e]very . . . school board is declared a body corporate and, in its corporate capacity, is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law"²³ The local school boards have exclusive jurisdiction to operate, maintain and supervise public schools.²⁴ Essential to this power of supervision is the local boards' function of adopting and enforcing policies, rules, and regulations for the management of their teaching staffs.²⁵

Each local school board has the power to adopt its own policies, rules, and regulations²⁶ which it records in a policy manual.²⁷ The State Board of Education prescribes certain standards for the local boards to follow in formulating their policies²⁸ and requires uniform inclusion of certain specific provisions in every school division policy manual.²⁹ Beyond these re-

18. See WORK TO CONTRACT, *supra* note 16, at 1-2.

19. Interview, *supra* note 5; see, WORK TO CONTRACT, *supra* note 16 at 5.

20. WORK TO CONTRACT, *supra* note 16, at 3.

21. See WORK TO CONTRACT, *supra* note 16, at 2.

22. See notes 23-45 *infra* and accompanying text. "The powers vested in local boards to enter into contracts and to hire employees and fix the terms and conditions of their employment are of ancient origin Commonwealth v. County Bd., 217 Va. at 578, 232 S.E.2d at 43. "[T]o the extent the boards' policies permit collective bargaining and collective bargaining agreements with recognized labor organizations, the policies are declared invalid." *Id.* The court's reference to "powers vested in local boards" and "boards' policies" applied to both the Arlington County Board of Supervisors and the Arlington County School Board. The School Board's power to act "is to be determined by the same rules applicable to the County Board." *Id.* at 576, 232 S.E.2d at 42.

23. VA. CODE ANN. § 22.1-71 (Repl. Vol. 1980).

24. County School Bd. v. Griffin, 204 Va. 650, 133 S.E.2d 565 (1963). "The supervision of schools in each school division shall be vested in [the local] school board." VA. CONST. art. 8, § 7.

25. School Bd. v. Parham, 218 Va. 950, 957-58, 243 S.E.2d 468, 472-73 (1978).

26. VA. CODE ANN. § 22.1-78 (Repl. Vol. 1980).

27. Each school division is required to maintain an up-to-date policy manual. 1981 Va. Acts, ch. 553, § 1 (Standard 12).

28. The standards prescribed by the State Board of Education are referred to as "standards of quality." The State Board of Education has authority to prescribe these standards, "subject to revision only by the General Assembly." VA. CONST. art. 8, § 2.

29. See 1981 Va. Acts, ch. 553, § 1 (Standard 12).

quired uniform provisions, the local school boards may adopt additional provisions for the management of schools within their localities.³⁰

Copies of the school board policy manual are distributed to each school within the division and are placed in the school's library, accessible to all school personnel and to the public.³¹ The policy manual provisions are incorporated by reference into the teachers' contracts,³² and noncompliance with the school board policies, rules, and regulations is a ground for dismissal.³³

Most local school boards have established general policy manual provisions that require teachers to perform extra duties beyond their regular classroom teaching assignments.³⁴ In those school divisions where there are no specific policy provisions for duties beyond classroom and instructional responsibilities, the boards may assign additional responsibilities under the teacher contract provision requiring teachers to "perform such duties . . . deemed necessary by the school board and superintendent for the efficient and successful operation of the school system."³⁵ These additional responsibilities, referred to as extracurricular or co-curricular duties, often require teachers to be at their respective schools before and after normal school hours.³⁶ The boards construe this additional work time either as a part of the teachers' contractual school day³⁷ or as an appropriate responsibility beyond the contractual school day for which teachers usually receive no additional compensation beyond their annual

30. *School Bd. v. Parham*, 218 Va. at 957, 243 S.E.2d at 472.

31. This distribution and placement of the policy manual within each school library is required under the Acts of the Assembly. 1981 Va. Acts, ch. 553, § 1 (Standard 12).

32. See note 8 *supra* and accompanying text.

33. VA. CODE ANN. § 22.1-307 (Repl. Vol. 1980). Other grounds for dismissal of teachers include "incompetency, immorality, . . . disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude or other good and just cause." *Id.* (emphasis added). See also *County School Bd. v. McConnell*, 215 Va. 603, 212 S.E.2d 264 (1975) (upholding school board's dismissal of teacher for noncompliance with rules and regulations even though teacher claimed she did not understand the policy handbook provisions).

34. See note 48 *infra*.

35. See note 9 *supra*.

36. *E.g.*,

§ 7-5 *Hours of Employment*

The hours of employment shall depend upon the length of time required to accomplish the objectives of the Buckingham County educational program. In general, the board desires to have certificated personnel available for a reasonable time both before and after school to assist students and parents as the needs may arise.

...

§ 7-34 *Extracurricular Activities*

The principal shall designate certain extracurricular activities to be supervised by employees as part of their work day.

BUCKINGHAM COUNTY PUBLIC SCHOOLS, POLICIES, REGULATIONS AND BYLAWS (Apr. 3, 1974).

37. *Id.*

salaries.³⁸

By their very nature, some school-related activities must be performed after the close of the normal school day so as not to interfere with the regular classroom program.³⁹ A typical example is the school athletic program. Because these activities are school functions, they not only require school personnel to coach the teams but also to participate in a supervisory capacity "to protect the welfare of the students."⁴⁰

There are no reported Virginia cases construing the scope of a teacher's duties under the employment contract. Courts of other jurisdictions, considering similar contracts, have held that teachers may be appropriately required to supervise extracurricular activities.⁴¹ For example, in *McGrath v. Burkhard*,⁴² a California Court of Appeals upheld a teacher's assignment to supervise the student section of bleachers at school football and basketball games.⁴³ The court emphasized the professional nature of a teacher's employment, the need for teacher cooperation with school authorities for the efficient operation of the school division, and the necessity of school board authority to assign extracurricular activities under the teachers' contract of employment.⁴⁴ In light of the Virginia Supreme Court's decision in *School Board v. Parham*⁴⁵ which established the local school boards' exclusive authority to manage their teaching staffs, it is likely that a Virginia court faced with an issue concerning the scope of

38. *E.g.*, BRISTOL CITY SCHOOL SYSTEM, SCHOOL BOARD POLICY MANUAL § 5-16 (rev. ed. May, 1977) (fixing work hours from 8:30 a.m. to 3:30 p.m. but requiring after hours time for "faculty meetings, home visits, the supervision of ou-of-class [sic] activities, . . . study groups, or special work in workshops or extension courses").

39. *See, e.g.*, AMELIA COUNTY SCHOOL BOARD, RULES AND REGULATIONS § EBS (July 1, 1976) (providing that extracurricular activities "shall be operated in such a manner as to supplement and not to interfere with the regular classroom program").

40. *McGrath v. Burkhard*, 131 Cal. App. 2d 367, —, 280 P.2d 864, 869 (1955). Teachers who serve as members of the school athletic coaching staff may receive salary supplements for their extended responsibilities. *See, e.g.*, HENRICO COUNTY SCHOOLS, PERSONNEL POLICIES § 4-05-004 (Aug., 1977). These salary supplements are not usually provided for teachers who are required to perform other supervisory duties at the games which may include ticket, program or concession sales, or general supervision of the school function. 131 Cal. App. 2d 367, 280 P.2d 864.

41. *E.g.*, *McGrath v. Burkhard*, 131 Cal. App. 2d 367, 280 P.2d 864 (1955) (holding that a teacher could be required under his or her teaching contract to act as a supervisor at six football and basketball games during the school year even though these games took place during evening hours and on Saturdays and holidays); *District 300 Educ. Ass'n v. Board of Educ.*, 31 Ill. App. 3d 550, 334 N.E.2d 165 (1975) (holding that extracurricular supervisory duties are necessary adjuncts to normal school activities and properly to be required as part of the teachers duties); *Appeal of Ganaposki*, 332 Pa. 550, 2 A.2d 742 (1938) (holding that the word "teach" in a physical education teacher's contract was broad enough to include coaching duties).

42. 131 Cal. App. 2d 367, 280 P.2d 864 (1955).

43. *Id.* at —, 280 P.2d at 871.

44. *Id.* at —, 280 P.2d at 868-70.

45. 218 Va. 950, 243 S.E.2d 468 (1978).

teachers' contractual duties would reach a decision similar to that of *McGrath*. Such a result would clearly undermine the VEA's "work to the contract" strategy. The organization's definitional components of the strategy call for teachers to observe rigid work hours without assuming additional responsibilities outside the regular work day unless provided additional compensation for these responsibilities.⁴⁶ The idea behind the strategy is for teachers to perform minimal contractual duties so that adherence to the strategy will not warrant their dismissal by the school board.⁴⁷

A comparison between working in compliance with school board policy and contractual provisions and "working to the contract" as proposed by the VEA indicates that teachers who strictly adhere to the strategy are not performing their minimum contractual duties. The list of strategy components provided in the VEA handbook conflicts with the policy manual provisions of at least 109⁴⁸ of the 140 school divisions in Vir-

46. WORK TO CONTRACT, *supra* note 16, at 2.

47. See WORK TO CONTRACT, *supra* note 16, at 5.

48. Compare WORK TO CONTRACT, *supra* note 16, at 2, and accompanying text with the following individual school division policy manual sections: ACCOMACK COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 5.16 (Sept. 20, 1977); ALBEMARLE COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 6-21 (Nov. 11, 1974); ALLEGHANY COUNTY SCHOOL BOARD, POLICY MANUAL § 5.16 (May 28, 1974); ALEXANDRIA CITY SCHOOL BOARD, POLICIES § 4301 (Nov. 16, 1966); AMELIA COUNTY SCHOOL BOARD, RULES AND REGULATIONS §§ EBS, FE (July 1, 1976); AMHERST COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-17 (Aug. 5, 1974); APPOMATTOX COUNTY SCHOOL DIVISION, POLICY MANUAL § 5.16 (June 5, 1974); BATH COUNTY PUBLIC SCHOOLS, 1 SCHOOL BOARD POLICIES AND ADMINISTRATIVE REGULATIONS § 5.11 (June 25, 1974); BEDFORD COUNTY SCHOOL BOARD, POLICY MANUAL § GBRB (July 1, 1979); BLAND COUNTY SCHOOL BOARD, POLICIES HANDBOOK § 5.3.4 (Aug. 12, 1974); BOTETOURT COUNTY SCHOOLS, POLICY MANUAL § 3.08(c)(2) (June 6, 1974); BRISTOL CITY SCHOOL SYSTEM, SCHOOL BOARD POLICY MANUAL § 5-16 (rev. ed. May, 1977); BRUNSWICK COUNTY PUBLIC SCHOOLS SCHOOL BOARD POLICIES §§ 532.31, 533.22-.23 (rev. ed. June 29, 1979); BUCHANAN COUNTY SCHOOL BOARD, POLICY MANUAL §§ 3.6.3—8.6 (Aug. 5, 1974); BUCKINGHAM COUNTY PUBLIC SCHOOLS, POLICIES, REGULATIONS AND BYLAWS, §§ 7-5, -34 (Apr. 3, 1974); BUENA VISTA CITY PUBLIC SCHOOLS, PERSONNEL POLICIES § 7.04, paras. 1-3 (Sept. 27, 1977); CAMPBELL COUNTY SCHOOL BOARD, POLICY MANUAL § 8-5(A) (July, 1973); CAROLINE COUNTY SCHOOL BOARD, POLICIES, AND BYLAWS § 8-18(A) (May 10, 1976); CARROLL COUNTY SCHOOL BOARD, POLICY MANUAL FOR THE CARROLL COUNTY PUBLIC SCHOOLS § 6.03 (July 20, 1977); CHARLES CITY PUBLIC SCHOOLS, BOARD POLICY MANUAL § 5-49.3 (Sept. 20, 1977); CHARLOTTE COUNTY SCHOOL BOARD, POLICY MANUAL § 5.36 (Mar. 5, 1979); CHARLOTTESVILLE CITY SCHOOL BOARD, POLICIES AND REGULATIONS § 5-49.3 (Feb. 13, 1979); CHESTERFIELD COUNTY PUBLIC SCHOOLS, BOARD POLICIES AND REGULATIONS § 3018 (Jan., 1980); CLARKE COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-37 (June 26, 1980); COLONIAL BEACH TOWN SCHOOL BOARD, POLICY MANUAL § 6.8.1 (May 29, 1974); COLONIAL HEIGHTS CITY PUBLIC SCHOOLS, ADMINISTRATIVE HANDBOOK § 5.16 (rev. ed. Apr. 28, 1981); COVINGTON CITY SCHOOL BOARD, POLICY HANDBOOK § 5.16 (Aug., 1976); CRAIG COUNTY SCHOOL BOARD, SCHOOL POLICIES AND ADMINISTRATIVE GUIDE FOR CRIAG COUNTY § 7.04 (rev. ed. July 1975); CULPEPER COUNTY SCHOOLS, POLICY MANUAL §§ 301.2, 402.5 (July 13, 1981); CUMBERLAND COUNTY SCHOOL BOARD, BYLAWS, POLICIES AND REGULATIONS § 8-5(A) (June 7, 1978); DANVILLE PUBLIC SCHOOLS, SCHOOL BOARD POLICY MANUAL § 3.10(f) (June 20, 1974); DICKENSON COUNTY PUBLIC SCHOOLS, POLICY MAN-

ual §§ 5.16, 7.21 (rev. ed. 1980); DINWIDDIE COUNTY SCHOOLS, POLICY MANUAL §§ 5.4.4 to .6 (May 30, 1974); ESSEX COUNTY SCHOOL BOARD, POLICIES RULES AND REGULATIONS § 5.19, paras. 1-3 (July, 1974); FAIRFAX COUNTY SCHOOLS, POLICIES, 2 BYLAWS AND REGULATIONS § 4812.1 (July 30, 1981); FALLS CHURCH CITY SCHOOL BOARD, POLICIES AND REGULATIONS §§ 8-5(A), -36 (Sept. 17, 1974); FAUQUIER COUNTY PUBLIC SCHOOLS, ADMINISTRATIVE HANDBOOK § 3.32 (1977-1978); FLOYD COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-5(A) (rev. ed. Nov. 12, 1980); FLUVANNA COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 4-37 paras. 1-3 (May 15, 1962); FRANKLIN CITY PUBLIC SCHOOLS, MANUAL OF RULES, REGULATIONS AND POLICIES § 61.204 (Mar. 11, 1974); FRANKLIN COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 6(a)-(b) (Mar. 11, 1974); FREDERICK COUNTY SCHOOLS, BOARD OF EDUCATION POLICIES AND REGULATIONS §§ 8-18, -35 (Apr. 7, 1970); FREDERICKSBURG CITY SCHOOL BOARD, POLICIES AND BYLAWS §§ 8-5, -36 (July 1, 1974); FRIES TOWN SCHOOL BOARD, POLICIES § 5.3.4, paras. 1-3 (Aug. 12, 1974); GALAX CITY SCHOOL BOARD, POLICIES, § 5.3.4, paras. 1-3 (May 14, 1974); GILES COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 7-3.2, paras. 1-3 (June 2, 1981); GRAYSON COUNTY SCHOOL BOARD, POLICIES, § 5.3.4, paras. 1-3 (Aug. 12, 1974); GREENE COUNTY PUBLIC SCHOOLS, POLICY HANDBOOK § 8.21 (June 24, 1974); GREENVILLE COUNTY SCHOOL BOARD, 1 POLICIES AND REGULATIONS § GBRHB-R (Dec., 1973); HALIFAX COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS §§ 8-5, -18(A), -36 (July 1, 1974); HANOVER COUNTY PUBLIC SCHOOLS, POLICY MANUAL §§ 7.01(4), .24 (June 7, 1977); HARRISONBURG CITY SCHOOLS, BOARD OF EDUCATION POLICIES AND REGULATIONS §§ 9-35, 11-46 (Apr. 15, 1969); HENRICO COUNTY SCHOOLS, PERSONNEL POLICIES § 4-05-007 (Aug., 1977) (*but see* § 4-05-004 which provides salary supplements for extended responsibilities including some club sponsorships); HENRY COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 5.37, para. 3 (n.d.); HIGHLAND COUNTY SCHOOL BOARD, BYLAWS, POLICIES AND REGULATIONS §§ 7-5(A), -34(c) (Apr. 1, 1981); HOPEWELL CITY SCHOOL DIVISION, BOARD POLICY MANUAL § 7.21 (June 10, 1974); KING GEORGE COUNTY SCHOOL BOARD, POLICIES, RULES AND REGULATIONS §§ 6:29, 7:04 paras. 1-3 (rev. ed. Aug., 1970); KING AND QUEEN COUNTY SCHOOL BOARD, POLICY AND REGULATIONS MANUAL §§ 5-12(A), -49.3 (Jan. 24, 1979); LANCASTER COUNTY PUBLIC SCHOOLS, PERSONNEL HANDBOOK § 8.05 (a)(9) (Feb. 12, 1974); LEE COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 5.17 (May 30, 1974); LEXINGTON CITY SCHOOLS, POLICY MANUAL § 5.16 (June 15, 1979); LOUDOUN COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-18:2 (Jan. 11, 1977); LOUISA COUNTY SCHOOL BOARD, POLICIES, RULES AND REGULATIONS § 7:04, paras. 1-3 (May 30, 1974); LUNENBURG COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS §§ 8-5(A), -36 (Aug., 1975); MADISON COUNTY SCHOOL BOARD, POLICIES, RULES AND REGULATIONS § 5.12-2(A) (July 1, 1975); MANASSAS CITY SCHOOL BOARD, POLICY AND REGULATION MANUAL §§ 5-13(A), -59.3 (Jan. 24, 1978); MANASSAS PARK CITY SCHOOL BOARD, POLICY MANUAL §§ 3.09.19 to .21 (1978); MIDDLESEX COUNTY SCHOOL BOARD, POLICY HANDBOOK § 5-32(A), paras. 1-3 (Aug. 1, 1974); MONTGOMERY COUNTY SCHOOL BOARD, POLICY MANUAL § 5.16, para. 3 (May 28, 1974); NEW KENT COUNTY PUBLIC SCHOOLS, POLICIES, REGULATIONS AND BYLAWS § 7-5(A) (May 23, 1974); NEWPORT NEWS PUBLIC SCHOOLS, POLICIES AND PROCEDURES § 3.21(1), (3) (July 18, 1973); NORFOLK PUBLIC SCHOOLS, POLICIES AND REGULATIONS §§ 8-5(A), -36 (Apr. 1, 1978); NORTHAMPTON COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 6-17(A) (Aug. 20, 1975); NORTHCUMBERLAND COUNTY SCHOOL BOARD, POLICIES §§ 6:28, 7:04(1)-(3) (Aug. 8, 1973); NORTON CITY PUBLIC SCHOOLS, POLICIES RULES AND REGULATIONS § 7.04(1)-(3) (rev. ed. Dec. 11, 1973); PAGE COUNTY SCHOOL BOARD, SCHOOL POLICIES AND ADMINISTRATIVE GUIDE FOR PAGE COUNTY §§ 7.36(5), .45(1)-(3) (July 3, 1973); PATRICK COUNTY SCHOOL BOARD, BYLAWS, POLICIES AND REGULATIONS § 8-5(A) (Dec. 11, 1978); PETERSBURG CITY SCHOOL BOARD, POLICIES, RULES AND REGULATIONS § 4.16.20 (June 20, 1974); PITTSYLVANIA COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS, § 5.16, para. 1; § 6.8, paras. 4, 9 (July 1, 1981); POWHATAN COUNTY SCHOOL BOARD, POLICY § 8.10(1)-(3) (Oct. 14, 1975); PRINCE EDWARD COUNTY SCHOOL BOARD, POLICY HANDBOOK § 5.17(A), para. 1-3 (Dec. 10, 1973); PRINCE WILLIAM COUNTY SCHOOL BOARD, 1 POLICY MANUAL § 418.1 (June 3, 1981) (*but see* § 464.1 providing for an extra duty and responsibility pay program); POQUOSON TOWN PUBLIC SCHOOLS, POLICY MANUAL § F.3, para. 2 (Dec. 17,

ginia.⁴⁹ In a typical provision, one school board policy manual provides that teachers are to be "available for a reasonable time before and after school to assist students and parents as the need may arise."⁵⁰ Another school board manual sets the teachers' minimum school day from 8:30 a.m. to 3:30 p.m., but expressly provides that these minimum hours do not relieve teachers of their responsibility to participate "in meetings or conferences or other duties as assigned."⁵¹ Conversely, the "work to the contract" strategy provides that teachers will work strict contractual hours only and will not remain after school for parent conferences or for supervision of students' extracurricular activities unless compensated for these activities.⁵² The strategy also conflicts with the school boards' general contractual right to assign teachers such duties as the board deems necessary "for the efficient and successful operation of the school sys-

1974); PULASKI COUNTY SCHOOL BOARD, POLICIES OF THE COUNTY SCHOOLS OF PULASKI COUNTY, VIRGINIA § 7.03 (1)-(3) (rev. ed. Jan., 1977); RADFORD CITY SCHOOL BOARD, POLICY MANUAL art. 4(X)(A1)(b), § 4.24a; art. 5(II)(E), § 5.19 (Apr. 24, 1980); RAPPAHANNOCK COUNTY PUBLIC SCHOOLS, SCHOOL POLICIES AND ADMINISTRATIVE GUIDE § 4.84(o)(p) (May 14, 1974); RICHMOND CITY SCHOOL BOARD, RULES AND REGULATIONS § 8-6(4) (Apr. 20, 1978); RICHMOND COUNTY SCHOOL BOARD, POLICY HANDBOOK § 7.04, paras. 1-3 (May 16, 1974); ROANOKE CITY PUBLIC SCHOOLS, 1 POLICY MANUAL § GBRE (July 1, 1976); ROCKINGHAM COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 5.18 (rev. ed. July 1, 1980); RUSSELL COUNTY PUBLIC SCHOOLS, POLICY MANUAL § GCAO(1)-(2) (rev. ed. 1978); SCOTT COUNTY SCHOOLS, POLICY MANUAL § 5.15 (June 5, 1974); SMYTH COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 7.21 (May 13, 1974, rev. ed. Sept., 1981); SHENANDOAH COUNTY PUBLIC SCHOOLS, SHENANDOAH COUNTY POLICIES AND REGULATIONS §§ 5-49.3, 6-33(B) (Aug. 10, 1981); SOUTH BOSTON CITY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-5, -18(A), -36 (July 3, 1974); SOUTHAMPTON COUNTY SCHOOL BOARD, POLICIES AND REGULATIONS § 5.12-2(A) (rev. ed. June 9, 1980); SPOTSYLVANIA COUNTY PUBLIC SCHOOLS, POLICY HANDBOOK § GBRE (rev. ed. June 28, 1979); STAFFORD COUNTY SCHOOL BOARD, POLICIES, RULES AND REGULATIONS § 7.04(1)-(3), (9) (Aug. 13, 1974); SUFFOLK CITY SCHOOLS, MANUAL ON RULES, REGULATIONS AND POLICIES § 5-03.7 (rev. ed. June 28, 1979); SURRY COUNTY SCHOOL BOARD, LOCAL POLICY MANUAL § 5-11.1(A), 1-3 (rev. ed. June, 1981); SUSSEX COUNTY PUBLIC SCHOOLS, POLICIES AND REGULATIONS § G-2 (June 13, 1974); TAZEWELL COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 2.51(3) (rev. ed. Oct. 1978); 1 VIRGINIA BEACH CITY PUBLIC SCHOOLS, SCHOOL BOARD POLICIES AND ADMINISTRATIVE REGULATIONS § 4116 (Oct. 21, 1969); WASHINGTON COUNTY PUBLIC SCHOOLS, 2 SCHOOL BOARD POLICY MANUAL § 7-12.2:2 (Mar. 2, 1974); WAYNESBORO, VIRGINIA PUBLIC SCHOOLS, 2 POLICIES AND REGULATIONS § GCJ, paras. 3-4 (May 11, 1976) (hour of employment); WESTMORELAND COUNTY PUBLIC SCHOOLS, SCHOOL BOARD POLICY § 5-12, para. 1 (July 1, 1974); WINCHESTER CITY SCHOOL BOARD, POLICIES AND REGULATIONS § 8-36 (May 20, 1974); WISE COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 6112 (June 26, 1973); YORK COUNTY PUBLIC SCHOOLS, POLICY MANUAL § 5.10 (Nov., 1980).

49. VIRGINIA DEPT. OF EDUCATION, VIRGINIA EDUCATIONAL DIRECTORY (School Yr. 1980-1981); Interview with S. Berry Morris, Director of Administrative Review Service, Virginia Department of Education (Sept. 28, 1981) (Saltville town school system abolished even though included in the VIRGINIA EDUCATIONAL DIRECTORY).

50. BUCKINGHAM COUNTY PUBLIC SCHOOLS, POLICIES, REGULATIONS AND BYLAWS § 7-5 (Apr. 3, 1974).

51. BATH COUNTY PUBLIC SCHOOLS, SCHOOL BOARD POLICIES AND ADMINISTRATIVE REGULATIONS § 5.11 (Jan. 25, 1974).

52. WORK TO CONTRACT, *supra* note 16, at 2, and accompanying text.

tem."⁵³ This clause permits school boards to impose extracurricular duties in the absence of policy manual provisions expressly detailing teachers' full contractual responsibilities.⁵⁴

The VEA contends that teachers are not legally required to perform duties that are not *specifically* articulated either in their contracts or in the boards' policy manuals.⁵⁵ For example, a teacher who is "working to the contract" should not chaperone a school dance unless his or her contract or the school board policy manual specifically states that this particular supervisory activity is one of the teacher's responsibilities.⁵⁶ Teachers' contracts do not specify this activity as a contractual duty⁵⁷ nor do most school board policy manuals specifically include this activity as an appropriate duty to be required of teachers.⁵⁸ This degree of specificity which the teachers' organization contends is required of school board assignments is generally viewed by the courts as an inherently impossible standard for contracts and employment codes.⁵⁹ General provisions have been traditionally used by government entities to eliminate the necessity of articulating each specific employee contractual obligation. The grounds for a teacher's dismissal, for example, are general in nature.⁶⁰ Rather than specifically naming each act or form of conduct which could be deemed grounds for dismissal, the Virginia Code provides that teachers may be dismissed "for incompetency, immorality, noncompliance with school laws and regulations, disability as shown by competent medical evidence, conviction of a felony or a crime of moral turpitude or *other good and just cause*."⁶¹ The specific acts which constitute these general grounds are determined by the school boards.⁶² Courts have upheld such provisions over constitutional attacks of overbreadth.⁶³ The VEA's attempt to harmonize the "work to the contract" strategy with existing law by contending that specificity of contractual obligations is legally required of school

53. Compare WORK TO CONTRACT, *supra* note 16, with note 9 *supra* and accompanying text.

54. See note 9 *supra* and accompanying text.

55. WORK TO CONTRACT, *supra* note 16, at 5.

56. See WORK TO CONTRACT, *supra* note 16, at 5.

57. Division of Teacher Certification, Virginia Department of Education, Form No. C-3, Annual Contract With Professional Personnel (rev. ed. Apr., 1980) & Form No. CC3, Continuing Contract With Professional Personnel (rev. ed. Apr., 1980).

58. See note 48 *supra*.

59. 15 GA. L. REV. 219 (1980). The absurdity of the VEA's contention is realized when, hypothetically, a third grade teacher looks over his or her employment contract and the school board's policy manual provisions, and determines that he is not required to teach his students how to multiply because this duty is not specifically articulated by the school board.

60. VA. CODE ANN. § 22.1-307 (Repl. Vol. 1980).

61. *Id.* (emphasis added).

62. See *County Bd. v. McConnell*, 215 Va. 603, 212 S.E.2d 264 (1975).

63. 15 GA. L. REV. 219, 224 (1980).

boards does not withstand legal or practical analysis.⁶⁴

When viewed from a practical standpoint, the VEA's contention that contractual duties must be specifically delineated to require the teachers' compliance appears to be a ploy designed to force the school boards to either take some legal action against those teachers adhering to the strategy or submit to a teacher organizational victory.⁶⁵ The VEA depends upon unanimous teacher adherence to the strategy⁶⁶ and expects that the school boards will determine that the dismissal of most of their teaching staffs would so disrupt the operations of the schools that the teachers' noncompliance with certain duty requirements, even though annoying, is the lesser of two evils.

This ploy jeopardizes the teachers' employment because the school boards have sufficient support in Virginia Code provisions for a legal stand against the "work to the contract" strategy if it disrupts efficient operation of the schools.⁶⁷ If the strategy is adhered to by three or more teachers as a concerted action within the school division, the action "may be subject to legal restraint as a partial strike"⁶⁸ or work stoppage.⁶⁹ Virginia law expressly forbids such activity by public employees.⁷⁰ Employees engaging in such concerted activity are deemed to have terminated their employment and may not be rehired for any state or local government position for the twelve months immediately following the termination.⁷¹ The possibility of legal action by the school boards is not so remote that teachers can ignore the potential consequences of their strategy.⁷²

Because of the local school boards' broad contractual authority to de-

64. See notes 59-64 *supra* and accompanying text.

65. See text accompanying note 76 *infra*.

66. See WORK TO CONTRACT, *supra* note 16, at 3.

67. VA. CODE ANN. §§ 22.1-307 (Repl. Vol. 1980) (grounds for teacher dismissal), 40.1-55 (Repl. Vol. 1981) (partially quoted in note 70 *infra*).

68. R. CHANIN & D. WOLLETT, *supra* note 14, at 6:112.

69. See Douglas, *Injunctive Relief in Public Sector Work Stoppages: Alternative Approaches*, 30 LAB. L.J. 406 (1979).

70. Any employee of the Commonwealth, or of any county, city, town or other political subdivision thereof, or of any agency of any one of them, who, in concert with two or more other such employees, for the purpose of obstructing, impeding or suspending any activity or operation of his employing agency or any other governmental agency, strikes or *willfully refuses to perform the duties of his employment* shall, by such action, be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next twelve months by the Commonwealth, or any county, city, town or other political subdivision of the State, or by any department or agency of any of them.

VA. CODE ANN. § 40.1-55 (Repl. Vol. 1981) (emphasis added).

71. *Id.*

72. The possibility of a legal action by the school boards becomes very real in light of recent results of an illegal strike by air traffic controllers. President Reagan delivered a work-or-be-fired ultimatum to the illegal strikers and ultimately dismissed them. NEWSWEEK, Aug. 17, 1981, at 18.

termine teachers' contractual responsibilities,⁷³ the "work to the contract" strategy in Virginia can be a lawful protest only if it is limited to teachers' refusal to *volunteer* for extra duties.⁷⁴ Teachers may not legally refuse to comply with a direct assignment unless they validly believe the assignment is unnecessary "for the efficient and successful operation of the school system."⁷⁵ The VEA recognizes the legal consequences of teachers' refusal to comply with direct assignments and has advised teachers participating in the strategy not to refuse a direct command to perform a task. Instead, teachers are to carry out the assignment under protest.⁷⁶ This precautionary guideline merely forces school administrators to arbitrarily make assignments rather than to ask for volunteers. This result has a more detrimental effect on the teachers than on the administrators who may simply resort to posting a duty roster without consulting teachers concerning their preferences in particular assignments. If the strategy is legally carried out according to VEA guidelines it becomes a watered-down, formal protest without any limiting effect on the school boards' authority. The strategy is practically feasible, however, in drawing attention to the need for effective limits on the school boards' authority.

V. LIMITS ON THE SCHOOL BOARDS' AUTHORITY TO DETERMINE TEACHERS' CONTRACTUAL OBLIGATIONS

There are limits to the extra duties which school boards can require teachers to perform beyond their actual classroom responsibilities. As a general principle of contract law, it is presumed that the parties intended that the terms of the contract should be reasonable and just.⁷⁷ The reasonableness requirement was defined by a California court of appeals in its holding that assignments of extra duties "are proper so long as they are distributed impartially, they are reasonable in number and hours of duty and each teacher has his share of such duty."⁷⁸ The school boards' specific authority to assign extracurricular duties has been limited in other jurisdictions by the requirements that such assignments be reasonable and sufficiently related to the school program.⁷⁹

To illustrate, the Pennsylvania Supreme Court ruled that a history

73. See notes 7-11 *supra* and accompanying text.

74. See *WORK TO CONTRACT*, *supra* note 16, at 3.

75. See note 9 *supra* and accompanying text. The term "necessary" as provided in the teacher contract is defined by the school board rather than the teachers. *Id.*

76. *WORK TO CONTRACT*, *supra* note 16, at 3.

77. In Virginia, this principle was established in *Young v. Ellis*, 91 Va. 297, 21 S.E. 480 (1895).

78. *McGrath v. Burkhard*, 131 Cal. App. 2d 367, —, 280 P.2d 864, 870 (1955).

79. *E.g., Id.* (applying the reasonableness requirement to school board assignments); *Pease v. Millcreek Township School Dist.*, 412 Pa. 378, 195 A.2d 104 (1963) (requiring that extra duty assignments be sufficiently school-related).

teacher could not properly be dismissed for refusing to supervise a bowling club which had been approved by the school board.⁸⁰ The court held that the bowling club was not sufficiently school-related to permit a requirement of teacher supervision and based its decision on these findings: the club's bowling sessions took place at a privately-owned bowling alley, the school did not provide the club members' transportation to or from the alley, the club did not compete intramurally or interscholastically with other school teams or clubs, and the teacher was assigned merely to maintain discipline among the club members.⁸¹

Although no reported Virginia cases have addressed the school boards' discretionary authority to assign extracurricular duties to teachers, the same standard of review applicable to appeals from school board decisions, in general, would apply.⁸² Virginia law provides a "grievance procedure" for teachers and other state and local government employees for the resolution of complaints and disputes relating to their employment.⁸³

Under this procedure, a teacher who wishes to contest an action of the school board or his supervisor submits his complaint in succession to his immediate supervisor, the school principal, and the complaint is forwarded in writing through the appropriate channels to the school board.⁸⁴ The complaint must state the specific relief that the teacher expects to obtain through the procedure.⁸⁵ If the teacher's complaint remains unsettled after passing through successive supervisory levels, the school board will provide a hearing to determine the legitimacy of the complaint.⁸⁶ If the school board determines that the complaint is a legitimate "grievance," the teacher will be provided a hearing by either the board or a fact-finding panel with final decision by the school board.⁸⁷ If the teacher's complaint concerns a duty assignment, the board may determine "by virtue of its exclusive right to manage the affairs and operations of the school division" that such a complaint is not a legitimate "grievance."⁸⁸ The school board's determination may be appealed to the circuit

80. *Pease v. Millcreek Township School Dist.*, 412 Pa. 378, 195 A.2d 104 (1963).

81. *Id.* at —, 195 A.2d at 106.

82. *See County School Bd. v. McConnell*, 215 Va. 603, 212 S.E.2d 264 (1975).

83. VA. CODE ANN. §§ 2.1-114.5:1 (Cum. Supp. 1981) (providing grievance procedure for state employees), 15.1-7.1 to .2 (Repl. Vol. 1981) (providing grievance procedure for local government employees); 22.1-308 (Repl. Vol. 1980) (providing grievance procedures for teachers).

84. *See School Bd. v. Parham*, 218 Va. 950, 243 S.E.2d 468 (1978); VA. CODE ANN. § 22.1-308 (Repl. Vol. 1980).

85. VA. CODE ANN. § 22.1-308(3) (Repl. Vol. 1980).

86. VA. CODE ANN. § 22.1-314 (Repl. Vol. 1980) (determination of "grievability").

87. VA. CODE ANN. §§ 22.1-310 to -311, -313 (Repl. Vol. 1980).

88. VA. CODE ANN. § 22.1-306 (Repl. Vol. 1980). *See also* VA. CODE ANN. §§ 9-6.15:15 (Repl. Vol. 1978) (applicable section of Virginia Administrative Process Act), 22.1-314 (Repl. Vol. 1980).

court having jurisdiction over the school division.⁸⁹ The reviewing court, however, will not substitute its judgment for that of the board where there is some rational legal and factual basis for the board's determination and where there is no finding by the court that the board "acted in bad faith, arbitrarily, capriciously, or in abuse of its discretion."⁹⁰

Due to the school boards' authority to assign extra duties as part of the teachers' contracts⁹¹ and the courts' limited review of the boards' actions,⁹² the grievance procedure is an inadequate means of attacking a contractual assignment for an individual teacher who faces the grave, but realistic, possibility of losing his job in the process.⁹³ Although the complaint alone is insufficient ground for dismissal,⁹⁴ the teacher's failure to comply with an assignment during the pendency of a grievance action is grounds for dismissal.⁹⁵ The teacher, not knowing what the board's decision will be or whether the reviewing court will find that the board's action was an abuse of its discretion, will probably comply with the assignment and complete it before a final decision is made.⁹⁶

The VEA justifiably complains that this grievance procedure is an inadequate legislative substitute for public employee collective bargaining.⁹⁷ Teachers believe that their efforts to communicate with the school boards concerning contractual duties and rights are nothing more than "collective begging" without the power to negotiate.⁹⁸ In the absence of a workable legislative solution, teachers have adopted "working to the contract" for their own self-protection against the school boards' unilateral authority.⁹⁹ The substantial legal risks assumed by employing the strategy, how-

89. VA. CODE ANN. § 22.1-314 (Repl. Vol. 1980).

90. County School Bd. v. McConnell, 215 Va. at 607, 212 S.E.2d at 267-68. See VA. CODE ANN. § 9-6.14:17 (Repl. Vol. 1978).

91. See School Bd. v. Parham, 218 Va. at 957-58, 243 S.E.2d at 472-73; note 59 *supra*; note 9 *supra* and accompanying text.

92. See note 91 *supra* and accompanying text.

93. Interview, *supra* note 5.

94. Johnson v. Butler, 433 F. Supp. 531 (W.D. Va. 1977).

95. See VA. CODE ANN. § 22.1-307 (Repl. Vol. 1980).

96. The school board is required to provide a hearing on the complaint within 30 days of the teacher's request. VA. CODE ANN. § 22.1-311 (Repl. Vol. 1980). The teacher must give notice of appeal of the school board's decision to the board within 10 days after this decision is made. VA. CODE ANN. § 22.1-314 (Repl. Vol. 1980). The school board has another 10 days to forward a record of its decision to the clerk of the court to which the appeal is taken; however, "failure of the school board to transmit the record within the time allowed shall not prejudice the rights of the grievant." *Id.* The circuit court must hear the appeal within 10 days after receipt of the school board record and render a decision within 15 days from the date of the conclusion of the hearing. *Id.* Although this time allotment seems reasonable, it is likely that a teacher's assignment may only be for a period of six weeks or less as it is common practice among Virginia school divisions to assign duties for specific short periods.

97. Interview, *supra* note 5.

98. VA. J. OF EDUC., Sept., 1981, at 20.

99. See WORK TO CONTRACT, *supra* note 16, at 5-6.

ever, make collective bargaining a much safer alternative for teachers and a more effective limit on school board powers.¹⁰⁰

Prior to 1977, at least ten local education associations and local school boards in Virginia were engaged in voluntary collective bargaining.¹⁰¹ This culminated in master contract agreements covering almost forty percent of Virginia's public school teachers.¹⁰² These voluntary bargaining agreements were made pursuant to policies established by local supervisory boards.¹⁰³ The board policies provided for both "official recognition of labor organizations as the exclusive representatives of the employees of various units of county government and for the negotiation and execution of binding agreements with the recognized organization concerning wages, hours, fringe benefits, and other conditions of employment"¹⁰⁴ and included prohibitions against strikes.¹⁰⁵

In 1977, the Virginia Supreme Court declared these voluntary agreements void and refused to recognize any school board power to bargain collectively absent "express statutory authority."¹⁰⁶ This ruling and the failure of the legislature to act on the issue¹⁰⁷ places Virginia in the minority of jurisdictions which does not provide some form of public sector collective bargaining procedures.¹⁰⁸

Of the thirty-eight states where the right to bargain collectively exists for some or all public employees,¹⁰⁹ Michigan has a particularly well-advanced bargaining relationship between teachers and local school boards.¹¹⁰ Each school division in Michigan is a separate bargaining unit

100. See notes 68-77 *supra* and accompanying text.

101. DIVISION OF NEGOTIATIONS/ORGANIZING, VIRGINIA EDUCATION ASSOC., NEGOTIATIONS NOTEBOOK 1110 (Nov. 3, 1976). For an overview of public employee collective bargaining in Virginia prior to 1977, see generally 11 U. RICH. L. REV. 431 (1977).

102. DIVISION OF NEGOTIATIONS/ORGANIZING, VIRGINIA EDUCATIONAL ASSOC., NEGOTIATIONS NOTEBOOK 1110 (Nov. 3, 1976).

103. *Commonwealth v. County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977).

104. *Id.* at 560, 232 S.E.2d at 32.

105. *Id.*

106. *Commonwealth v. County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977).

107. See note 4 *supra*.

108. At the present time, 38 States and the District of Columbia have statutes or executive orders which provide legal frameworks for collective bargaining for some or all of their employees. These enactments vary widely in their nature and scope. For example, 23 states and the District of Columbia have enacted comprehensive statutes covering all public employees. In contrast, 11 states have comprehensive legislation limited to specific groups of employees. In 4 states some or all public employees have been granted collective bargaining rights to a limited extent.

LABOR-MANAGEMENT SERVICES ADMINISTRATION, DIVISION OF PUBLIC EMPLOYEE LABOR RELATIONS, U.S. DEPT. OF LABOR, SUMMARY OF PUBLIC SECTOR LABOR RELATIONS POLICIES v. (1979).

109. *Id.*

110. Kornbluh, *Public Schools—Multi-Unit Common Bargaining Agents: A Next Phase in Teacher-School Board Bargaining in Michigan*, 27 LAB. L.J. 520 (1976).

with a master agreement between the division school board and the teachers employed in that division.¹¹¹ On an experimental basis local units have voluntarily banded together to form multi-unit negotiating arrangements with a common bargaining agent.¹¹² These multi-unit bargaining agreements have been successful in standardizing salaries, fringe benefits, and other noneconomic contract provisions of the participating school divisions.¹¹³ The relative bargaining power shifts between the boards and the teachers depending on such factors as availability of tax dollars, teacher surplus or demand, and decline or rise in enrollments.¹¹⁴

In that context, a "work to the contract" action by teachers may be successful in effectively limiting the school boards' unilateral discretion.¹¹⁵ Where a master agreement between the teachers and the board specifically provides, *inter alia*, that teachers may not be required to perform extra duties beyond specified working hours, it would be an effective and probably legal pressure on the school board in negotiations if these teachers concertedly discontinued these voluntary services and "worked to the contract."¹¹⁶

VI. CONCLUSION

"Working to the contract" in Virginia is an attempt by public school teachers to legally restrict the local school boards' unilateral authority to determine teachers' contractual obligations. The "work to the contract" strategy, however, lacks legal force and validity because of the school boards' broad contractual rights to determine teachers' duties under the employment agreement.

Any effective implementation of the work-to-the-contract strategy would violate the school board's statutory authority. If kept within the legal bounds, the proposed strategy cannot adequately protect teachers' rights unless it is coupled with the power to negotiate these contractual rights through some type of collective bargaining procedure. Under the Virginia Supreme Court's decision in *Commonwealth v. County Board*, that power exists only by virtue of an express statutory grant.

Teachers' obvious dissatisfaction with the *status quo* and the inadequacies of the present statutory grievance procedure as a protection of teachers' employment interests evidence the need for a more workable legislative solution to teachers' legitimate concerns. If such a solution is brought

111. *Id.*

112. *Id.*

113. *Id.* at 524-25.

114. *Id.* at 521.

115. R. CHANIN & D. WOLLETT, *supra* note 14, at 6:112.

116. *Id.*

about, "working to the contract" will have served a useful purpose for teachers as well as other state and local government employees.

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