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## Labor Relations - Disputes and Concerted Activities - Right of Employees of a Public Corporation to Strike

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LABOR RELATIONS — DISPUTES AND CONCERTED ACTIVITIES — RIGHT OF EMPLOYEES OF A PUBLIC CORPORATION TO STRIKE — The Los Angeles Metropolitan Transit Authority Act provides that “employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.”<sup>1</sup> The Transit Authority brought this action to obtain a declaratory judgment that its employees did not have the right to strike. The trial court upheld its contention. On appeal, *held*, reversed, two justices dissenting. This statutory language has been uniformly construed to include the right to strike.<sup>2</sup> Since this statute dealt only with public employees, the legislature must have intended to grant this right or it would not have unqualifiedly used this language. Moreover, according to the employees this right was not an unconstitutional delegation of the state’s authority. *Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen*, 54 Cal. 2d 684, 355 P.2d 905 (1960).

There is considerable diversity among the states with respect to the rights of public employees to organize, bargain collectively, and strike. In at least three states, they are prohibited by statute from joining unions.<sup>3</sup> In five other states, either by statute<sup>4</sup> or court decision,<sup>5</sup> a governmental unit may not enter into collective bargaining agreements with its employees. In thirteen states, although government employees may organize, they are by statute<sup>6</sup> or court decision<sup>7</sup> denied the right to strike. The prohibitions

<sup>1</sup> CAL. GEN. LAWS ANN. act 4481 (Deering Supp. 1959).

<sup>2</sup> The quoted language has been included in the following statutes: Norris-LaGuardia Act § 2, 47 Stat. 70, 29 U.S.C. § 102 (1932); National Labor Relations Act § 7, 49 Stat. 449, 452, as amended, 29 U.S.C. § 157 (1947). It has been construed to include the right to strike in the following cases: *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955); *Amalgamated Ass’n of Street Employees v. Wisconsin Employment Relations Bd.*, 340 U.S. 383 (1951); *International Union UAW v. O’Brien*, 339 U.S. 454 (1950).

<sup>3</sup> Alabama, ALA. CODE tit. 55, § 317 (2) (1958); Georgia, GA. CODE ANN. § 54-909 (1961) (police); North Carolina, N.C. GEN. STAT. §§ 95-97 to -310 (Supp. 1959). Compare MASS. ANN. LAWS ch. 149, § 178D (Supp. 1960) (police excluded from law which gives other public employees right to join unions without employer discrimination).

<sup>4</sup> Texas, TEX. REV. CIV. STAT. art. 5154c (1948).

<sup>5</sup> *Miami Waterworks Local 654 v. City of Miami*, 157 Fla. 445, 26 So. 2d 194 (1946); *Mugford v. Mayor and City Council of Baltimore*, 185 Md. 266, 44 A.2d 745 (1946); *Weakley County Municipal Elec. Sys. v. Vick*, 309 S.W.2d 792 (Tenn. App. 1957); *City of Springfield v. Clouse*, 356 Mo. 1239, 206 S.W.2d 539 (1947).

<sup>6</sup> Florida, FLA. STAT. ANN. § 839.221 (Supp. 1960); Michigan, MICH. COMP. LAWS § 423.202 (1948); Minnesota, MINN. STAT. ANN. § 179.51-58 (Supp. 1960); New York, N.Y. CIV. SERV. LAW § 108; Ohio, OHIO REV. CODE ANN. § 4117.02 (Page 1954); Pennsylvania, PA. STAT. ANN. tit. 43, § 215.1-5 (1952); Texas, TEX. REV. CIV. STAT. art. 5154c-4 (1948).

<sup>7</sup> *City of Manchester v. Manchester Teachers’ Guild*, 100 N.H. 507, 131 A.2d 59 (1957); *City of Pawtucket v. Pawtucket Teachers’ Alliance*, 141 A.2d 624 (R.I. 1958); *Local 976, IBEW v. Grand River Dam Authority*, 292 P.2d 1018 (Okla. 1956); *City of Los Angeles v. Los Angeles Bldg. and Constr. Trades Council*, 94 Cal. App. 2d 36, 210 P.2d 305 (1949); *Port of Seattle v. International Longshoremen’s Union*, 52 Wash. 2d 317, 324 P.2d 1099 (1958).

against government employee organizations are generally applicable only to policemen and firemen. These limitations are justified on the ground that since these employees are responsible for the protection of persons and property and the preservation of public order the government must command their undivided loyalty. Therefore, employee organizations which might lead to dissension and possible diminution of governmental control must be proscribed.<sup>8</sup> However, failure to afford a reasonable outlet for grievances through an organization which can provide for orderly communication and participation in the settlement of these grievances seems more dangerous to maintenance of essential public services than any possible conflict of loyalty. At a minimum, public interest in effective police and fire departments does not justify a blanket bar to government employee organizations. And even where organization is allowed, it has often been suggested that government participation in collective bargaining agreements would be a derogation of governmental sovereignty.<sup>9</sup> Proponents of this view argue that issues such as wages, hours, tenure, and working conditions are to be determined through the exercise of the legislative power which the legislature cannot delegate or bargain away. However, if a government may negotiate agreements with its employees individually without impairing its sovereignty, collective bargaining agreements should have no greater deleterious effects. The legislature may prescribe the broad framework within which negotiation may be conducted without thereby derogating from its authority. In many jurisdictions where the government may enter collective bargaining agreements, the right to strike is denied public employees because it is thought such a strike would be a denial of authority and a rebellion against the government.<sup>10</sup> But if the government through its legislative or judicial branch consents to the exercise of the right to strike, it is hard to regard such a strike as a rebel-

<sup>8</sup> See, e.g., *King v. Priest*, 357 Mo. 68, 206 S.W.2d 547 (1947); *City of Jackson v. McLeod*, 199 Miss. 676, 24 So. 2d 319 (1946); *Carter v. Thompson*, 164 Va. 312, 180 S.E. 410 (1935); *Hutchinson v. Magee*, 278 Pa. 119, 122 Atl. 234 (1923).

<sup>9</sup> See cases cited *supra* note 5, which deny to government the right to enter collective bargaining agreements.

<sup>10</sup> See *Norwalk Teachers' Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951); *City of Manchester v. Manchester Teachers' Guild*, *supra* note 7; *City of Cleveland v. Division 268, Amalgamated Ass'n of Street Employees*, 90 N.E.2d 711 (Ohio C.P. 1949); *Local 976, IBEW v. Grand River Dam Authority*, *supra* note 7; *City of Pawtucket v. Pawtucket Teachers' Alliance*, *supra* note 7. The following is one statement of this view:

"To tolerate or recognize any combination of Civil Service employees of the Government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle on which our government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the state can dictate to the Government the hours, the wages and conditions under which they will carry on essential services vital to the welfare, safety and security of the citizen. To admit as true that Government employees have power to halt or check the functions of Government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous." *Railway Mail Ass'n v. Murphy*, 180 Misc. 868, 875, 44 N.Y.S.2d 601, 607 (Sup. Ct. 1943).

lion.<sup>11</sup> Another consideration in this area is the considerable public inconvenience and danger to public health and safety which may be caused by a strike of government workers.<sup>12</sup> However, since this public interest is not necessarily associated with all such strikes, the right need not categorically be denied to all government workers. A more desirable approach would be in each case to balance the interests of the union in being allowed to exercise its most powerful economic weapon to support its collective bargaining positions against the convenience, health, safety and welfare of the general public. For example, under this approach a strike of municipal golf course caddies would not sufficiently jeopardize the general welfare to justify proscription of the right. However, it should be noted that the broad, unqualified language of the statute in the principal case does not lend itself to use of the balancing approach in the absence of qualifications created by judicial fiat. Even where a jurisdiction does adopt the suggested balancing test, alternative devices should be available to facilitate settlement of disputes in those cases in which proscription of the right to strike would be proper. In many states, statutes have been enacted to ensure uninterrupted service from public utilities; such statutes generally provide for conciliation, mediation, and often, as a last resort, compulsory arbitration.<sup>13</sup> In general, a policy of granting the right to strike or providing

<sup>11</sup> The majority in the principal case had no trouble finding legislative authority to confer the right to strike, but declined to comment on the constitutional problems if the employees were policemen, firemen, or officers exercising a portion of the state's sovereignty. Principal case at 6, 355 P.2d at 910. Another court, while unable to find sufficient precedent in the common law, expressly conceded the power of the legislature to grant the right to strike. See *City of Manchester v. Manchester Teachers' Guild*, *supra* note 7. Although often unexpressed, many courts seem compelled under a notion of judicial restraint to leave to the legislature such a departure which involves a resolution of a basic policy conflict. It has been argued that when government is acting in a proprietary, as opposed to a governmental capacity, a strike does not contravene its authority since there is no opposition to the sovereign power. *Local 266, IBEW v. Salt River Project*, 78 Ariz. 30, 275 P.2d 393 (1954). However, most courts have held this distinction inapposite in this context since all governmental activities are equally services for the general public whether or not they may also be performed by private agencies. See, *e.g.*, *New York City Transit Authority v. Loos*, 2 Misc. 2d 733, 154 N.Y.S.2d 209 (Sup. Ct. 1956); *Nutter v. City of Santa Monica*, 74 Cal. App. 2d 292, 168 P.2d 741 (1946).

<sup>12</sup> This problem influenced the courts in the following cases. *City of Detroit v. Division 26, Amalgamated Ass'n of Street Employees*, 332 Mich. 237, 51 N.W.2d 228 (1952); *City of Manchester v. Manchester Teachers' Guild*, *supra* note 7; *Port of Seattle v. International Longshoremen's Union*, *supra* note 7.

<sup>13</sup> Florida, FLA. STAT. ANN. § 453 (1952); Hawaii, HAWAII REV. LAWS § 91 (1955); Indiana, IND. ANN. STAT. §§ 40-2401 to -15 (1952); Massachusetts, MASS. ANN. LAWS ch. 150B, § 1-8 (1957); Michigan, MICH. COMP. LAWS § 423.201-08 (1948); Missouri, MO. REV. STAT. § 295 (1949); Nebraska, NEB. REV. STAT. §§ 48-401, -802 (1960) New Jersey, N.J. STAT. ANN. §§ 34:13B-1 to -29 (Supp. 1960); North Dakota, N.D. CENTURY CODE §§ 34-11-01 to -05 (1961); Pennsylvania, PA. STAT. ANN. tit. 43, § 213.1-6 (1952); Texas, TEX. REV. CIV. STAT. art. 1446a (Supp. 1960); Virginia, VA. CODE ANN. §§ 40-95.-1 to -95.6 (1950); Wisconsin, WIS. STAT. § 111.50-64 (1957). These statutes, however, create separate problems of their own. The constitutionality of a number of them has been challenged on the ground that federal legislation has pre-empted the field. See *Local 8-6, Oil Workers v. Missouri*, 361 U.S. 363 (1960) (issue moot; contested injunction expired by its own terms); *Amalga-*

adequate substitute machinery where the right to strike would be improper would tend to remove dissatisfaction of the public servant who has less voice in the determination of questions concerning his employment status than has his privately-employed counterpart.

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ated Ass'n of Street Employees v. Wisconsin Employment Relations Bd., *supra* note 2 (Wisconsin statute held unconstitutional); Henderson v. State *ex rel.* Lee, 65 So. 2d 22 (Fla. 1953) (Florida statute held unconstitutional).