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Labor Law - Collective Bargaining - Right of Power of Municipalities to Engage in Collective Bargaining

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LABOR LAW—COLLECTIVE BARGAINING—RIGHT OR POWER OF MUNICIPALITIES TO ENGAGE IN COLLECTIVE BARGAINING—Plaintiff, Weakley County Municipal Electric System, sought to enjoin defendant union members and unions from continuing alleged picketing, intimidation of non-strikers and other acts incidental to a strike. Defendants had gone on strike to compel plaintiffs to recognize Local Union 835, IBEW, as the bargaining agent of plaintiffs' employees and to sign a contract with the union. The chancellor granted a permanent injunction on the ground that the strike was illegal and against public policy, as a municipality has no right or power to bargain collectively. On appeal to the Tennessee Court of Appeals,

held, affirmed. Even though the county was acting in a proprietary capacity in operating a public utility, it had no authority, absent express statutory authorization, to bargain collectively with its employees as the union demanded; as even peaceful picketing for an unlawful purpose may be enjoined, the permanent injunction was properly granted. *Weakley County Municipal Electric System v. Vick*, (Tenn. App. 1957) 33 CCH Lab. Cas. ¶70,874.

The principal case illustrates the almost unanimous reluctance of courts in the few decisions¹ directly in point to hold that municipal corporations have the power to bargain collectively with their employees. Although the Tennessee Municipal Electric Plant Law of 1935 under which plaintiff was organized contained provisions² granting municipalities the power to contract in the operation and maintenance of electric plants, as well as an instruction that such power be liberally construed,³ the court here found "no provision which could possibly authorize the collective bargaining contract demanded by defendant in this case."⁴ Moreover, such bargaining, even by a municipality admittedly acting in a proprietary capacity,⁵ was held to be contrary to public policy and illegal.⁶ While the opinion of the court gave little detailed analysis of

¹ Paucity of authority on the precise issue of the municipality's right to engage in collective bargaining has unfortunately tended to encourage courts to rely upon precedents involving related but clearly distinguishable issues, e.g., the right of municipal employees to strike, closed shops in public employment. For an extensive annotation on these and other issues concerning unions in public employment, see 31 A.L.R. (2d) 1142 to 1180 (1953).

² Tenn. Code Ann. (Williams, 1934; 1942 Repl.) §3708.3: "Every municipality shall have power . . . (g) . . . to make all other contracts and execute all other instruments as in the discretion of the municipality may be necessary, proper or advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any electric plant and the furnishing of electric service. . . ." Cf. *Local 266, IBEW v. Salt River Project Agricultural Improvement and Power District*, 78 Ariz. 30, 275 P. (2d) 393 (1954), and *Civil Service Forum v. New York City Transit Authority*, 3 Misc. (2d) 346, 151 N.Y.S. (2d) 402 (1956), where similar language was held to give sufficient authority to enter into bargaining agreements, on the facts of those cases.

³ Tenn. Code Ann. (Williams, 1934; 1942 Repl.) §3708.24.

⁴ Principal case at 94,642.

⁵ The distinction between proprietary and governmental functions, as a basis for finding collective bargaining rights for the former, has been generally rejected. Relevant considerations have been said to be the same regardless of classification of function. *Springfield v. Clouse*, 356 Mo. 1239, 206 S.W. (2d) 539 (1947); *Nutter v. Santa Monica*, 74 Cal. App. (2d) 292, 168 P. (2d) 741 (1946); *Los Angeles v. Los Angeles Building and Construction Trades Council*, 94 Cal. App. (2d) 36, 210 P. (2d) 305 (1949); 1 TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING (1947 Cum. Supp.) §171; RHYNE, LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW 53 (1946). But see *State ex rel. Moore v. Julian*, 359 Mo. 539, 222 S.W. (2d) 720 (1949).

⁶ Absence of express legislative direction has left the courts generally free to apply their own conceptions of public policy. Congressional legislation ensuring collective bargaining rights to employees in private industry has excluded the states and their political subdivisions from the definition of "employer." Labor-Management Relations Act, 1947, 61 Stat. 137, 29 U.S.C. (1952) §152(2). State labor legislation granting similar

the basis for such conclusion, relying primarily upon citation of precedents in other jurisdictions, the importance of denying to large numbers⁷ of municipal employees a right ensured to private employees justifies an examination of possible grounds. One argument often made⁸ against the right is that such bargaining would conflict with existing administrative or legislative civil service provisions covering such matters as wages, hours, promotions, and hiring. Several objections may be raised to this contention: (1) it has no bearing as to employees⁹ or matters not covered by civil service; (2) collective bargaining agreements could be stated to be subject to such civil service provisions¹⁰ and in any case would yield, in case of conflict, to such provisions if legislative; (3) where administrative officials are vested with powers over such matters, they could properly be made party to such agreements—so that the objection goes to the persons with whom to negotiate rather than to power; (4) so far as based on provisions regulating hiring or firing, it is an objection to possible provisions of such contracts, viz., closed or union shops, rather than to the power to contract generally. A second recurring argument is that such agreements would be an unlawful delegation of discretion vested in administrative officials or city legislative councils by the state legislature.¹¹ Objections to this argument include: (1) an agreement can as easily be regarded as an exercise of his discretion by an administrative

rights has been restrictively interpreted by several courts as inapplicable to public employees. *Springfield v. Clouse*, note 5 supra; *Miami Waterworks Local No. 654 v. Miami*, 157 Fla. (2d) 445, 26 S. (2d) 194 (1946); *Nutter v. Santa Monica*, note 5 supra. A state legislature might expressly declare collective bargaining contracts by municipalities to be contrary to public policy and void. See *Tex. Civ. Stat. (Vernon, 1948) art. 5154c*. Or the legislature might expressly empower municipalities to bargain collectively with certain groups of employees. See *Wash. Rev. Code (1951) §35.22.350*.

⁷ As of October, 1956, there were an estimated 3,953,200 local government employees. *STATISTICAL ABSTRACT OF THE UNITED STATES, No. 501 (1957)*.

⁸ *Miami Water Works Local No. 654 v. Miami*, note 6 supra; *Nutter v. Santa Monica*, note 5 supra; *Los Angeles v. Los Angeles Building and Construction Trades Council*, note 5 supra. See RHYNE, *LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW* 53 et seq. (1946), as to this and other arguments infra.

⁹ Of 1,041 cities over ten thousand which reported, 306 cities had no civil service and 457 had a system covering only some of its employees. 1957 *MUNICIPAL YEARBOOK* 152. The opinion in the principal case does not state whether Weakley County Electrical System employees are under civil service, and the full discretion over hiring and compensation granted the superintendent indicates that they are not. *Tenn. Code Ann. (Williams, 1934; 1942 Repl.) §3708.24*. However, the court stated the facts here were most similar to *Miami Waterworks Local No. 654 v. Miami*, note 6 supra, where all employees were covered by civil service.

¹⁰ *Civil Service Forum v. New York City Transit Authority*, note 2 supra, upheld a collective bargaining agreement between the Authority and two unions against attack by the Civil Service Forum, as the agreement contained such provisions.

¹¹ *Springfield v. Clouse*, note 5 supra; *Los Angeles v. Los Angeles Building and Construction Trades Council*, note 5 supra. See also *Mugford v. City Council of Baltimore*, 185 Md. 266, 44 A. (2d) 745 (1945).

official;¹² (2) although the power to modify is relinquished for a time, this is true of any contract by a public official.¹³ A third argument is that collective bargaining agreements would give unlawful preferences to union members and discriminate against non-union members, which a government cannot do;¹⁴ but clearly this is relevant only to possible specific provisions for a closed or union shop or compulsory check-off, and does not apply to contracts lacking such provisions. So long as individual employees retain the right to present their grievances personally, a fourth argument that recognition of a union as a bargaining agent would infringe the right to petition the government for redress of grievances also seems inapplicable. Thus the arguments typically made for concluding that a municipality lacks power to enter into collective bargaining agreements are at least subject to question. It is submitted that the decision as to the presence or lack of such power is best reserved until a specific agreement is before the court, rather than ruling in advance that no such contract could conceivably be valid and using this as a basis to enjoin striking or picketing. The underlying basis of the holding, however, may be objection to the assertion by government employees of a right to strike and engage in other activities incidental to a strike. Since this is a distinct issue subject to attacks other than on the basis of the unlawful purpose doctrine, a court might well enjoin such activities without prospectively barring any and all possible collective bargaining agreements.

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¹² Cf. *Norwalk Teachers Assn. v. Board of Education*, 138 Conn. 269, 83 A. (2d) 482 (1951).

¹³ See Local 266, *IBEW v. Salt River Project Agricultural Improvement and Power District*, note 2 *supra*.

¹⁴ *Los Angeles v. Los Angeles Building and Construction Trades Council*, note 5 *supra*; RHYNE, *LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW* 137 (1946). See also *Civil Service Forum v. New York City Transit Authority*, note 2 *supra*, where this was the plaintiff's main contention.