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COMMENT

MUNICIPAL EMPLOYEES' UNIONS: THE CLIMB UP LABOR'S LADDER

INTRODUCTION

For years municipal employees' unions have struggled to stand as equals beside their brother unions in private industry. Periodically, they have ascended many rungs in labor's ladder. However, in many instances their progress has been blocked, not by the municipal government but by courts, who, after considering all the factors involved, not only believed that it was in the public's best interests to have municipal employees join a less powerful union but also outlined the power of the municipality in dealing with the union.

At the present time, the court, the union and the municipality appear lost in a maze. The court is bound to an established interpretation of the law by years of precedent and must apply that interpretation to municipal and union activity. The union is obligated to its members and, therefore, must present their requests until the municipality will seriously consider them; and the municipality, while recognizing and often sympathetic toward their requests, is unable to help—the shackles of judicial decisions restraining them.

A few courts and legislatures are beginning to remove the shackles, thereby enabling municipalities to reach out and help the unions in their climb to maturity. This legal activity, although it is and will continue causing indecision in the area of collective bargaining, is removing some of the stiff resistance that has been blocking the rise of municipal labor.

FORMATION OF A UNION

Due to the success and popularity of industrial labor unions, municipal employees initiated unions at the turn of the century. Soon, thereafter, courts began to decide their legality. In *Hutchinson v. Magee*,¹ the director of public safety ordered the firemen, who were members of a union which had organized a strike, to resign from the organization. The court upheld the order saying that association with this organization proved to be detrimental to the general welfare. In fact, many of these initial attempts were not successful.² They were doomed from the start because of a statement in *McAuliffe v. Mayor of City of New York*.³ This case dealt with a policeman who was discharged from the police force for

1. 278 Pa. 119, 122 Atl. 234 (1923).

2. Seattle High School, Chapter No. 200 v. Sharples, 159 Wash. 424, 293 P. 994 (1930); *People v. City of Chicago*, 278 Ill. 318, 116 N.E. 158 (1917).

3. 155 Mass. 216, 29 N.E. 517 (1892).

soliciting political donations. Although there was no mention of unions, subsequent decisions often based the right to prevent the joining of labor unions by municipal employees on the following language.

There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control.⁴

Although early attempts to organize were blocked, determined employees could not be stopped and with the union's actual solidification, the right of municipal employees to join unions was recognized. Since the emergence of the union as a solid organization, this ". . . right has never been successfully challenged in the courts"⁵ and has been reaffirmed numerous times.⁶ Currently, courts feel that ". . . there is nothing improper in the organization of municipal employees into labor unions. . . ."⁷ The city, however, is certainly justified in placing certain restrictions on employees entrusted with public health, safety and welfare.⁸ They should organize in a manner acceptable to the municipality. Imagine the chaos if various classes of employees became ". . . [affiliated] with outside labor unions [whose interest] might be inimical to the public interests."⁹

Even considering this as the cause of the reluctant reception unionization received, it is unfortunate that the value of the union was not recognized immediately. With its advent, the municipality had an individual, the union representative, who both registered and received complaints. The cumbersome process of dealing with individuals, qua individuals, was avoided. As one court stated, "Organizations are likewise helpful to bring public officers and employees together to survey their work and suggest improvements in the public service as well as in their own working conditions."¹⁰ Possibly because of this, the union has never had its right

4. *Id.* at 517, 518.

5. KAPLAN, *THE LAW OF CIVIL SERVICE*, 319 (1958). *But see*, Congress of Industrial Organization v. City of Dallas, Tex. Civ. App., 198 S.W.2d 143 (1946) which held constitutional an ordinance prohibiting the joining of a union; Goodwin v. Oklahoma City, 199 Okl. 26, 182 P.2d 762 (1947) where the court upheld the discharge of an employee based on a provision in the city charter forbidding the joining of a union.

6. City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947); Norwalk Teachers' Ass'n v. Board of Education of City of Norwalk, 138 Conn. 269, 83 A.2d 482 (1951).

7. City of Springfield v. Clouse, *supra* note 6, at 542; see also, Potts v. Hay, 229 Ark. 830, 318 S.W.2d 826 (1958).

8. This class would include policemen, firemen, health officers and others similarly situated.

9. Kaplan, *op. cit. supra* note 5, at 320.

10. City of Springfield v. Clouse, *supra* note 6, at 542.

to represent the employees seriously threatened or perhaps this is because the next logical step, following the ability to join unions, is the right to be represented by that union in negotiations with the city. But whatever the reason, it is unimportant.

It would seem to make no difference theoretically whether the negotiations are with a committee of the whole association or with individuals or small related groups, so long as any agreement made with the committee is confined to members of the association.¹¹

In *Beverly v. Dallas*,¹² however, the court said that preventing a representative from being recognized as an agent of public employees for the purpose of collective bargaining was not contradictory to the recognition of the representative as a valid agent for the presentation of grievances. But non-recognition, in this case, applied only to collective bargaining agreements. Therefore, with employees having the right to join unions and the unions the right to represent the employee in most negotiations with the city, the question remains as to what type of agreement they can legally establish.

A COLLECTIVE BARGAINING AGREEMENT

The judiciary has defined a collective bargaining agreement as an agreement which

. . . establishes in a general way reciprocal rights and responsibilities of the employer, employees collectively and the union . . . [but] establishes no concrete contract between the employer and any employee . . . [and] is only an agreement as to terms on which contracts of employment may be satisfactorily made and carried out.¹³

The actual contract is the next step. It is formed through negotiations during which the terms of hiring, working conditions and pay scales are discussed and agreed upon. This type of agreement is what the union desires, what the municipality would grant, but what the courts will not permit. They have set forth the following arguments against entering such an agreement.

1. A collective bargaining agreement would conflict with civil service laws; (*contra*) the agreement could be made subject to the civil service law.

2. The agreement would be an unlawful delegation of a legislative

11. *Norwalk Teachers' Ass'n v. Board of Education of City of Norwalk*, *supra* note 6, at 486.

12. *Tex. Civ. App.*, 292 S.W.2d 172 (1956).

13. *Bridges v. F. H. McGraw and Co.*, Ky., 302 S.W.2d 109, 112 (1957).

matter; (*contra*) in any contract entered by a municipality there is some relinquishment of discretion.

3. The agreement would favor the union employees over the non-union employees; (*contra*) only if it provides for closed shops or dues check-off.

4. The agreement would adversely affect the grievance procedure; (*contra*) the employee can retain the right of personal presentation of grievances.¹⁴ Also, if the state has created a grievance procedure, the agreement can be made subject to the existing statute.¹⁵

The second argument is the one relied upon most often by the courts.¹⁶ It constitutes the foundation for a wall of decisions confining collective bargaining to private industry.¹⁷ At least once, however, the judiciary has decided in favor of a municipal collective bargaining agreement. In the case of *Civil Service Forum v. New York City Transit Authority*,¹⁸ the court said,

Since there is nothing in the statute creating the authority, in the Constitution or in any other applicable statute which interdicts the execution of a collective bargaining agreement by the defendant authority with the unions the court is of the opinion that under the broad powers granted the Transit Authority it could properly enter into the agreement in question.¹⁹

This case, reaffirmed in *Neil v. Wagner*,²⁰ apparently disregarded *Railway Mail Ass'n v. Murphy*²¹ which expressly denied a municipality the right to enter into a collective bargaining agreement. In the space of a mere thirteen years, the court had completely reversed itself. However, many courts feel that permission must be expressly granted by the legislature before they will allow the agreement to stand. Recognizing this directive, the legislatures of California, Massachusetts, Michigan, Minne-

14. 56 MICH. L. REV. 645, 647, 648 (1958).

15. *E.g.*, 43 P.S. § 215.2.

16. *Fellows v. LaTronica*, 151 Col. 300, 377 P.2d 547 (1962); *International Union of Operating Engineers v. Water Works Board of the City of Birmingham*, 276 Ala. 462, 163 So. 2d 619 (1964).

17. *International Union of Operating Engineers v. Water Works Board of the City of Birmingham*, *supra* note 16; *Miami Water Works Local No. 654 v. City of Miami*, 157 Fla. 445, 26 So. 2d 194 (1946); *Norwalk Teachers' Ass'n v. Board of Education of City of Norwalk*, *supra* note 6; *Nutter v. City of Santa Monica*, 74 Cal. App. 2d 292, 168 P.2d 741 (1946); *Railway Mail Ass'n v. Murphy*, 180 Misc. 868, 44 N.Y.S.2d 601 (1943), *rev'd on other grounds* 326 U.S. 88 (1945).

18. 3 Misc. 2d 346, 151 N.Y.S.2d 402 (1956).

19. *Id.* at 408.

20. 27 Misc. 2d 1053, 211 N.Y.S.2d 598 (1960).

21. *Supra* note 17.

sota, New Hampshire, Oregon, Rhode Island and Wisconsin²² have granted some form of collective bargaining to their municipalities.

Once the union begins collective bargaining, such things as dues check-off and closed shops become problems. Some of the solutions to these problems are readily available. For example, closed shops have not and should not be held applicable to public service. Public service is not a right but a privilege governed by civil service provisions which regulate all of its functions. As Mr. Kaplan, a prominent author in the field of municipal government, expresses it,

Such practices would be held to violate the democratic concept that every citizen may have the privilege of aspiring to public office if he is qualified to assume such responsibility, and he may not be arbitrarily discriminated against in appointment, promotion or retention in the service.²³

Apparently, the courts are in complete agreement with Mr. Kaplan.²⁴

On the other hand, the problem of dues check-off has been viewed differently. Courts, discounting the additional administrative expense the check-off of union dues would entail, have emphasized the fact that this practice could involve the use of municipal power to induce the payment of union dues. Because of this, early cases held dues check-offs inapplicable to municipal agencies; however, *Mugford v. Mayor and City Council of Baltimore*²⁵ established a policy of permitting the practice but only with the agreement of all parties involved. ". . . [I]t is within the power of the City to extend the privilege to members of a union . . . [only if] the request for the deduction comes in the first instance from the individual employee."²⁶ In this way these problems are solved and the way paved for states which have made neither a legislative nor judicial determination.

Pennsylvania is one of the states which has not made some determination on this issue. The question has not been decided even though the opportunity has presented itself several times.²⁷ In *DeBlasio v. Capra*,²⁸

22. Stutz, *Collective Bargaining by City Employees*, 15 LAB. L.J. 696, 700 (1964).

23. Kaplan, *op. cit. supra* note 5, at 331.

24. *Adams v. Brennan*, 177 Ill. 194, 52 N.E. 314 (1898); *Hein v. McCall*, 239 U.S. 175 (1915); *Lewis v. Board of Education*, 139 Mich. 306, 102 N.W. 756 (1905); *Mugford v. Mayor and City Council of Baltimore*, 185 Md. 266, 44 A.2d 745 (1945); *Petrucci v. Hogan*, 5 Misc. 2d 480, 27 N.Y.S.2d 718 (1941).

25. *Ibid.*

26. *Id.* at 747. *But see*, *Hagerman v. City of Dayton*, 147 Ohio 313, 71 N.E.2d 246 (1947) holding the practice of dues check-off invalid when it conflicts with a state statute prohibiting the assignment of wages.

27. *DeBlasio v. Capra*, 413 Pa. 148, 196 A.2d 352 (1964); *O'Donnell v. Philadelphia*, 385 Pa. 189, 122 A.2d 690 (1956); *Philadelphia Teachers' Association v. LaBrum*, 415 Pa. 212, 203 A.2d 34 (1964).

28. *Ibid.*

Justice O'Brien said, "We need not . . . decide the question of automatic renewal of the collective bargaining agreement. . . ." ²⁹ However, in *Philadelphia Teachers' Association v. LaBrum*,³⁰ Justice Cohen entertained ". . . serious doubt as to the Board's authority to recognize or bargain exclusively with a representative so selected."³¹ This statement, as well as others,³² might hinder any attempt to have the court recognize the validity of a collective bargaining agreement between the municipality and its employees' union. In this and other states, because of the practice of avoiding unnecessary issues, there is a great lag between case law and the actual practices of municipalities. Many cities operate under agreements which have never been legally tested. A study of Connecticut towns and cities revealed that "with only two exceptions [out of the 169 municipalities examined] every city with a population of 25,000 or over bargained with employee organizations."³³ Since this is the rule, not the exception, there must be a reason for the unrelenting action of the courts.

Labor union attorneys have expressed the thought that many of the instances in which governmental collective bargaining has been judicially denounced have involved strikes vitally affecting public safety, and that the zeal of the judiciary to protect the public interests has caused these decisions to be based on the seriousness of the immediately threatened situation rather than on the merits of collective bargaining in the governmental area.³⁴

This would certainly be difficult to determine, but it is a fact that courts have been plagued with cases concerning striking and picketing by municipal employees. Opinions emphasize the stress this type of strike places on the public and considering its importance, it would be difficult not to weigh the adverse effects of striking and picketing in reaching any conclusion.

MUNICIPAL EMPLOYEES' RIGHT TO STRIKE AND PICKET

In private employment a union's arsenal is comprised of only one major weapon—the strike; but the arsenal of the municipal employees' union

29. *Id.* at 353.

30. *Supra* note 27.

31. *Id.* at 36.

32. "Indeed, absent statutory authorization, a governmental unit does not have power to bind itself to its employee by the terms of a contract. Rather, wages, hours, retirement benefits and many other conditions of employment are established by ordinance or directive of the duly authorized municipal authority. . . ." *Pittsburgh City Fire Fighters Local No. 1 v. Barr*, 408 Pa. 325, 184 A.2d 588, 591, 592 (1962).

33. *Supra* note 22, at 696.

34. Cornell, *Collective Bargaining by Public Employee Groups*, 107 U. PA. L. REV. 43, 63 (1958).

has been raided by statutory³⁵ and case law,³⁶ not to mention self-regulatory rules, all of which forbid strikes by municipal employees. Many courts have held that a public employees' strike is contrary to public policy.³⁷ The reasoning is obvious. Today, the role of government is so important that a general strike by municipal employees would cause immeasurable damage. The municipality would be at their mercy and would be forced to follow a dictated policy concerning conditions of employment as well as adhere to demands for fewer hours and greater wages. The result would be a relinquishing of the discretionary power that citizens have placed in the hands of the government. This is approximately the position taken by the court in *Norwalk Teachers' Ass'n v. Board of Education of City of Norwalk*,³⁸ the leading case in the area of municipal employer-employee relations. In that case the teachers went on strike over a dispute concerning salary rates. There, speaking of municipal employees, the court said, "They serve the public welfare and not a private purpose. To say that they can strike is the equivalent of saying that they can deny the authority of government and contravene the public welfare."³⁹ But instead of relying on protection fashioned by the courts, many states have passed anti-strike acts⁴⁰ to prevent such occurrences. This legislation may stem from the fact that

occasional threats of organized public employees and actual strikes by public employees against governmental agencies have from time to time caused embarrassment not only to public officials but to leaders of employee organizations, as well as taxed the patience of the public. These have engendered more heat than light toward resolving the issue of government-employee relationships.⁴¹

A majority of unions are extremely aware of the fact that any activity which places their cause in an unfavorable light ultimately injures the union. In order to prevent this, "many organizations of public employees, whether or not they bear the title of unions, have clauses in their con-

35. 43 P.S. § 215.1 (Penna.); Civil Service Law § 22-a(2) (N.Y.); Comp. Laws § 423.202 (Mich.).

36. *Norwalk Teachers' Ass'n v. Board of Education of City of Norwalk*, *supra* note 6; *Railway Mail Ass'n v. Murphy*, *supra* note 17.

37. *City of Detroit v. Division 26 of Amalgamated Ass'n of Street, Electric Railway and Motor Coach Employees of America*, 332 Mich. 237, 51 N.W.2d 228 (1952); *City of Cleveland v. Division 268 of Amalgamated Ass'n of Street Railway Employees*, 41 Ohio 236, 90 N.E.2d 711 (1949).

38. *Supra* note 6.

39. *Id.* at 485. See also, *City of Cleveland v. Division 268 of Amalgamated Ass'n of Street Railway Employees*, *supra* note 37.

40. *Supra* note 35. See also, *Pruzan v. Board of Education of City of New York*, 25 Misc. 2d 945, 209 N.Y.S.2d 966 (1960) holding an anti-strike law constitutional.

41. Kaplan, *op. cit. supra* note 5, at 325.

stitution forbidding strikes or work stoppages."⁴² Other unions, however, fail to see the value of this and employ every means available to enforce their demands.

Picketing is the most common method of enforcing demands. In *City of Alcoa v. International Brotherhood of Electrical Workers*,⁴³ the issue was whether or not city employees could strike, thus compelling the city to enter a collective bargaining agreement. The court held that a union cannot picket a city for an illegal purpose⁴⁴ and that a collective bargaining agreement is just such a purpose. The court felt that

. . . the strike and picketing as carried on in this suit were unlawful and contrary to the public policy of this State, regardless of the fact that the employees involved were employed in connection with a private proprietary function of the City.⁴⁵

Recently, a trade union's right to picket a municipal function was upheld.⁴⁶ The union was not an employee organization but a plumbers' union protesting the city's use of non-union labor in the municipal water works. The court said that the union had the right to inform the people of this practice and did not enjoin the picketing.

Therefore, the right to picket seems to be permissible when it has, for its main purpose, public enlightenment (publicity picketing); however, where it can be shown that the organization is attempting to compel an illegal act, it will be enjoined.

CONCLUSION

In the area of collective bargaining, there appears to be a lag between the actual practice of municipalities in entering such agreements and of the judiciary in determining their validity. When the determination is made, even if, once again, the agreement is struck down, municipal labor will have taken another step up labor's ladder. Municipalities, by adopting this course of action, are showing the courts that they believe this type of agreement will benefit their citizenry as well as their employees.

Just as the value of the union was obscured by erroneous prognostications, the value of collective bargaining agreements has likewise been

42. *Supra* note 34, at 51, 52; *Beverly v. Dallas*, Tex. Civ. App., 292 S.W.2d 172 (1956).

43. 203 Tenn. 12, 308 S.W.2d 476 (1957). See also, *Weakley County Municipal Electric System v. Vick*, 43 Tenn. App. 524, 309 S.W.2d 792 (1957).

44. See *City of Los Angeles v. Los Angeles Bldg. and Const. Trades Council*, 94 Cal. App. 2d 36, 210 P.2d 305, 312 (1949) where the court said ". . . defendants' objectives are contrary to the law and to prevailing public policy, injunctive relief against both striking and picketing to accomplish those objectives is not violative of any Constitutional limitations."

45. *Supra* note 43, at 482.

46. See *West Frankfort v. United Association of Journeymen*, 53 Ill. App. 2d 207, 202 N.E.2d 649 (1964).

misinterpreted. Eventually, the court or the legislature will have to yield to pressures exerted by the employees, the unions and especially the municipalities. Municipalities have found that collective bargaining is the most practical course available, for an employee will not function efficiently if he is under the impression that his employer has an unfair advantage. This advantage, if it exists, exists only because of court decisions.

To circumvent these decisions, home-rule cities are passing ordinances and states are passing statutes providing for collective bargaining agreements.⁴⁷ This seems to be the trend and thus the more progressive courts are following this.⁴⁸ In the final analysis, municipalities and employees' unions must meet at the bargaining table. Eventually, this method will be acceptable to all concerned—the unions, the municipalities and the courts.

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47. *City of Manchester v. Manchester Teachers Guild*, 100 N.H. 507, 131 A.2d 59 (1957); *Professional Fire Fighters Inc. v. City of Los Angeles*, 32 Cal. Rptr. 830, 384 P.2d 158 (1963).

48. *Supra* note 18.