The Journal of Law and Education

Volume 2 | Issue 3 Article 5

7-1973

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Much of the literature related to the emerging law of public sector labor relations deals with states or jurisdictions where the relationships between the parties are regulated to a significant extent by law. However, over half the states do not have comprehensive schemes requiring such relationships.[1] Since most jurisdictions do have some degree of organization and some even have rather intensive organization, it is hoped that it will be of assistance to the readership to present a set of articles, one from the management perspective and the other from the union point of view, describing the problems and strategies involved in coping with concerted activities in the absence of statute.

Three different categories of insights might be derived from the thoughts provided by attorneys Granville M. Alley, Jr. and V. James Facciolo, who are headquartered in Tampa, Florida and who have a nationwide management practice, and Eugene Green, who represents teachers associations in Ohio—both states where there is no comprehensive system requiring collective bargaining. First is the obvious guidance intended for those who want to know what to do where there is no legislative direction. Second, is an understanding of the development of the law which affects even those jurisdictions with comprehensive laws.

Many of the important decisions by the courts have arisen in the context of a state without a statutory system. Illinois was the locale for *Pickering*

[1] Twenty states may be said to require collective bargaining for teaching personnel: Alaska, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin. In addition, Kansas, Nebraska and Oregon, which require only a meet-and-confer relationship (where there is no obligation to try to reach an agreement) provide bargaining rights for higher-education faculty members. Finally, it might be said that California, Florida, Idaho and Texas permit meet and confer arrangements. It should be noted, however, that several jurisdictions permit, as the result of litigation, bargaining in the absence of statute. *See,* Chicago Div. of Ill. Educ. Ass'n v. Board of Educ., 76 Ill. App. 2d 465, 222 N.E.2d 243 (1966) and East Chicago Teachers Union, Local 511 v. Board of Trustees, 3d Dist. Ct. App. (Ind. 1972), citing *Chicago Division, supra,* with approval. Although declining to follow *Chicago Division,* the Arizona Court of Appears held in Board of Educ. v. Scottsdale Educ. Ass'n that the board could engage in a form of negotiations with its teaching personnel but could not enter into a binding agreement.

v. Board of Education,[2] where the Supreme Court recognized the right of public employees to criticize publicly their employers. Nebraska was the locale for *AFSCHE v. Woodward,*[3] at a time when there was no statute, where the Eight Circuit Court declared that all public employees have a constitutionally protected right to organize in the public sector. Indiana was the locale for *Anderson Federation of Teachers, Local 519 v. School City of Anderson,*[4] where the Indiana Supreme Court held by a 3-2 vote that there is no right to strike by public employees, but where the eloquent dissent is widely quoted by proponents of the right to strike by public employees. Other decisions have their antecedents in situations that developed prior to a statute. Moreover, the critical decisions more often than not involve teachers.

The third category concerns the problems that might occur in the future as the result of the absence of law now. The reader might want to consider, while perusing the two articles, whether the problems raised provide any insight into whether unit determinations or the treatment of principals might create difficulties under a statutory scheme. Similarly, consideration might be given to whether the scope of bargaining engaged in under a *de facto* situation might later reflect itself in a statute. There are other possibilities worth examining:

1. Does the postponing of a legal structure sometimes seem to impugn the vitality of or strength of existing organizations and lead to the ascendency of tougher more militant unions?

2. Does the postponing of a law lead to its later adoption in response to a crisis? And is a law hurriedly put together apt to have poor draftsmanship and errors that will meaningfully affect the relationships of the parties?

3. Will parties waiting for a law to come about be so frustrated that there will be inadequate time for the parties to be trained and neutral administrative machinery established?

4. Will waiting for a law too long bring about the glamorization of the law into an idealized panacea rather than a tool to make the collective bargaining process work and will the attendant frustrations and impatience impair the efforts of the parties to make the law work?

5. Will delay in legislation bring about enactment of more liberal laws?

6. If the states do not act, will Congress?

7. Will the deferral of law until there is strong enough interest to generate passage be more apt to bring about an evolving and growing development of the relations of the parties in a manner more prone to produce harmony than a system imposed before a large number of the "actors" are willing to accept it or are prepared to deal with it?

[2] 391 U.S. 563 (1968).

[3] 406 F.2d 137 (8th Cir. 1969).

[4] 252 Ind. 558, 251 N.E.2d 15 (1969).

Although the two articles do not purport to directly answer these questions they do offer deep insights that might be helpful to the reader in making tentative conclusions. In the meantime, the Public Employment Relations Research Institute, with the help of funding by the United States Department of Labor, is endeavoring to explore some of these areas and hopes to report by the end of 1974 on what have been some of the experiences in this regard.

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