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Limited Right to Strike Laws - Can They Work When Applied To Public Education? - A School Board Member

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The Limited Right to Strike Laws—Can They Work When Applied to Public Education?

A SCHOOL BOARD MEMBER'S PERSPECTIVE

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The School District of Philadelphia experienced a sixteen-day strike of its teachers in September, 1972 and another forty days of strike during the months of January and February, 1973. All of this took place in spite of a state statute, Public Employees Relations Act, July 23, 1970, P.L. 563 (Act 195), which gave only a limited right to strike to public employees. This statute provided for judicial review to determine if a strike should be allowed to continue when certain conditions were found to exist.

As a Member of the School Board in Philadelphia and as Chairman of its Negotiating Committee, it became my duty to follow the negotiations carefully. In the later days of the negotiations, I took an active part on the management team. This experience raised many questions in my mind relative to the efficacy of a limited right-to-strike law and possible alternatives.

Prior to July 23, 1970, it was the law in Pennsylvania that no public employee had the right to strike and no person exercising any authority over public employees had the power to authorize or consent to a strike by one or more public employees. This prohibition was added to the Pennsylvania Public School Code by the Act of June 30, 1947, P.L. 1183.[1] Further, any public employee who violated the prohibition against strikes was subject to the penalty of losing his position and might regain the same only with limited rights of reemployment.[2] If such an employee was reemployed, he could not receive more money than received by him prior to the strike. His compensation could not be increased until the expiration of three years from such reemployment. Such employee would be on probation for five years following such reemployment during which period he would serve without tenure and at the pleasure of the appointing officer or body.[3]

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[1] SCHOOL LAWS OF PA., §3303 (1947).

[2] *Id.* §3304.

[3] *Id.* §3305.

In spite of this prohibition against strikes by school teachers with its attendant penalties, there were a number of strikes (*e.g.*, some twenty-three teachers' strikes during the spring of 1969) culminating with a variety of consequences. In most of these cases, when the strikes were settled, there was usually an amnesty clause or simply a failure to exert any penalties against the striking teachers.

In Philadelphia, in September, 1970, toward the end of the negotiations between the Board of Education and the Philadelphia Federation of Teachers, there was a short strike. This strike ended in an agreed settlement with the assistance of the good offices of the Honorable D. Donald Jamieson, President Judge of the Common Pleas Court of Philadelphia County.

Fines were levied against the union for violating the prohibition against strikes, but these fines were finally remitted when the strike was settled. It became quite clear that the provisions of the law prohibiting strikes were ineffectual and changes were necessary. In other states similar laws prohibiting teachers' strikes were experiencing the same frustrations.

In Pennsylvania, the legislature created a Commission for the Revision of Pennsylvania Public Employee Laws known as the Hickman Commission. This Commission held many hearings prior to the introduction of a bill relating to the matter of collective bargaining by public employees and their right to strike. The Hickman Commission's work resulted in the legislation known as Act 195 which was passed by the legislature and signed into law on July 23, 1970 by the Governor, Honorable Raymond P. Shafer. This Act became effective ninety days after enactment with certain minor exceptions. Further, this Act repealed the aforementioned, earlier Act of June 30, 1947 (P.L. 1183) prohibiting strikes by public employees.

Act 195 is a labor relations law which governs collective bargaining relations between public employers and public employees. Section 101 states the "Public Policy" as follows:

> The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employees subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employees are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution. Within the limitations imposed upon the governmental processes by these rights of the public at large and recognizing that harmonious relationships are required between the public employer and its employees, the General Assembly has determined that the overall policy may best be accomplished by (1) granting to public employees the right to organize and choose freely their repre-

sentatives; (2) requiring public employers to negotiate and bargain with employee organizations representing public employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the public employee, the public employer and the public at large.

This act made it possible for the first time for public employees, including Commonwealth employees and employees of the public schools (but excluding policemen and firemen), to bargain collectively.

With the Public Employee Relations Act now on our statute books, it was felt by the legislature and by the board of education members that the collective bargaining process would proceed in a more orderly manner. In addition, the availability of third parties serving as mediators and fact-finders as an aid to final settlement was reassuring to the board. The strike as a weapon to effectuate final settlement was looked upon as an act in extremis. It was thought that if the parties bargained in good faith and properly utilized the impasse procedures, strike confrontations would be minimized.

When Act 195 was passed in 1970, the School District of Philadelphia had already effectuated four successive collective bargaining agreements with the Philadelphia Federations of Teachers, AFL-CIO. The first collective bargaining contract was entered into in 1965 and was of one year's duration. There were subsequent contracts for the periods 1966–68, 1968–70, and 1970–72. The latter contract terminated on August 31, 1972.

Negotiations for a new agreement (to take effect September 1972) commenced in October, 1971. This date was dictated by PERA. The Federation submitted as their demands approximately four hundred and eighty proposals. Their wage proposals included a demand for a thirty percent wage increase. The Board took the position that in view of the projected deficit of fifty-two million dollars ($52,000,000) for 1972–73, there could be no wage increase. However, the board proposed that, if funds within the budget could be released by the elimination of some existing non-wage monetary benefits, the money made available thereby could be used for wage increases. Another major proposal raised by the board was that the length of the senior high school teacher day be increased. The Philadelphia high school teacher day is one of the shortest in the country and one that, therefore, required additional paid overtime teacher hours to meet the state mandated minimum instructional hours.

Through the fall and winter of 1971–72, negotiations continued with no measurable progress. The state mediator entered the negotiations in November, 1971, as required under the terms of PERA. The Pennsylvania Labor Relations Board chose not to impose fact-finding. Perhaps because of the volume and complexities of the issues, fact-finding seemed to offer

little prospect of success at that time. By the spring of 1972 it was clear that the negotiations were moving very slowly. Agreement had been reached on only a handful of minor non-economic issues. The summer of 1972 found the parties involved in additional jockeying which accomplished no agreement. The Philadelphia Federation of Teachers rejected all of the board proposals. Furthermore, the federation did not withdraw or modify any of the proposals it had introduced at the inception of negotiations.

On September 5, 1972, the Philadelphia Federation of Teachers called for a strike of its membership. The board decided to keep the schools closed during the strike while negotiations continued with the assistance of the state mediator. No agreement was reached.

In late September, 1972, a number of legal actions were filed against the board to compel it to seek to enjoin the strike. These suits were initiated pursuant to the terms of PERA that permit strikes.

> ... unless and until they create a threat or danger to the public health, safety or welfare of the public....[4]

There were two days of intensive conferences which involved the President Judge of the Court of Common Pleas, to whom all the cases were assigned. The parties and representatives of the city administration entered into a *Memorandum of Understanding* which provided for a return to work on September 28, 1972. Thus, this period of the strike lasted for sixteen school days.

The *Memorandum of Understanding* provided that all conditions of the 1970–72 agreement were to be restored and negotiations were to continue under the supervision of Judge Jamieson. Unless an earlier agreement had been reached the Memorandum was to continue in effect until December 31, 1972. By mutual agreement this expiration date was extended to January 5, 1973. Following the execution of the *Memorandum of Understanding,* negotiations were held and only minor progress towards agreement was achieved.

On October 11, 1972, the federation (pursuant to PERA) through its counsel, requested the Pennsylvania Labor Relations Board to invoke fact-finding. The Labor Relations Board appointed as fact-finder Arnold M. Zack of Boston, Massachusetts. A preliminary meeting to work out procedural guidelines was held on October 26, 1972. At that meeting the union objected to a single fact-finder and in lieu thereof asked for a panel of three fact-finders and requested the panel be chosen by the American Arbitration Association. The Pennsylvania Labor Relations Board refused the federation request and affirmed its original decision which designated Arnold M.

[4] Pincus v. Ross, Case No. 654 (C.P. 1972). Fineman v. Ross, Case No. 2791 (C.P. 1972); Keilt v. Ross, No.__(C.P. 1972).

Zack as the sole fact-finder. On seven days between November 8 and December 4, 1972, formal hearings were held by the fact-finder. The proceedings consisted of one hundred and thirty exhibits, over sixteen hundred pages of transcript and thirty-one witnesses (twenty-seven for the board of education and four for the federation). The union presented approximately eighty demands to the fact-finder. This package bore an estimated cost of over 250 million dollars in a three-year period. The board of education presented approximately eight issues. The fact-finder issued his report on December 18, 1972. The federation rejected the fact-finder's recommendations out of hand. The board of education calculated that the fact-finder's recommendations for a three-year package would total 32 to 35 million dollars. Even though its financial burdens would be increased by its acceptance of the recommendations of the fact-finder, the board did favor a peaceful settlement rather than further strike confrontation. The federation persisted in its rejection of the fact-finder's recommendations. On December 27, 1972, the federation presented new proposals with an estimated cost of 108 to 111 million dollars. Since the board of education could not anticipate additional funds, it could not go beyond the fact-finder's recommendations. The board of education held firmly to its position of supporting the fact-finder's report. On January 3, 1973 the union membership voted against accepting the board's offer.

On January 4, 1973 the board of education applied to the president judge for an injunction under PERA to bar the impending strike.[5] The judge at a hearing on January 5, 1973 refused to issue the injunction on the basis that he had no jurisdiction since no strike was then in progress. However, the judge retained jurisdiction of the case.

Negotiations continued over that weekend through January 7, 1973 with no progress. At the last minute, the board of education offered to submit the entire matter to binding arbitration with Judge Jamieson as the arbitrator. The union refused the offer and refused any further extension of the *Memorandum of Understanding*. On January 8, 1973 the strike was renewed.

At the inception of this phase of the strike, the board of education announced that it would keep the schools open during the strike making plans for the operation of special centers for high school seniors and for as many other schools as could function. Additionally, the board of education went to court and sought an injunction. The complaint in equity averred that the strike was a violation of Act 195 in that it imposed a clear and present danger to the health, safety or welfare of the public. During the first week of the strike, and after two days of court hearings, the injunction was granted on January 11, 1973. The injunction declared the strike illegal be-

[5] Ross v. Sullivan, Case No. 558 (C.P. 1973).

cause it was a clear and present danger to the health, safety and welfare of the public. Notwithstanding the injunction, the federation refused to end the strike. The union appealed the case to the Commonwealth Court.[6] A supersedeas was sought by the federation in the Commonwealth Court, but it was denied. On March 13, 1973, the Commonwealth Court ruled against the appeal of the union. The court affirmed that the lower court had jurisdiction to hear the case on January 5, 1973, and that the strike constituted a clear and present danger to the health, safety or welfare of the children of the School District of Philadelphia and of the public.

During the first two weeks of the strike, since the parties were in court much of the time, there were only two negotiating sessions. There were also a few brief conferences with President Judge Jamieson who attempted to act as a mediator, but these efforts also failed to achieve resolution of the dispute.

The negotiations were accompanied by constant and voluminous media coverage. The Mayor of Philadelphia took a strong position in support of the board of education. The publicity reached its peak when, at the mayor's urgency, the board of education negotiating team agreed to meet the union negotiating team on television in a four-hour joint discussion. The television session was held Sunday, February 4, 1973. In retrospect, there was general agreement that the television effort had only created an opportunity for grandstanding and had not helped but rather impeded progress of the negotiations.

During this period the union leadership and its executive board steadfastly refused to obey the injunction which required an end to the strike. President Judge Jamieson, after jury trial, held the union president and the chief union negotiator on criminal contempt charges and sentenced them to prison for six months to two years. He also levied a ten thousand dollar daily fine against the union itself for every day of continued strike. This sentencing of the two union leaders brought the negotiations to a close until the judge released the two union officials from prison during the day in order that they participate in the negotiations. In a separate proceeding following the strike, the members of the union's executive board were convicted of contempt and fined. Appeals were filed on their behalf. To date all appeals have been denied by the Commonwealth Court. The Supreme Court of Pennsylvania is presently deliberating on whether to allow an appeal.

Because of the operation of the schools, the injunction and contempt convictions, the local labor movement rallied full support for the Philadelphia Federation of Teachers. George Meany, President of the AFL-CIO, sent representatives to Philadelphia to investigate and report back to him

[6] Philadelphia Fed'n of Teachers v. Ross, Case No. 46 (Pa. Cmwlth 1973).

on the strike. The city labor movement planned a demonstration first designated as a one-day general strike and later called a "Day of Conscience." This one-day demonstration was to take place on February 28, 1973. Meanwhile, the federation turned to mass picketing at selected school locations. Another court order was issued banning such picketing and over a period of a week, several hundred picketing teachers who violated the proscription were arrested.

The mayor met several times with groups of city labor leaders to provide them with opportunities to explain their position. At one such meeting, the mayor made a public statement increasing the offer of the board of education by ten million dollars, which sum was to be contributed from the city's own budget. Subsequently, on another occasion, the mayor added a second ten million dollars from his own budget to the board of education's offer.

Toward the latter part of February, 1973, the president of the board of education, a leader of the local International Ladies' Garment Workers Union and a vice-president of the Philadelphia AFL-CIO Council, resigned from the latter body. On February 20, 1973 he also tendered his resignation as president of the board of education. He felt that his role in the teachers' strike had caused a conflict in his personal labor role, and he hoped that his resignation from the school board presidency might improve the chances for a settlement. His offer of resignation was accepted neither by the board of education nor by the Mayor of Philadelphia.

On February 22, 1973, W. J. Usery, Assistant Secretary of Labor, was sent by President Nixon to mediate the dispute. He was assigned by President Nixon, apparently in response to a request from George Meany. Mr. Usery first spent two days conferring separately with the parties—the Mayor, the state mediator, labor leaders and others. Then, on Saturday, February 24, 1973, he called the parties back into joint session. The first session ran into Sunday, a total of thirty-one hours. On Monday, February 26, 1973, another meeting was held. Following this continuous twenty-four hour session, a settlement to this protracted labor dispute was reached.

The actual details of the settlement are of lesser importance to the purpose of this article. The details and ramifications of the strike have been presented to show how complicated and diversified this strike became. Act 195 permitted a limited right to strike, but once the confrontation got under way, the subsequent legal attempts to stop the strike pursuant to the same act proved fruitless.

What did the strike teach us? Many said that Act 195, when challenged by a strong militant union, had proven itself to be powerless. The federation took the position that it had a higher right to strike which could not be limited by any state statute or by court decisions.

Interestingly enough, soon after the termination of the teachers' strike, another labor dispute arose in Philadelphia, and Act 195 again was tested. This dispute arose between the management of the Southeastern Pennsylvania Transportation Authority (SEPTA) and its employees over a new collective bargaining agreement. The provisions of the act for mediation and fact-finding were followed. A final settlement was agreed upon based on the fact-finder's recommendations. In this case, the parties were anxious to avoid a strike, and the machinery of Act 195 gave them a framework and process for settlement without strike confrontation.

The problems with PERA came to the fore when the parties were not willing to abide by the machinery and processes of the act and were willing to go to the ultimate step of a strike with all of its consequences.

It was perhaps predictable that the bitterness and intensity of the 1972–73 teachers' strike would set off the following chain of consequences:

The legislature of Pennsylvania set up an investigating committee to review Act 195 with a view to determining whether there was any need for revision. In the short time of about three years since the passage of Act 195, the strike provisions had come under severe attack and there was wide clamor for their elimination.

On May 17, 1973, Station KYW-TV, in its editorial comment, reported that there had been more than a hundred and thirty strikes since the passage of Act 195. Although the right of public employees to collective bargaining was supported by the station, it did not support the right to strike where a strike disrupted essential public services. The editorial decried the failure of existing machinery for mediation and fact-finding, although recognizing that in the Philadelphia teachers' strike the ultimate settlement was influenced by the fact-finder's recommendations. The editorial ended with the following statement:

> We think the state law (Act 195) should be strengthened to provide some kind of incentive for bargaining without strikes and without court action. We think the answer is compulsory binding arbitration for public employees after normal bargaining, mediation, and fact-finding have failed.

On May 18, 1973, the *Evening Bulletin* reported from its Harrisburg Bureau in the State Capitol that the Pennsylvania State Labor Relations Board officials recommended no major changes be made in the State's Public Employees Relations Act (Act 195). Chairman Schieb said that unions have won exclusive bargaining rights under the law for more than two hundred and fifty thousand employees with over fifteen hundred labor contracts negotiated since October, 1970. Concerning the large number of strikes since the passage of the law, Mr. Schieb commented:

> Whether or not the Commonwealth recognizes the right of public employees to strike, strikes cannot be legislated out of existence. Fifteen states had illegal teachers' strikes during the last school year.

Counsel for the Pennsylvania Labor Relations Board said:

> Part of the hangup is the overlap in bargainable elements. Until these elements are resolved by courts, one party or the other is not going to give in.... We expect that within six to eight months, we will have decisions determining what is bargainable.

The Commonwealth Court on June 6, 1973, handed down an important decision affecting what is bargainable.[7] This test case ruled that the public employer must participate in good faith in collective bargaining with respect to wages, hours and other terms and conditions of employment. The court added, however, that even if a proposed item for collective bargaining does involve such matters, it is not bargainable when the item also involves matters of inherent managerial policy.[8]

There is an interesting and serious loophole in this decision. The language of Act 195 says that the public employer shall not be required to bargain as to matters of inherent managerial policy. The court notes at this point in its decision that public employers are, of course, free to bargain but are not required to do so by Act 195.

Will this decision interpreting Act 195 affect negotiations so as to reduce the incidence of teacher strikes? I believe it will not. Prior items on the negotiating table will tend to reappear, and the special note in the decision leaving the negotiating option with the public employer almost certainly assures repetition of matters of inherent managerial policy.

If public employers strongly resist bargaining about the twenty-one listed items, militant unions might resort to strikes which brings us back to the original question of how to control such a confrontation once started or how to prevent the strikes initially.

Harry Boyer, President of the Pennsylvania AFL-CIO, defended the law. He declared that his group would oppose any move to amend Act 195 to prohibit all strikes and to impose compulsory arbitration. "Yes, there have been some few strikes and of short duration at the local level, but hardly enough to justify a challenge to Act 195." He told the committee that he suspected that the legislative review stemmed from "the unhappy, regrettable strike by teachers in Philadelphia" and the loss and limitations

[7] State College Educ. Association v. Penn. Labor Relations Bd., Case No. 1162 (Pa. Cmwlth 1972); Penn. Labor Relations Bd. v. State College Area School Dist., Case No. 1162 (Pa. Cmwlth 1972).

[8] The specific items deemed to be outside the realm of the board's obligation to bargain are listed in the preceeding article by Judge Bromiaski.

on politicians to hire and fire public employees on a patronage basis because of negotiated labor contracts.

The Philadelphia teachers' strike provided a deeper involvement of the parties in the political life of the city and state. Organized labor unions, citizens and ethnic groups, community organizations and others flexed their political muscles in their endeavors to influence the mayor, city council, legislators, and the governor to intercede and to seek to terminate the strike. Political rivalries and political considerations often had their own hidden agendas making consideration of the issues of the strike secondary in importance and priority. The parties to the collective bargaining negotiations began to be involved in a miasma of politics with an increasing loss of stature by the board of education in its efforts to operate the public schools in Philadelphia.

Another factor in the dynamics of the dispute was the injection of court pressure into the teachers' strike. After the first phase of the strike in September, 1972, Judge Jamieson became involved through various legal actions. He tried to act as mediator, supervisor of negotiations, as judge in ruling upon the legality of the strike under Act 15, and finally, as judge in the contempt proceedings after the union refused to abide by his ruling that the strike was illegal. The imprisonment of the two union leaders, pursuant to the court's sentence, further polarized the community, raising the emotional climate surrounding the entire tragic strike situation. The court, in attempting to compel the union leaders to obey the injunction and stop the strike, experienced serious frustration.

Another consequence of the strike was the inevitable polarization within the school community. The school board decided to keep the schools open during the second phase of the strike because certain sections of the community objected to the loss of schooling during the first phase of the strike. The striking teachers became increasingly embittered against non-striking teachers who crossed the picket lines, against their principals in charge of the school buildings, and against parents and children who utilized the school facilities during the strike. This embitterment led to mass picketing which in turn led to further legal prohibitions followed by violations of the court orders and even acts of violence and vandalism against school property and the property of non-strikers. "Scab" and worse epithets were freely hurled by strikers at non-strikers and against school board members. As the strike temperature rose, violence became more evident. There was even one occasion when mass picketing was conducted around the Pennsylvania State Office Building where a negotiating session was to take place, and this writer, a member of the board of education negotiating team, was encircled by the strikers in a menacing manner.

Lastly, another important consequence was the posture of the teachers

in the eyes of the public. Parents of students saw some teachers acting crudely on the picket line and using vile language. They saw striking teachers violating the law and the orders of the court. How were these same teachers now going to seek to enforce law and order in their own classrooms when students asserted their own alleged rights above and beyond the rules and regulations of the school? Students crossing picket lines were condemned by striking teachers. Parents were vilified. All of these acts have created an atmosphere of hostility that will be difficult to eradicate for months or even years after the strike settlement.

Further, these acts, together with inflammatory statements made by well-meaning and angry Philadelphians, promoted, unwittingly, a situation which will have far-reaching effects on our lives for, nationally, the educational failures of our inner-city schools have disgusted the taxpayers. Unwilling to face responsibility for the failures of our total society, these good men and women have taken comfort in the advocacy of some vocal educators and laymen who have attacked public education as having outlived its usefulness. This board member is deeply concerned that a society which must depend on an educated population to be an intelligent electorate must face eventual failure if each child cannot be guaranteed an opportunity for equal, quality education. This goal, notwithstanding the many failures, will only be achieved with a vital system of public education.

Thus, in the passions of the strike, the vilification and denigration of all teachers as mercenary, unconcerned laborers provided a platform for destructive attacks not only on the role and persons of our teachers, but on the value of public education as well.

An amnesty clause had to be negotiated and agreed to by both parties at the end of the strike. In spite of this amnesty clause, a special committee of union and management personnel had to be established to handle matters of bitterness and hostility in the schools arising from the strike.

The bitterness and hostility that characterized the strike was carried into the schools following the settlement. Arguments between strikers and non-strikers; refusal of teachers to work with each other; refusal of one group of teachers to even speak to the other or to administrators, were the most common kinds of reactions in the schools.

A common form of harassment against non-striking teachers was the delivery of a flood of unwanted magazine subscriptions; delivery of pizzas, flowers, diaper service and other anonomously ordered service. There were also cases of damage to non-strikers' automobiles.

The most distressing aspect of post strike bitterness is the effect on children. There have been cases of teachers explaining to their children the meaning of "scab". In other cases, a child sent to a teacher on an errand has been turned away because one teacher will not respond to the other.

Recriminations and accusations were posted in schools or sent to teachers and administrators. Typical of these was an "open letter" to the principal of one high school which ended with:

> Finally, do *not* expect a "forgive and forget" attitude as was propounded by some after the last stoppage. The scars are too deep this time and will take years to heal. Gird yourselves for some monumental changes in the years ahead—changes that will make every union teacher who was in the fight PROUD OF HIS ROLE AND SORRY FOR YOURS.

The majority of the problems arose in the internal school relationships which are not subject to correction by an order or directive, yet they are the most difficult in terms of their effect on the children and the schools' program.

The committee established by the parties consisted of the president and general vice president of the union and the executive deputy superintendent and the director of labor relations of the school district. This committee has attempted to work quietly and use persuasion and mediation as its tools. Without power to order or direct, the committee has tried to serve as a clearing house and channel of communications between the parties.

In the four months following the strike, the committee has considered approximately sixty problems with an approximately even distribution between those presented by the union and those presented by the administration. Many have been dealt with; some that are intangible matters of attitude have continued. Certainly, there are a large number of problems that have not been called to the committee's attention. The level of bitterness and hostility has declined since the strike. In many schools, teachers and administrators went back to work to pick up the pieces of a shattered school year. The relationship with the union in matters of day to day contract maintenance has remained, for the most part, at arm's length with an unprecedented number of grievances being referred to arbitration and several matters in the courts.

The prospects for the next school year indicate a lessening of the tensions but deep and tragic scars that will last for years.

As a board member, I observed the entire process from the beginning of negotiations through the sixteen-day strike and the ensuing forty-day strike. During the latter days of the first strike, I participated on the negotiating team which brought an end to the strike by means of the *Memorandum of Understanding*. During the last month of the ensuing strike, I again participated as a board member on the negotiating team for the board of education until final settlement. My observations lead me to the following conclusions:

(a) Teachers and other employees in the public sector should have the

right to organize and bargain collectively through authorized representatives selected by them. The agreement reached should be reduced to writing and signed by the parties involved in the collective bargaining.

(b) Proper machinery for resolving impasses should be utilized by the negotiating parties when they reach impasses. Mediation must be resorted to if the parties cannot resolve their differences and have not voluntarily sought mediation.

(c) If mediation is unsuccessful, fact-finding should be utilized to resolve the impasses. The fact-finding can be done by one individual or a panel. In this situation, both parties should present the issues and all the facts supporting them. These parties, with proper witnesses, should be subject to cross-examination so that the fact-finder gets a full and complete picture of the matters dividing the parties. The fact-finder should make recommendations to resolve the issues presented.

(d) If fact-finding does not lead to settlement, a method other than a strike must be devised. My experience in the Philadelphia teacher's strike leads me to believe that "a limited right to strike" is a fantasy, for once a strike is set into motion, it will quickly reach proportions making it impossible for the union leaders to turn it off. In a teachers' strike, there is no competing school business to cause the pressure of the marketplace as a force for settling the strike. If the strike lasts any length of time, the students lose precious schooling that can never be made up. In the Philadelphia teachers' strike of 1972–73, the eleven weeks of the strike greatly impaired the whole school year for the students. It not only deprived hundreds of thousands of students their academic training, but it produced a cynicism against the adults, both professionals and citizens.

(e) The final step must be some form of third party arbitration. Historically, neither management nor labor wanted compulsory arbitration. On the other hand, when both parties agree in advance, voluntary arbitration can be effective.

George Meany, President of the AFL-CIO, recently suggested something of this sort for school teachers. He said:

> I think there is a basic right of an individual to quit his job if he doesn't like the conditions under which he works. On the other hand, there is a basic right of the general public to expect service from these workers, and it represents a very, very difficult problem. It might be that you could set up some sort of system of voluntary arbitration by which the union would agree that their conditions would be set up, not by some politicians holding a public office, but by some system under which impartial people will give consideration to the dispute.

The 1970's must look to some sort of arbitration to settle finally the disputes in the public sector, if the voluntary negotiations by the parties do

not resolve the issues. My own suggestion would be that if fact-finding is used in the impasse procedure, the report of the facts and recommendations should be given great importance and weight. In subsequent arbitration, the arbitrator should make his determination based solely on the facts presented to the fact-finder. This would give status and importance to fact-finding that would induce acceptance of the fact-finder's report by the parties. It would eliminate the advantage sought by the side which does not like the recommendations to resort to arbitration with proceedings de novo. Further, it would tend to prevent use of the fact-finder's report as a new floor for negotiations in the presentation of material to the arbitrator.

Whatever final form the arbitration will take, I believe that this process is preferable for public education. The consequences of a strike as traumatic and devastating as the 1972–73 strike experience in Philadelphia are too dire and too devastating to be acceptable in public education. Continued good labor relations in the public sector require that we create a more healthful and less destructive plan than the strike for the resolution of problems dividing the parties to a collective bargaining dispute in public education.