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Hugh D. Jascourt

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HUGH D. JASCOURT*

Both union and management adherents will concede that strikes by public employees, including those employed by educational institutions, are undesirable. Although the qualifying adjectives they may apply will differ, they will concede that there is a "price" to be paid for the interruption of school functions by work stoppages—whether it may be measured by the impact upon the learning process, the loss of pay by strikers, the consequences to the parents of school children, the personal interrelationships ensuing upon the resumption of work, or other circumstances too numerous to mention. Whether or not this "price" is too high to pay depends upon the value structures of those making the judgment and upon the circumstances of the specific case.

Nevertheless, the continued incidence of school strikes has not abated, as indicated by Table 1 of the companion article by Steven B. Rynecki. Nor has the intensity or duration of such strikes ameliorated as should be obvious by the mere mention of the school strikes in Hortonville, Wis. or Timberlane, N.H. If anything, the incidence is likely to rise. Faced with the economic conditions afflicting most states, dissatisfied teachers are not as likely to quit and switch to a different school district or to obtain a non-teaching job. Moreover, legal sanctions against strikes have continued to erode, as illustrated by two recent examples. The Michigan Supreme Court has determined that the Michigan Employment Relations Commission may determine whether striking teachers may be excused from discharge or other sanctions allowed by the state law if MERC were to find that the strike was provoked by unfair labor practices of the employer despite the illegality of the strike and even if the strike originally began as an economic strike.[1] The California Supreme Court held that a strike settlement agreed to by a school board and manifested by a school board resolution could not be vitiated by the illegal or coercive nature of the strike.[2]

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* Director, Public Employment Relations Research Institute; Labor Relations Editor, JOURNAL OF LAW AND EDUCATION.

[1] *Rockwell v. Board of Educ. of Sch. Dist. of Crestwood,* 57 Mich. App. 636, 226 N.W. 2d 596 (1975).

[2] *City and Cty of San Francisco v. Cooper,* 120 Cal. Rptr. 707, 534 P. 2d 403 (1975).

The real question is whether there is a viable alternative to the strike. Most of us are willing to pay the "price" of the inefficiencies, temporary imbalances, and other inequities inherent in a democratic form of government because the "price" to be paid by other forms of government is less acceptable. Opinions differ on the price imposed by compulsory arbitration.

In the past several years several jurisdictions have tried to obviate the perceived need for the strike weapon by substituting some form of imposed settlement upon the parties by means of "compulsory arbitration". This term means that not only is arbitration required when one party requests it or certain designated circumstances trigger it, but also that the decision reached by the arbitrator is binding upon the parties.

By 1972 such laws were adopted with respect to firefighters by Wyoming and Rhode Island, with respect to both police and firefighters by Michigan and Pennsylvania and with respect to other employees by Nebraska and Nevada (if the Governor so ordered). Later in 1972, Rhode Island imposed binding arbitration for nonwage items of the employees of the state government. New York City changed its procedures to require parties to either accept the impasse panel's decision or reach their own agreement, or appeal to the Office of Collective Bargaining. The OCB was given the power to decide the dispute even in the absence of an appeal and its decision is final. In addition, Michigan renewed its compulsory arbitration law but changed the procedure on economic matters so that the arbitrator has to choose without modification the "final offer" of the employer or of the union on each item. The more usual final offer selection is not done on an item by item basis but usually involves selecting between two final packages (although sometimes parties can submit two final offers). Alaska required arbitration in situations where the strike was prohibited (education employees are permitted to strike subject to certain health and safety considerations).

The trend became more pronounced in 1973. Massachusetts added final offer selection (if fact finding was unsuccessful) for police and firemen and Wisconsin renewed its police and fire compulsory arbitration law, but gave the parties the choice of the traditional arbitration method or final offer selection. New York also amended its law to provide that police and firefighters (except in New York City) impasses not resolved by fact finding shall be resolved by binding arbitration. However, the arbitration panel was not bound by the factfinders' recommendations and could refer the issues back to the parties for further negotiations.

Compulsory arbitration was also extended to the field of public education in Oregon and Minnesota. Like Alaska, Oregon required binding arbitration in situations where the strike was prohibited. By amendments to the Minnesota law, the Director of Mediation could, if he determined that mediation could not resolve the impasse, decide which items were still unresolved and send them to binding arbitration. However, the employer could refuse to go to binding arbitration or could go on to arbitration and then reject the award. Upon such cases of employer rejection, the union was empowered to legally strike.

The trend continued in 1974 with Florida's requirement that the legislative

body impose a settlement if the arbitrator's award is rejected and with Iowa's procedure invoked by a party after the parties have failed to resolve the dispute 10 days after the factfinder's award. Thereafter the state board could impose arbitration with respect to unresolved items considered by the factfinder. The arbitration award is limited to final offers on each of these impasse items. The impasse panel is mandated to not only consider "the power of the public employer to levy taxes" and the ability to pay, but also the "effect of such adjustments on the normal standards of services".

Maine's law for state employees had still another variation. If mediation and factfinding were unsuccessful, there is a 45-day period for the parties to resolve their dispute. Thereafter, either party could petition the state board to initiate compulsory arbitration which would be ordered if it is determined that a genuine impasse exists. However, the arbitration is not binding on salaries, pensions and insurance. Among the criteria, which differ from the norm, to be considered by the arbitrator are "the need of State Government for qualified employees," "the need to maintain appropriate relationships between different occupations in State Government" and "the need to establish fair and reasonable conditions in relation to job qualifications and responsibilities".

Based on the abovementioned experiments and the hope that there is a viable alternative to the strike, many of those involved with collective bargaining in public education have started to seriously examine the potential benefits of compulsory arbitration. Although the experience thus far is limited, in the belief that it will further this examination, we offer the impressions of a teachers' representative in Minnesota and a management representative in Iowa. Neither view-point is necessarily representative of the management or the union viewpoint in other states and, perhaps, in the states discussed. Moreover, as should be apparent from the quick survey depicted above "compulsory arbitration" does not embrace the same sets of obligations, responsibilities and rights under all statutes. There is a wide variety of differences in the prerequisites to arbitration: whether a genuine impasse has to exist, the steps necessary to reach arbitration, whether a party has to request it, and the timing. A similar diversity abounds with respect to who renders the final award, the criteria, if any, to be utilized in determining the award and the format for arbitration itself. Even "final offer" selection can mean different things: it can mean the arbitrator has to choose between one offer or the other; it can mean selecting between two offers on an item by item basis; or it can mean choosing between offers unresolved by the factfinder. Obviously, the impact of a binding award will differ with the scope of bargaining required in the jurisdiction under consideration (e.g. whether or not matters involving educational policy are within the scope of required negotiations). Similarly, the impact will differ if the arbitration is limited to specified items, just as it is limited to economic matters in police and firefighters arbitration in Michigan. Enforcement machinery also differs. An infinite number of alternatives is possible in future legislative enactments.

This rich diversity must be kept in mind as a backdrop in considering the two viewpoints presented for your consideration. We offer no opinion as to

their effect upon the advantages and disadvantages ascribed to compulsory arbitration by the authors. We do assert, however, that despite the variations possible, the thoughtful perceptions articulated will be of significant assistance to you in assessing the viability of compulsory arbitration in the context of collective bargaining in public education.