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When the world of public employment is divided into areas of employment, the titles of primary and secondary education or of higher education invariably are used to refer to teaching or instructional personnel. Perhaps as a result of semantics we frequently overlook the fact that a significant portion of the workforce in these areas consists of non-instructional personnel engaged in functions not directly related to teaching. This is particularly true in higher education.

When it comes to the emerging and evolving law of public sector labor relations this is a dangerous oversight. Decisions involving non-instructional personnel are usually immediately transferable to the same institution with regard to its teaching personnel. Take for example the Cornell University decision[1] of the National Labor Relations Board in 1970. The NLRB asserted jurisdiction over Cornell in a dispute involving non-instructional personnel. It may have taken five more years for the NLRB to make clear that it would also assert jurisdiction with respect to teaching personnel, but there was not much doubt what the result would be.

In addition, disputes involving teachers usually attract the most attention. Discussion of decisional material most frequently focuses on teacher bargaining because of the fuzzy line between policy and working conditions and, therefore, what is bargainable or non-bargainable. It has become more apparent, however, that problems involving non-instructional personnel do have high impact, especially in times of financial stress. Functions most susceptible to being contracted or even to volunteer performance obviously involve non-instructional personnel. The words "school bus" do not need any explication to make one aware of how labor trouble with school bus drivers can be explosive. What custodians do during a teachers strike may make the difference as to whether the strike will be successful or not. School crossing guards can often be a source of intense public debate. In addition, there has been a great increase in the number of decisions involving such personnel. Some have been of great magnitude such as the case of *Van Buren Public School District V. Wayne Cty. Circuit Judge*[2] in which a Michigan appellate court

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[1] 183 NLRB 41.

[2] 61 Mich. App. 6, 232 N.W. 2d 278, 90 LRRM 2615 (Mich. Ct. App. 1975).

not only found that the school district could not contract out its busing without first bargaining with the union and, therefore, had to rehire its former personnel and do something about the bus fleet it had sold, but it also held that the absence of the right to strike meant that it had to construe the law as having a wider scope of bargaining than the National Labor Relations Act!

Since the past articles in the *Journal* concerning labor relations for the most part have centered on teaching personnel, this issue is devoted to the non-instructional employee. Our intent is to make you, the reader, aware of the volatile nature of labor relations with such employees and its growing importance, although, in comparison to teaching personnel, they are organized to a lesser extent, are a smaller workforce (but three quarters of a million people in primary and secondary education is by no means a miniscule number), do not have the protection of as many laws, and are represented by a greater diversity of organizations.

In order to achieve this and to create a further awareness of the applicability to the whole spectrum of school employment, the article from the management perspective describes the setting in which these relationships occur and, in effect, provides the ABCs of collective bargaining as applied to non-instructional personnel. It is written by R. Theodore Clark, Jr., a partner in Seyfarth, Shaw, Fairweather & Geraldson, which is headquartered in Chicago. The firm and Mr. Clark have been engaged in representing public employers, including school districts, throughout the nation and enjoy a perspective few can possess. A companion article is written from the union side, co-authored by Peter J. Gee, General Counsel of the Ohio Association of Public School Employees and a partner in the firm of Lucas, Prendergast, Albright, Gibson, Brown & Newman, and by James E. Melle, of the same firm and former Chief Counsel for the Division of Administrative Services of the State of Ohio. They have focused on the Ohio experience to demonstrate the type of problems and legal responses which have been arising, particularly those involving merit rules and difficulties encountered by school bus drivers, and student discipline. Ohio was chosen because it has no bargaining law and, therefore, no legal compulsion to engage in labor relations. Consequently, if the experiences described are taking place in Ohio they could take place anywhere. Except for the recognitional strikes which have taken place, Ohio provides a typical example.

Perhaps the sensitive reader who can appreciate not only the importance of relationships involving these employees, but also the applicability to relationships involving teaching personnel, may also hurdle another barrier which has all too frequently impaired perception of labor relations as applied to public education—the lessons and applicability of the decisions and experience pertaining to the rest of the public sector.