

The Journal of Law and Education

Volume 16 | Issue 2

Article 6

Spring 1987

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Recommended Citation

Hugh D. Jascourt, An Introduction: Can Damage Suits Be Brought against Strikers and Their Unions, 16 J.L. & EDUC. 203 (1987).

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An Introduction: Can Damage Suits Be Brought Against Strikers and Their Unions?

HUGH D. JASCOURT

When public employees go on strike today, there appears to be less attention paid to whether the strike is legal and whether strikers should be fined. Instead, the focus seems to be shifting to a different issue: Can those who claim they have been damaged by a strike bring suit to recover damages? If a student does not get into the college of his choice because of the large number of days school was closed due to a strike, the threshold question is whether there is a forum to entertain the complaint.

Despite the divergences among different state statutes and differences among the legal foundations peculiar to certain states, a consensus has developed to an amazing extent with respect to many labor relations issues. This has been due, in part, to the willingness of the courts to look to decisions of other jurisdictions as, at least, an analytical tool. For example, the California Supreme Court in *City and County of San Francisco v. United Association of Plumbers Local 38*,¹ examined decisions of Michigan, Missouri, New York, Washington and West Virginia relating to liability attributable to strikers.

At this particular time, the law is in its initial stage of development with respect to strike liability. The early decisions may be a clue to the future and may have significant impact upon the ultimate theory of law applicable to such situations. Because there is so much uncertainty whether damage suits can be brought, other secondary issues are even less clear. For example, if a suit may be brought, who can bring it? If a strike settlement is reached, can suit be brought against the employer for failure to obtain damages? Does the settlement insulate the union and/or strikers from damages which can otherwise be obtained?

The *Journal* is fortunate to obtain two authors to discuss the threshold issue of whether suit can be brought at all. The management perspective and a full discussion of the legal theories potentially available is presented by Patrick L. Egan, whose firm represents public employers throughout

1. 42 Cal.3d 810, 726 P.2d 538, 230 Cal. Rptr. 856 (1986).

New England. The union perspective is articulated by Donald D. Slesnick II, whose practice covers much of the Southeast. Mr. Slesnick also is the union co-chairman of the American Bar Association Committee on State and Local Collective Bargaining.