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NOTES

STRIKES BY GOVERNMENT EMPLOYEES

I

In 1947 the federal, state and local governments had approximately 5.9 million employees, about one-tenth of the total working force of the nation.[1] Stenographers, street-cleaners, shipyard workers, school teachers—almost all trades, skills, and professions are represented in that number.[2] They may be employed by the TVA or the county road commission, by the Post Office Department or the municipal golf course, but like all men who work for others they sometimes have disputes with their employers. On numerous occasions such disputes have led government employees to strike.[3] In 1940 an exhaustive study of strikes by government employees showed that up to that time there were records of 1,116 such strikes.[4] These strikes occurred in all parts of the country

1. Manvel, *Public Employment in April, 1947,* 8 GOVT. EMP. No. 4 (1947).

2. The question of who is a government employee is worthy of separate treatment. It is treated in United States v. United Mine Workers, 330 U. S. 258, 67 Sup. Ct. 677, 91 L. Ed. 884 (1947), 45 MICH L. REV. 469; *In re* Cleveland and Sandusky Brewing Co., 11 F. Supp. 198 (N. D. Ohio 1935), 49 HARV. L. REV. 341, 45 YALE L. J. 372; 60 HARV. L. REV. 656 (1947).

3. The organization of unions and collective bargaining are interrelated means of settling the labor relations difficulties of government employees; both raise questions beyond the scope of this Note. The questions of unionization of government employees and of the affiliation of unions of govenment employees with other unions are treated in Perez v. Board of Police Commissioners, 75 Cal. App. 2d 638, 178 P. 2d 537 (1947); People *ex rel.* Fursman v. Chicago, 278 Ill. 318, 116 N. E. 158 (1917); Fraternal Order of Police v. Harris, 306 Mich. 68, 10 N. W. 2d 310 (1943), *cert. denied,* 321 U. S. 784 (1943); Springfield v. Clouse, 356 Mo. 1239, 206 S. W. 2d 539 (1947); King v. Priest, 206 S. W. 2d 547 (Mo. 1947), *appeal dismissed,* 333 U. S. 852 (1948); Hutchinson v. Magee, 278 Pa. 119, 122 Atl. 234 (1923); C. I. O. v. Dallas, 198 S. W. 2d 143 (Tex. Civ. App. 1946); Carter v. Thompson, 164 Va. 312, 180 S. E. 410 (1935); Seattle High School Chap. No. 200 v. Sharples, 159 Wash. 424, 293 Pac. 994 (1930); COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, EMPLOYEE RELATIONS IN THE PUBLIC SERVICE (1942); RHYNE, LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW (1946); WHITE, INTRODUCTION TO THE STUDY OF PUBLIC ADMINISTRATION, c. 28 (1947); ZISKIND, ONE THOUSAND STRIKES OF GOVERNMENT EMPLOYEES (1940); Baldwin, *Have Public Employees the Right to Strike?—Yes,* 30 NAT. MUNIC. REV. 515 (1941); Kaplan, *Have Public Employees the Right to Strike?—No,* 30 NAT. MUNIC. REV. 518 (1941); Clapp, *Problems of Union Relations in Public Agencies,* 33 AM. ECON. REV. 184 (Supp. 1943); Spero, *Collective Bargaining in the Public Service,* 248 ANNALS 146 (1946); *Union Contracts Covering Public Workers,* 18 LAB. REL. REP. 46 (1946); Notes, 47 COL. L. REV. 1161 (1947), 54 HARV. L. REV. 1360 (1941); Note, 162 A. L. R. 1106 (1946). For treatment of questions relating to collective bargaining in government, see authorities cited *supra* and Nutter v. Santa Monica, 74 Cal. App. 2d 292, 168 P. 2d 741 (1946); Miami Local No. 654 v. Miami, 157 Fla. 445, 26 So. 2d 194 (1946); Mugford v. Mayor, 185 Md. 266, 44 A. 2d 745 (1946), 94 U. OF PA. L. REV. 427; Agger, *The Government and Its Employees,* 47 YALE L. J. 1109 (1938); Mire, *Collective Bargaining in the Public Service,* 36 AM. ECON. REV. 347 (1946), discussed by Anrod, *id.* at 375. For a discussion of union controls covering public workers see § 18 LAB REL. REP. 46 (1946). For a general discussion of labor relations problems of government employees, see Holt, *Labor Rights of Public Employees,* 2 S. W. L. J. 226 (1948).

4. ZISKIND, ONE THOUSAND STRIKES OF GOVERNMENT EMPLOYEES 187 (1940).

and in all phases of government activity.[5] Some strikes by government employees were successful; others were not.

Little effort has been made in developing a definite policy towards such strikes.[6] In attempting to end these strikes the governmental employers concerned have resorted to strikebreakers, dismissals and threats of dismissal, negotiation, conciliation and even formal arbitration. The course taken has depended upon the attitude of the controlling administrators and the exigencies of the particular situation.[7] No officially reported case has been found where court processes were used to prevent or to terminate a strike by government employees.[8]

Under the original common law view any combination of workers to strike was illegal.[9] Such an attitude was unworkable in a democratic industrial society. The legality of a strike then came to depend upon its objects and on the means used to attain them.[10] Today the private employee's right to strike is recognized in a number of federal and state statutes.[11] There have been some indications that the right to strike has become one of those "fundamental human liberties" protected by the constitution.[12] There is, however, no absolute right to strike.[13] Limitations and restrictions are imposed by statute and by the courts on the use of the strike by private employees.[14]

There has been no express recognition by the legislatures or by the courts of any right to strike by government employees. While no appellate court has expressly denied that any such right exists,[15] several statutes have

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5. *Id.* at 190.
6. *Id.* at 215.
7. *Id.* c. 14.
8. See, however, RHYNE, LABOR UNIONS & MUNICIPAL EMPLOYEE LAW 158 (1946), where an order issued by a Texas lower court restraining city employees from striking is set out in full. In Los Angeles v. Los Angeles Building & Construction Trades Council, 14 CCH LAB. CAS. ¶ 64,405 (Calif. Super. Ct. 1948), municipal employees were enjoined from striking.
9. People v. Fisher, 14 Wend. 1 (N. Y. 1835); FRANKFURTER AND GREENE, THE LABOR INJUNCTION c. 1 (1930); LANDIS, CASES ON LABOR LAW c. 1 (1934).
10. State v. Stockford, 77 Conn. 227, 58 Atl. 769 (1904); RESTATEMENT, TORTS §§ 775 *et seq.* (1939); Note, 41 MICH. L. REV. 1143 (1943).
11. *E.g.*, 61 STAT. 151 (1947), 29 U. S. C. A. § 163 (1948); N. Y. LABOR LAW § 713.
12. "The right to peaceably strike, or to participate in one, to work or to refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the state may not condition or abridge in the absence of grave and immediate danger to the community." Stapleton v. Mitchell, 60 F. Supp. 51 (D. Kan. 1945), *appeal dismissed*, 326 U. S. 690 (1945); Note, 47 COL. L. REV. 299 (1947). Compare the right to picket: Jaffe, *In Defense of the Supreme Court's Picketing Doctrine*, 41 MICH. L. REV. 1037 (1943); Teller, *Picketing and Free Speech*, 56 HARV. L. REV. 180 (1942); Dodd, *Picketing and Free Speech: A Dissent*, 56 HARV. L. REV. 513 (1943); Teller, *Picketing and Free Speech: A Reply*, 56 HARV. L. REV. 532 (1943).
13. Dorchy v. Kansas, 272 U. S. 306, 311, 47 Sup. Ct. 86, 71 L. Ed. 248 (1926).
14. *E.g.*, 61 STAT. 141 (1947), 29 U. S. C. A. § 158 (Supp. 1948).
15. A strike by municipal employees was enjoined as unlawful, Los Angeles v. Los Angeles Building & Construction Trades Council, 14 CCH LAB. CAS. ¶ 64,405 (Calif. Super. Ct. 1948); see Railway Mail Ass'n v. Murphy, 180 Misc. 868, 44 N. Y. S. 2d 601, 607 (Sup. Ct. 1943).

recently been passed forbidding government employees to strike.[16] Typical of these is the New York statute,[17] which, after defining strikes, sets forth the following provisions: (1) that nothing shall interfere with the employees' expressions of grievances, so long as such expressions do not interfere with the performance of their duties;[18] (2) that no public employee shall strike;[19] (3) that no person in authority shall have power to authorize or consent to strikes by public employees;[20] (4) that any violator of the statute shall be deemed to have abandoned his employment and shall not be entitled to any rights or emoluments thereof, except if re-appointed as provided in this statute;[21] (5) that any violator may be re-appointed only on the following conditions, (a) that his compensation not exceed that received immediately prior to the violation, (b) that his compensation not be increased until two years after his re-employment, (c) that the violator be on probation for five years after re-employment during which time he shall serve without tenure and at the pleasure of the appointing officer;[22] and (6) a provision for hearings to determine whether or not an employee has violated the statute.[23] The Michigan statute gives the state labor mediation board authority to mediate the grievances of public employees.[24] The Pennsylvania statute sets up a complete procedure for the adjustment of grievances of public employees.[25] The Missouri statute makes it a misdemeanor for any government employee to strike.[26]

No cases have arisen under these statutes; consequently their constitutionality has not been passed upon. Compelling analogies from which the courts can find ample support for the constitutionality of these statutes may be found, however, in cases upholding restrictions on the political activity of government employees,[27] in cases upholding the refusal of government ad-

16. 61 STAT. 160 (1947), 29 U. S. C. A. § 188 (Supp. 1948); MICH. STAT. ANN. § 17.455 (Henderson Cum. Supp. 1947); Mo. REV. STAT. ANN. § 10178.207 (Cum. Supp. 1948); N. Y. CIVIL SERVICE LAW § 22(a), 21 ST. JOHN'S L. REV. 248 (1947); OHIO GEN. CODE ANN. §§ 17(7)-17(12) (Cum. Supp. 1948); TEX. STAT., REV. CIV. art. 5154(c) (Vernon 1947); VA. CODE ANN. § 2695h (Cum. Supp. 1948). A similar Pennsylvania statute is set out in full in 20 LAB. REL. REP. (Lab. Rel. Ref. Man.) 3065 (1947). A few cities have ordinances barring strikes by their employees. ZISKIND, *op. cit. supra* note 4, at 234; 16 LAB. REL. REP. 2227 (1945). Appropriation acts have also been used as a means of deterring strikes by government employees. 19 LAB. REL. REP. (Lab. Rel. Ref. Man.) 50 (1947); 20 LAB. REL. REP. (Lab. Rel. Ref. Man.) 19 (1947).

17. N. Y. CIVIL SERVICE LAW § 22(a).

18. *Id.* § 22(a) 1. The statutes of Michigan, Ohio, Pennsylvania and Texas have similar provisions.

19. *Id.* § 22(a) 2. Similar provisions in statutes of United States, Michigan, Ohio, Pennsylvania and Texas.

20. *Id.* § 22(a) 3. Similar provisions in statutes of Michigan, Ohio and Pennsylvania.

21. *Id.* § 22(a) 4. Similar provisions in statutes of United States, Michigan, Ohio, Pennsylvania and Texas.

22. *Id.* § 22(a) 5. Similar provisions in statutes of Michigan, Ohio and Pennsylvania.

23. *Id.* § 22(a) 6. Similar provisions in statutes of Michigan, Ohio and Pennsylvania.

24. MICH. STAT. ANN. §17.455(7) (Henderson Cum. Supp. 1947).

25. 20 LAB. REL. REP. (Lab. Rel. Ref. Man.) 3065 (1947).

26. Mo. REV. STAT. ANN. § 10178.207 (Cum. Supp. 1948).

27. *E.g.* United Public Workers v. Mitchell, 330 U. S. 75, 67 Sup. Ct. 556, 91 L. Ed.

ministrators to hire union employees,[28] in cases upholding the firing of government employees engaged in union activity,[29] and in cases upholding the imposition of restrictions on strikes by private employees.[30]

II

In the absence of statutes expressly forbidding government employees to strike, the law is unsettled as to whether or not they can. Where such statutes have been adopted, it is not certain that they provide the best solution to the problems raised in strikes by government employees. This unsettled condition of the law calls for the development of a definite policy for court or legislative action in this field. The purpose of this note is to examine the various principles involved and to suggest which of them should be deemed controlling in the formulation of such a policy.[31]

The basic human relations are essentially the same in any employer-employee relationship.[32] Wherever some men are managed by others, frictions, grievances and disputes inevitably arise. Misunderstandings and jealousies, stubbornness and pride, unsatisfactory wages or hours, tedious or boring work, favoritism, poor equipment and a host of other possibilities, real or fancied, may cause dissatisfaction. Dissatisfaction breeds frictions and grievances. If these are not adequately dealt with, serious disputes arise. In the normal course of events these disputes will be settled by negotiation, conciliation or arbitration; but these methods may fail. The employees may resort to the strike in an attempt to force a favorable settlement of the disputed issues. This pattern of employment relations is not substantially altered by the mere fact that the employer involved is some unit or agency of the government.[33] Strikes in government employment have had the same causes as those in private em-

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754 (1947), 32 MINN. L. REV. 176 (1948), 33 VA. L. REV. 345 (1947); Notes, 33 CORN. L. Q. 133 (1947), 15 GEO. WASH. L. REV. 443 (1947).

28. *E.g.*, Seattle High School Chap. No. 200 v. Sharples, 159 Wash. 424, 293 Pac. 994 (1930).

29. *E.g.*, McAuliffe v. Mayor, 155 Mass. 216, 29 N. E. 517 (1892); C. I. O. v. Dallas, 198 S. W. 2d 143 (Tex. Civ. App. 1946).

30. *E.g.*, United States v. International L. & W. Union, 78 F. Supp. 710 (N. D. Calif. 1948).

31. Policy is ultimately a matter of valuation. A discussion of policy therefore is meaningless outside the context of given value premises. The premises underlying this discussion, in addition to those stated above, are: (1) the problems of labor relations are primarily problems of efficient personnel management and not of legal theory, (2) voluntary means for the settlement of disputes must be emphasized with compulsives used only as measures of last resort, (3) strikes are inherently wasteful and should be minimized where possible, (4) in so far as strikes are caused by poor working conditions or the lack of effective grievance procedures, they will best be remedied by improving working conditions and providing adequate grievance procedures, (5) the welfare of society may require the imposition of restrictions and limitations on the freedom of action of both employer and employee.

32. MOSHER AND KINGSLEY, PUBLIC PERSONNEL ADMINISTRATION 542 (1941); Selekman and Selekman, *Reducing Friction in Employer-Employee Relationships*, 12 LAW & CONTEMP. PROB. 232 (1947).

33. YODER, PERSONNEL MANAGEMENT AND INDUSTRIAL RELATIONS 23 (1948).

ployment.[34] Essentially the same issues have been involved. The same methods and tactics have been used. The same general policies should be applied to strikes in government employment as are applied to strikes in private employment.

III

It has often been asserted, however, by people of various political leanings, that strikes by government employees cannot be tolerated.[35] They are spoken of as insurrections;[36] and it is said that to permit government employees to strike would be to invite a labor dictatorship.[37] A number of arguments have been advanced in support of the contentions that government employees have no right to strike and should not be given one. The four principal arguments are: (1) that logical deductions from the orthodox theory of sovereignty demonstrate that strikes by government employees are inherently unlawful; (2) that the loss of a strike by "the government" would cause such a loss of prestige as to seriously weaken the authority of the government; (3) that strikes by government employees are unnecessary; (4) that strikes by government employees are inevitably ineffectual.

(1) The central argument of those who would forbid the strike to all government employees as such lies in the orthodox theory of sovereignty.[38] The people are the ultimate repository of authority. They can act, however, only through the sovereign state, which is therefore the embodiment of the will of the people. The state's employees are the means by which the will of the people is effectuated, and herein they differ from private employees. The government employee owes unquestioning loyalty and obedience to the state, for to disobey the state is to disobey and to thwart the will of the people.[39]

34. ZISKIND, *op. cit. supra* note 4, c. 12. Government employees have struck principally to enforce demands for higher wages or shorter hours or because of the refusal of some administrator to permit union activity.

35. Coolidge, Hoover, F. D. Roosevelt, Truman and La Guardia have been quoted to that effect. Spero, *Collective Bargaining in the Public Service,* 248 ANNALS 146, 149 (1946). A number of city attorneys and attorneys-general have voiced similar opinions. RHYNE, LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW 138 (1946). It has been suggested that this attitude is more emotional than rational. ZISKIND, *op. cit. supra* note 4, at 251; Note, 54 HARV. L. REV. 1360, 1365 (1941).

36. RHYNE, LABOR UNIONS AND MUNICIPAL EMPLOYEE LAW 138 (1946).

37. Kaplan, *Have Public Employees the Right to Strike?—No,* 30 NAT. MUNIC. REV. 518, 523 (1941).

38. For discussions of the sovereignty argument see COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, EMPLOYEE RELATIONS IN THE PUBLIC SERVICE 57 (1942); SPERO, *Employer and Employee in the Public Service* in PROBLEMS OF THE AMERICAN PUBLIC SERVICE 175 (1935); Agger, *The Government and Its Employees,* 47 YALE L. J. 1109 (1938); Johnson, *General Unions in the Federal Service,* 2 J. OF POL. 23 (1940); Spero, *Collective Bargaining in the Public Service,* 248 ANNALS 146 (1946); Watt, *The Divine Right of Government by Judiciary,* 14 U. OF CHI. L. REV. 409, 453 (1947).

39. The theory of sovereiguty forms the basis of certain arguments by analogy. The right to strike, it is argued, is analogous to the right to sue the state; unless the sovereign permits, it cannot be done. Kaplan, *supra* note 37, at 520. The government employee has been likened to the soldier. It has been argued that the sovereign demands

A strike by government employees is an act of disobedience to the sovereign and thus a challenge to properly constituted authority.[40] It is in effect a revolution.

A fundamental objection to this argument lies in its absolutist overtones. If the state can demand unquestioning obedience of six million employees, it is but a short step to demanding unquestioning obedience from all its subjects. Does this theory of the sovereign state accurately portray the nature of the democratic state? Assuming that it does, is a strike by government employees necessarily an act of disobedience to the sovereign? Might it not be more accurate to consider such a strike as merely a means of calling the sovereign's attention to grievances and disputes which other agents of the sovereign have seen fit to ignore? To answer such questions would necessitate the working out of comprehensive theories of the democratic state and of the nature of strikes, a task beyond the scope of this Note. In any event the major premises of this argument lie in a disputed, if not discredited, theory of the state.[41]

(2) The authority of the state depends in a large measure on its prestige, and therefore public policy cannot tolerate a loss of prestige on the part of the state. The loss of a strike, it is argued, would entail such a loss.[42] But it is doubtful if it would be such a loss of prestige as to cause a breakdown of the state's authority. A greater loss might occur by the resort to repressive labor policies. In any event no strike by government employees has yet had the effect of causing a breakdown of the state's authority.[43] The rights of government employees should not be predicated upon hypothetical possibilities.

(3) Strikes by government employees are unnecessary, it is argued, because the government employee can have no legitimate reason to strike. It is contended that the government employee stands in a favored and protected position,[44] and that he has a number of benefits not open to the private employee. This argument, however, does not rest on a solid factual basis.[45] Many government employees do not have adequate protection and security; even

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the same discipline, loyalty and obedience from both. COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, EMPLOYEE RELATIONS IN THE PUBLIC SERVICE 45 (1942).

40. This argument is applicable to all government employees. RHYNE, *op. cit. supra* note 36, at 53, 138; TELLER, A LABOR POLICY FOR AMERICA 275 (1945).

41. COHEN, RECENT THEORIES OF SOVEREIGNTY (1937) and bibliography therein. See also, FINER, THEORY AND PRACTICE OF MODERN GOVERNMENT 819 (Guthrie rev. 1934).

42. COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, *op. cit. supra* note 39, at 45; SPERO, *Employer and Employee in the Public Service* in PROBLEMS OF THE AMERICAN PUBLIC SERVICE 175 (1935).

43. ZISKIND, *op. cit. supra* note 4, at 191, 249.

44. In the Matter of Hatton, Civil Service Commission of New Jersey (1942), set out in full, RHYNE, *op. cit. supra* note 36, at 222.

45. COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, *op. cit. supra* note 39, at 60 (1942); Agger, *The Government and Its Employees*, 47 YALE L. J. 1109, 1127 (1938); Baldwin, *Have Public Employees the Right to Strike?—Yes*, 30 NAT. MUNIC. REV. 515 (1941); Mire, *Collective Bargaining in the Public Service*, 36 AM. ECON. REV. 347, 348 (1948).

those within civil service systems may sometimes have serious grievances.[46]

A similar contention is that since the government does not function for profit there is no basis for the exploitation of its employees, and therefore they should have no grievances and no need of the strike.[47] The number of strikes in which government employees have participated is in itself enough evidence to show the extent of their grievances. Moreover, it is doubtful if strikes in private or government employment are caused so much by exploitation as by the inevitable conflict of interests between manager and worker. Furthermore, while no drive for profits may affect government employees, they generally bear the brunt of the economy programs which are constantly urged on all governmental bodies.[48]

Assuming that government employees do have serious grievances, strikes by government employees are still unnecessary, it is argued, because there are other and better means by which those grievances may be remedied.[49] First, government employees may resort to arbitration and mediation boards; second, they may bring the pressure of public opinion on administrators and legislators. But government employees are generally denied access to the various arbitration and mediation boards set up under the federal and state labor relations acts.[50] Though some governmental units have provided internal machinery for the hearing and settlement of the grievances of their employees, generally no adequate machinery exists.[51]

Government employers are more responsive to the pressure of public opinion than private employers. However, restrictions on the right of government employees to organize or to participate actively in politics in a large measure prevent government employees from crystallizing public opinion so as to change the employment practices of their employers.[52] They may take advantage of the responsiveness of their employers to public opinion by sponsoring organized lobbies to further their interests before the various legislative bodies. Some government employees do support such lobbies, and they have been rather effective in protecting the employees' interests.[53] But, while the

46. Agger, *supra* note 45, at 1127.

47. This argument is discussed by Baldwin, *supra* note 45, at 515; Mire, *supra* note 45, at 349.

48. COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, *op. cit. supra* note 39, at 50.

49. RHYNE, *op. cit. supra* note 36, at 153; Kaplan, *supra* note 37; Note, 54 HARV. L. REV. 1360, 1365 (1941).

50. *E.g.*, 61 STAT. 137 (1947), 29 U. S. C. A. § 152 (Supp. 1948). N. Y. LABOR LAW § 715; See, however, 12 MICH. STAT. ANN. § 17.455 (Henderson, Cum. Supp. 1947).

51. See note 45 *supra;* Westwood, *The "Right" of an Employee of the United States against Arbitrary Discharge,* 7 GEO. WASH. L. REV. 212 (1938).

52. For examples of restrictions on the organization of government employees see cases collected in note 3 *supra.* For examples of restrictions on political activity see, 53 STAT. 1148 (1939), 18 U. S. C. A. § 61h (Supp. 1948); Oklahoma v. United States Civil Service Commission, 330 U. S. 127, 67 Sup. Ct. 544, 91 L. Ed. 794 (1947); United Public Workers v. Mitchell, 330 U. S. 75, 67 Sup. Ct. 556, 91 L. Ed. 754 (1947); *Ex parte* Curtis, 106 U. S. 371, 1 Sup. Ct. 38, 27 L. Ed. 232 (1882).

53. ZISKIND, *op. cit. supra* note 4, at 246.

organized lobby may be a very effective means of influencing legislators, it is not the proper instrument for handling labor disputes. It is, moreover, too subject to abuse to be encouraged.

(4) The banning of strikes by government employees is further supported by the contention that such strikes are inevitably ineffectual.[54] Some conditions of government employment are directly controlled by legislative bodies, and others must be within the bounds of general statutes and fixed budgets; such conditions cannot be changed without resort to the cumbersome legislative process. A strike involving such conditions, it is argued, is more likely to induce repressive than favorable action. Frequently, however, administrative officers have wide discretionary powers over working conditions. Furthermore many strikes by government employees have been effective in improving working conditions.[55]

There are, however, more fundamental reasons for asserting that strikes by government employees cannot be effective. A strike is effective as an economic weapon and as an instrument of propaganda. In its economic aspect a strike by government employees would have to contend with the tremendous resources of the government. As an instrument of propaganda it would meet a wall of hostile public opinion, for neither the strike nor the government employee is a popular favorite.[56] But this argument is directed to the tactical question of whether government employees should resort to the strike and not to the question of whether they are or should be forbidden to strike under all circumstances.[57]

IV

The social welfare demands the continuity of certain essential services. An employee upon undertaking such an essential service assumes a duty to the community to maintain that continuity, even at the risk of suffering injustice to himself.[58] The most cogent argument for denying the strike to any group of employees is that their services come within this essential class.[59]

54. This argument is discussed by Ziskind, *op. cit. supra* note 4, at 254; Agger, *supra* note 45, at 1132; Note, HARV. L. REV. 1360, 1365 (1941).

55. ZISKIND, *op. cit. supra* note 4, at 254.

56. Agger, *supra* note 45, at 1110. *Compare* YODER, PERSONNEL MANAGEMENT AND INDUSTRIAL RELATIONS 780 (1948).

57. For discussions of the attitudes of government employees towards strikes in government employment and the policies adopted by the various unions with members drawn from government employees see COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, *op. cit. supra* note 39, at 112-114; ZISKIND, *op. cit. supra* note 4, at 202-214; Spero, *Have Public Employees the Right to Strike?—Maybe,* 30 NAT. MUNIC. REV. 524, 526 (1941).

58. "All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community." Mr. Justice Brandeis, dissenting, in Duplex Printing Press Co. v. Deering, 254 U. S. 443, 488, 41 Sup. Ct. 172, 65 L. Ed. 349 (1921).

59. For a general discussion of the effect of the public interest in strikes see Smith, *The Effect of the Public Interest on the Right to Strike and to Bargain Collectively,* 27 N. C. L. REV. 206 (1949). It has been said that labor has already lost the right to strike in those key industries in which continuity of operation is essential. Rosenfarb,

Several statutes have been enacted in an attempt to maintain the continuity of those services deemed essential to the public welfare. The Labor-Management Relations Act of 1947 contained sections authorizing injunctions against strikes imperilling the national safety.[60] Some states have statutes providing for the compulsory arbitration of labor disputes in public utilities.[61] Other states provide for the seizure of strike bound utilities as a means of enforcing compulsory arbitration.[62] Virginia has enacted a statute authorizing the seizure of strike bound utilities, and providing criminal penalties for striking, picketing or otherwise interfering with the operation of the seized plants.[63]

The particular procedures adopted in these statutes may or may not be desirable. The important thing for the present purpose is that these statutes em-

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60. 61 STAT. 155, 156 (1947), 29 U. S. C. A. §§ 176-180 (Supp. 1948). The provison was upheld in United States v. International L. & W. Union, 78 F. Supp. 710 (N. D. Calif. 1948). The effect of these sections is to provide for an extended cooling-off period. For a short history of the provision see, THE TAFT-HARTLEY ACT, AFTER ONE YEAR, c. 14 (B. N. A. 1948).

61. FLA. STAT. ANN., c. 453 (Cum. Supp. 1947); IND. ANN. STAT., §§ 40-2401, 40-2415 (Burns Supp. 1947); MICH. STAT. ANN., § 17.454(14) (Henderson Cum. Supp. 1947); NEB. REV. STAT. § 48-802 (Cum. Supp. 1947); Wis. Laws 1947, c. 414. Compare MINN. STAT. ANN. § 179.38 (West Cum. Supp. 1948). These statutes are discussed in TELLER, LABOR DISPUTES AND COLLECTIVE BARGAINING § 423v (Supp. 1948). The Michigan statute was held unconstitutional as an attempt to confer on judicial officers non-judicial powers and duties. Local 170 v. Gadola, 34 N. W. 2d 71 (Mich. 1948). The Wisconsin statute was upheld in United Gas, etc. Workers v. Wisconsin Emp. Rel. Board, 16 CCH LAB. CAS ¶ 64,905 (Wis. Cir. Ct. 1948). See also Updegraff, *Public Utility Labor Problems,* 33 IOWA L. REV. 609 (1948).

A bill has been introduced in the Tennessee General Assembly to provide for the uninterrupted service by any public or private corporation, or other agency, generating or distributing electric energy in Tennessee; and to make provisions for the prompt, peaceful and just settlement of labor disputes between such corporations and their employees. Tenn., House Bill No. 539, 76th General Assembly (1949). The bill expressly covers any municipality or public authority engaged in distributing or generating electric energy. Some of the more important provisions of the bill are: (1) that it shall be unlawful for any employee within the terms of the bill to strike without first having given thirty days notice to the Railroad and Public Utilities Commission and to the utility; (2) that if the parties are unable to adjust the issues between them the Railroad and Public Utilities Commission shall hear the issues; (3) that when a contract exists between the parties, the commission shall have power to determine only the proper interpretation and application of the contract; (4) that where no such contract exists, or where the dispute is as to a new contract the commission shall have power to establish rates of pay and conditions of employment; (5) this determination of the dispute will be binding on the parties, and shall continue in effect for one year from date it is made; (6) that during the time of the proceedings described by the bill, and during the effective period of final orders, it shall be unlawful for any employees covered by the terms of the bill to strike.

62. MASS. ANN. LAWS c. 150B (Cum. Supp. 1948); MO. REV. STAT. ANN. § 10178.119 (Cum. Supp. 1948); for discussion see TELLER, *op. cit. supra* note 61, at § 423V. A similar New Jersey statute is set out with amendments 4 CCH LAB. LAW. SERV. ¶ 41,530 (1948); it is discussed in Note, 59 HARV. L. REV. 1002 (1946). The New Jersey statute was upheld. New Jersey v. Traffic Telephone Workers, 15 CCH LAB. CAS. ¶ 64,769 (N. J. Ch. 1948). Compare TEX. REV. CIV. STAT. art. 1446a (Cum. Supp. 1948). See also Teller, *Government Seizure in Labor Disputes,* 60 HARV. L. REV. 1017 (1947); Willcox and Landis, *Government Seizures in Labor Disputes,* 34 CORN. L. Q. 155 (1948). For a general discussion of these statutes see Notes, [1948] WIS. L. REV. 597, 97 U. OF PA. L. REV. 410 (1949). In general, see Sigal, *National Emergency Strikes and the Public Interest,* 27 N. C. L. REV. 213 (1949).

63. VA. CODE ANN. § 1887 (120) (Cum. Supp. 1948).

body a policy of distinguishing between strikes in essential and those in non-essential services. That policy is equally as applicable in government as in private employment. It is apparent that many if not most government activities are not so vital to the community that no break in their continuity could be tolerated. Only those government employees engaged in essential services should be prohibited from striking. It is beyond the scope of this Note to attempt to set out which services are and which are not essential. It is doubtful, moreover, if any useful classification could be made, for what is essential under one set of conditions might not be so under others.

V

The strike is an inherently wasteful instrument of social action. It tends to deepen the animosities out of which it arises. But it is the ultimate weapon of any group of employees in a dispute with their employers. Its undesirable qualities necessitate the imposition of restrictions on its use; but its importance to employees requires that those restrictions be imposed only where they are necessary for the public welfare. The central problem of the law of strikes is to reconcile these conflicting policies.

It has been the purpose of this Note to examine the various principles and arguments involved in the development of a policy for court or legislative action with regard to strikes by government employees.[64] It is suggested that the following principles should be controlling in the determination of that policy: (1) the general policies of the law towards striking private employees are applicable to striking government employees; (2) strikes by government employees are not all necessarily unlawful; (3) the legality of a strike by government employees depends upon its objects and upon the means used to attain them; (4) the public interest in the continuity of those government services deemed essential to the public welfare is such that the disruption of those services by strike is outside the scope of legitimate labor activity.

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64. For suggested approaches to the problem of strikes by government employees: COMMITTEE ON EMPLOYEE RELATIONS IN THE PUBLIC SERVICE, *op. cit. supra* note 39, c. 4; MOSHER AND KINGSLEY, PUBLIC PERSONNEL ADMINISTRATION 584 (1941); ZISKIND, *op. cit. supra* note 4, at 258; Spero, *supra* note 57, at 528; *Report of New Jersey Governor's Commission,* 11 LAB. REL. REP. 2556 (1942).