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STRIKES AND STRIKE PENALTIES IN THE PUBLIC SECTOR

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16. Abstract (Limit: 200 words)

Strikes by public employees are analyzed in this study. The report includes an overview of the issues raised by public employee strikes, the design of the study, an historical analysis of trends in the number of public employee strikes, the theoretical impact of strike penalties on strikes and bargaining outcomes and a legal analysis of strike penalties. An analysis of the strike experience and policies in Hawaii, Illinois, Indiana, New York, Pennsylvania, Ohio and Wisconsin and the results of a statistical analysis of strikes by teachers, firefighters, police and nonuniformed municipal employees in a sample of governments from six of the seven states are also covered.

Although numerous qualifications apply to each finding, the major conclusions from the study are: 1) Strike penalties that are consistently enforced can decrease the number of public employee strikes. 2) Interest arbitration can also significantly reduce the number of strikes. 3) Union recognition disputes resolved through state mandated election procedures appear to reduce union recognition strikes. 4) State educational policy that determines how school aid and lost school days are to be handled when teachers strike has at least as great an impact on teacher strikes as strike penalties included in collective bargaining legislation. 5) No long lasting, detrimental effects of public employees strikes were detected in the analysis of legal strikes in Hawaii and Pennsylvania. 6) Although no empirical evidence was presented, the theoretical analysis of strike penalties suggests that they lower bargaining outcomes below what they would be in the absence of penalties. NTIS abstract

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Craig A. Olson did the major share of the research and initial drafts of Chapters I-VI, VIII-XI and Joyce Najita bears the primary responsibility for Chapter VII. June Weisberger wrote the legal survey included in the appendix and portions of this analysis were incorporated into each of the state chapters. James Stern supervised the entire project, read each of the draft chapters and made major contributions to each. Barbara Dennis and Mary Alice Scherer provided expert assistance by carefully editing the manuscript.

The authors assume responsibility for all the remaining errors or deficiencies in the study.

The Authors

TABLE OF CONTENTS

Executive Summary

Strikes and Strike Penalties in the Public Sector

Over the past thirty years there has been a substantial increase in the number of strikes by public employees. Although strikes by public employees were illegal and remained illegal in most states over this time period, a variety of different policies have been adopted to prevent strikes or minimize their impact. These policies include penalties directed against striking employees or unions, various strike substitutes designed to replace the strike and, in a very few states, the limited legal right to strike. In this study we examined the strike experience in seven states that have different public policies toward strikes by government employees. The seven states were: Hawaii, Illinois, Indiana, New York, Pennsylvania, Ohio and Wisconsin. Our principal findings follow.

1. Compared to states with no laws, strike probabilities were lower in the states with interest arbitration for police and firefighters and also lower in some of the states with strike penalties. This conclusion was based on a statistical analysis of strikes in six of the seven states from 1975 to 1976.

Table 1 shows the estimated probability of a strike by teachers and nonuniformed municipal employees for an "average" government in our sample. The estimated probabilities for Wisconsin and Indiana were greater than the New York's probability but not statistically different. Illinois, which lacked a bargaining law, had a median strike probability

Table XI-1

Summary of the Estimated Strike Probabilities From the Logit Analysis Obtained From an Analysis of Strikes Over A Two Year Period, 1975-76

	Nonuniformed Municipal Employees	Teachers Districts < 5000 Students	Teachers Districts ≥ 5000 Students
Illinois	.11438	.05562	.31860
Indiana	.05986	.02574	.06053
New York	.03266	.02957	.03776
Ohio	.19811	.04503	.09474
Pennsylvania	.13843	.11756	.32201
Wisconsin	.03602	N.A.	N.A.

Source: Tables X-4 and 11.

of about .11 percent, Pennsylvania followed at almost .13 and Ohio had the highest probability at almost .20. The estimated probabilities for Illinois, Pennsylvania, and Ohio were statistically different from the New York probability.

The substantial variation in the strike probabilities between the states for nonuniformed municipal employees can be partially explained by differences in the cost of penalties that are imposed for violating the strike prohibition across the states. We interpret this finding to mean that the strike decisions of employees and unions are influenced more by the expected costs of breaking the law than the simple fact that strikes were illegal. In Ohio and Illinois where penalties are infrequently enforced, the probability of a strike approached or was greater than the probability in Pennsylvania where strikes are legal. On the other hand, the probability of a strike was lowest in New York where a dues check-off penalty was usually imposed against the striking unions, and striking employees were penalized one day of pay for each strike day. The low probabilities in Indiana and Wisconsin were explained by recently passed or pending legislation that caused a moderation in strike activity.

The statistical comparison that was done of strikes by police and firefighters in the arbitration (New York, Pennsylvania, and Wisconsin) and the no-arbitration states (Illinois, Indiana and Ohio) provided an estimate of the impact of arbitration on strikes relative to a no-law environment. Over the two-year period that was analyzed (1975-76), the estimated probability of a strike by firefighters in the states with arbitration was less than one chance in 100. In the three states without

a law the chances of a strike were about five in 100. This difference was statistically significant at the .05 level. The probability of a strike by police in the states with arbitration was 1.5 chances out of 100 and about 5 chances out of 100 in the states without a law. This difference between arbitration and nonarbitration states was statistically significant between .05 and .10 using a one tail test. While strikes by protective service employees were unlikely in all six states during this time period, these results show that from October, 1974 through September, 1976 the probability of a police or firefighter strike was three to five times more likely in the three states without arbitration.

These estimates suggest that arbitration may be just as effective at preventing strikes as strike penalties. In fact, an analysis of the descriptive Census data for New York and Pennsylvania showed the effect of arbitration on police and firefighter strikes outweighed the impact of the harsh penalties in New York. Police and firefighters in New York that strike are subject to the dues checkoff and pay penalties of the Taylor Law, while in Pennsylvania these employees may be subject to unspecified contempt penalties. Despite these differences in penalties, Pennsylvania police and firefighter bargaining units did not have higher strike probabilities. Although this evidence is not conclusive, it suggests that when arbitration is available, penalties such as in New York, are not needed to limit strike activity.

2. Both strike penalties and state aid formulas and minimum teaching day requirements had a significant impact on strikes by teachers in the seven states.

State educational policy has an impact on strikes if a district is closed by a strike and a district has to reschedule the strike days to meet the school year requirements of the state. When this occurs, teachers are usually paid for the rescheduled days and lose less pay than other public employees that strike. The rules governing the distribution of school aid to school districts that fail to meet the minimum teaching day requirements also influence school board bargaining decisions. If all state school aid is lost because a district fails to meet state standards, an employer's incentive to concede is enormous as the parties approach the point in the strike where strike days cannot be rescheduled to meet the state educational mandate. Alternatively, the employer may make fewer concessions if the district experiences a revenue "windfall" because no state aid is lost when a district fails to meet the state educational standards.

Even though all seven states had minimum length school year requirements, the relationship of this requirement to strikes was somewhat different in each of the states. In Hawaii the decision to reschedule school days lost from a strike has an important impact on teacher strike costs. However, because the system is a state system, this requirement does not have a serious impact on state funding because funding decisions and the rescheduling of missed school days from a strike are made jointly by the same government.

Until 1977, Wisconsin and Ohio had similar policies for dealing with the failure of district to meet the minimum teaching year requirements. If a district in either of these states failed to meet the school year

requirement the law implied the district would lose all of its school aid. Because this would have been catastrophic for any district, most employers and unions have been reluctant to test the law by missing the deadline. In 1977 Wisconsin changed its law to prorate the loss of state aid based on the number of days the district fell short of the state requirement because of a strike.

Illinois has had considerable experience with a policy of prorating state aid when districts do not meet the school year requirement. The state closely monitors each strike to ensure state educational standards are met if a district remains open during a strike. If these standards are not met or if a district is closed by a strike, state aid is reduced by 1/180 for each day the district falls short of 180 days.

In Indiana the question of state aid and make-up days is dealt with in the bargaining law which exempts school districts from the school calendar when a district is struck. However, districts have not had to take advantage of this option because they have typically remained open during a strike.

In Pennsylvania the law requires that districts provide 180 days of instruction. In about a third of the strikes the districts have failed to satisfy this requirement. Despite the failure of some districts to meet the requirement, no district was directly penalized by the loss of aid from the state. However, because state aid each year is partially based on expenses in the previous year, a district that saved money from a strike in one year will receive less aid the next year because of the savings.

School districts in New York have been able and willing to remain open during a strike and therefore do not have to schedule make-up days. The ability and willingness of districts to remain open is partially explained by the "2 for 1" penalty. The penalty monies provided to the district have given struck districts the resources to hire substitutes, keep schools open, and still save money from a strike.

A comparison of teacher strikes in New York and Pennsylvania showed that strikes were less likely in New York where the "2 for 1" penalty is imposed and where teachers cannot reduce strike losses by teaching make-up days (See Table 1). Strikes were more frequent in Pennsylvania where strikes are legal and most strike days are rescheduled. This finding held up across both large and small school districts. However, the legal right to strike in Pennsylvania had a far greater impact in small districts. In New York, strikes were only slightly more frequent in large districts than in small ones. But in Pennsylvania, strikes in large districts were far more frequent than in small districts.

The effect of the Taylor Law penalties in New York and the limited legal right to strike in Pennsylvania was also supported by a time series analysis of the <u>total</u> number of strikes in each state. Our regression results show that after the "2 for 1" penalty was added to the Taylor Law in New York the number of strikes dropped significantly from what they would have been had the amendments not been passed. In Pennsylvania a similar analysis showed that after Act 195 (limited right to strike law) was passed the number of strikes increased significantly.

A comparison of the estimated strike probabilities by teachers in Pennsylvania, Ohio and Illinois show that in small districts the strike probabilities were similar in Illinois and Ohio and about half the size of the probability in Pennsylvania. However, among large districts the differences between these three states changed dramatically. In Illinois the probability was about .32 or only slightly lower than the strike probability in Pennsylvania. In Ohio, the probability increased to about .10, but was substantially less than the probability for large districts in the other two states.

The similar probabilities for large districts in Pennsylvania and Illinois suggest that the policies in these states have had a similar impact on strikes by teachers in these districts. This result is not surprising when the policies in the two states are compared. Although strikes are legal in Pennsylvania and illegal in Illinois, penalties are seldom imposed in Illinois and the state policy of enrollment and educational standards in Illinois has significantly reduced a large district's ability or willingness to remain open during a strike because of the problems created by temporarily replacing a large workforce to meet state requirements.

The strike probability for large districts in Ohio was much lower than the probability in either Pennsylvania or Illinois. This is explained by the fact that in Ohio most districts are able to remain officially "open" by reducing programs and/or hiring substitutes. This meant that it was unnecessary for school boards to schedule make-up days in many strikes. Therefore teachers who struck suffered higher strike costs in Ohio than in Illinois or Pennsylvania.

3. It does not appear that legal strikes in Hawaii and Pennsylvania have produced the dramatic or lasting detrimental impact on public services that some people feared.

In 1977 the Governor's Study Commission on Public Employee Relations in Pennsylvania found that the representatives of most key employer, employee, and public organizations expressed at least qualified support for the continued limited right to strike. Union spokespersons universally endorsed the legal right to strike. The only disagreement within the labor community came over whether or not a judge that enjoins a strike because the strike endangers the public's health, safety, or welfare should also be required to order the parties to submit the dispute to arbitration.

Management support of the right to strike was less widespread, more qualified and less enthusiastic. However, when faced with a choice of the limited right to strike or arbitration, most manngement representatives favored the strike. The impact of the strike in Hawaii has been similar to the Pennsylvania experience. The basic acceptance of the principle of the limited legal right to strike for most employees still prevails.

4. Although the principle of a limited right to strike is accepted in Pennsylvania and Hawaii, both states have had difficulty designating who is essential or when a strike endangers the public.

If "too many" people are classified as essential, the impact of the strike may be so minimal that the right to strike is meaningless.

On the other hand, designating "too few" essential positions may endanger the public. The problem of designating essential employees in the public sector is similar to the problem of establishing a national emergency dispute in the private sector. It also appears that we are no closer to resolving the public sector problem than we are to resolving the private sector problem.

5. A theoretical model of strikes and strike penalties was developed which showed the impact of penalties on bargaining outcomes. The model suggests that in bargaining environments where unions or employees are penalized for striking, average outcomes will be lower than in environments where costly sanctions do not exist. This prediction applies even if employees do not strike. This is an important theoretical prediction that needs to be tested.

6. A comparison of descriptive strike statistics from Ohio, Illinois, Indiana and national averages show that union recognition disputes are significantly reduced where there are state laws providing for representation elections.

Twenty-one percent of all strikes in Illinois and 17 percent of all strikes in Ohio from 1974-77 were union recognition or first contract strikes. These figures are much greater than the 5.4 percent for the other 48 states. Compared to teachers in Indiana that were able to obtain recognition rights through an election, strikes by teachers to obtain recognition were far more common in Ohio and Illinois which lacked recognition procedures. These findings have important implications

for jurisdictions where unions are just beginning to organize public employees. They suggest that union recognition procedures and bargaining rights may have a greater initial impact on strikes than either penalties or strike substitutes that are directed primarily at resolving disputes in established relationships.

7. The legal analysis of strike policies in a large sample of states showed that in the absence of legislative authorization to strike, express or implied, there is universal acceptance of the common law rule that public employees do not have the right to strike. However, in a significant number of jurisdictions, this policy may be clouded because, among other reasons,

(a) no mandatory express strike penalties for violation exist except usual broadly discretionary contempt of court penalties for disobedience of an injunction;

(b) injunctions may be difficult to secure from a court unless certain substantive standards are met and this may be difficult to do;

(c) there may be a requirement that a public employer first seek relief from the state's administrative agency before a court injunction may be sought; and

(d) damage actions against illegally striking unions and public employees by employers and third parties may not be permitted.

For legislatures wishing to deal effectively with implementation of a strike ban policy (broad or narrow) for public employee strikes, it

is important that these issues be comprehensively addressed. Since that has rarely happended, unpredictable, diverse, and even perverse legal results continue to occur in many jurisdictions as state courts are required to deal with strikes with little, if any, legislative thought and guidance.

3. Future research should:

(a) repeat this analysis on a larger sample of states or time periods;

(b) study the impact of strike policies on bargaining outcomes and public services outcomes;

(c) explicitedly examine unionization, union recognition strikes, and recognition procedures;

(d) examine the impact of school aid on the bargaining behavior of teachers and school districts <u>within</u> particular states;

(e) analyze the impact of strike policies on strike duration; and

(f) investigate the role and use of the strike by parties over an extended time period in legal and illegal strike environments.

Chapter I

Introduction and Overview of the Issues

The policy problem that state governments face in dealing with public sector labor relations is to determine a combination of statutory and administrative regulations that will enable public sector managements and unions to resolve their differences peacefully and on terms that are regarded as equitable by the bargainers and by the public. The strategies they have adopted to meet these objectives fall into three broad categories: 1) laws prohibiting strikes, but no comprehensive collective bargaining legislation; 2) comprehensive legislation with strike prohibitions, but providing strike substitutes; and 3) comprehensive legislation, including the right to strike for some public employees.

Early legislation in this area was characterized by strike prohibitions and the absence of any comprehensive recognition of collective bargaining rights. For example, in 1947 eight states passed anti-strike legislation.[1] In addition to prohibiting strikes, these laws provided severe penalties for violation as in New York's Condon-Wadlin Act, where the penalties for workers who participated in a strike were five years' probation and no pay increases for three years.[2] Some of these early laws, however, did permit labor-management negotiations, but there were no provisions for resolving disputes if the parties could not reach an agreement on their own. Although a majority of the states now have comprehensive public sector bargaining legislation, a number do not and still prohibit strikes either directly by statute or through court injunction.

The second type of state policy provides comprehensive bargaining rights, strike prohibitions, and a strike substitute. The rationale behind this policy is that public employees have a legitimate right to bargain over terms and conditions of employment, and in exercising this right there will be times when the parties will be unable to reach an agreement. State policymakers have concluded that in these instances strikes can be prevented only if employees are provided with an alternative to a strike. A strike alternative is the quid pro quo for the strike prohibition and penalties for its violation. In Wisconsin, the 1977 statute covering municipal employees prohibits strikes and specifies stiff penalties for violation, but it also provides a procedure for interest arbitration to resolve most disputes. Under this law, a union found in violation of the strike prohibition loses it dues checkoff right for one year and must pay a fine of $2 per member per day up to $10,000 per day for each day a strike continues after a court injunction issues. The law also states that a municipal employee who strikes shall be fined $10 per day for each day the strike continues following the injunction.[3]

Strike substitutes under this second policy strategy usually are one or more of the following dispute-resolution procedures: Mediation, factfinding, or interest arbitration. Increasingly, arbitration has been viewed as an appropriate strike substitute because it provides for a final, binding decision by a neutral outsider. However, in many states factfinding continues to be the preferred strike alternative for municipal employees other than those in the protective services.

The third strategy, adopted by some states, is to provide collective bargaining rights and to permit strikes if certain conditions are met. One typical condition is that only "nonessential" employees may strike.[4] Another is that the parties must have made use of the third-party dispute-resolution procedure and it must have proved to be unsuccessful in resolving their differences. Under the Wisconsin law, employees have the right to strike provided both parties withdraw their final offers in the arbitration proceeding and provided a court does not hold that the strike would pose an imminent threat to public health and safety.[5] Nonessential public employees have a limited right to strike in Oregon and Minnesota. Until 1980 in Minnesota a union could strike if the employer refused to arbitrate or refused to comply with an interest arbitration award.[6] Public employee strikes are legal in Oregon, but the law states that if and when an employer prevents or stops a strike by obtaining an injunction, the judge must order arbitration of the dispute.[7]

Other states, including Hawaii and Pennsylvania,[8] have comprehensive legislation that permits nonessential public employees to strike. In Michigan, where the statute is silent on the issue of strikes of nonessential employees, the courts require school boards to show that they have bargained in good faith and have suffered or will suffer irreparable damages before an injunction will be issued.[9] This test is considered sufficiently difficult to meet in nonviolent school strikes that the teacher unions have adopted a bargaining strategy very similar to what it would be if the statute had granted these employees the legal right to strike.

When formulating options for dealing with employer-union disputes, lawmakers have to satisfy at least three constituencies--the employers, the employees

and their representatives, and the general public. The public employer is interested in maintaining control over the employment relationship and in obtaining bargaining outcomes that do not have a high political cost. Employees and their unions are interested in legislation that provides equitable procedures and outcomes. The public wants, at a minimum, to be protected from strikes that endanger the public health and safety, and it may also prefer to be inconvenienced by strikes as seldom as possible. However, citizens, as taxpayers, are also interested in the economic outcome of the bargaining process; thus, there may be a limit on what they are willing to pay to prevent strikes.

The goals of employers, employees and their unions, and the public obviously are incompatible. Harsh penalties may deter unions and employees from striking and, thus, prevent the public from being inconvenienced. Yet the unions may view these penalties as inequitable unless, perhaps, the law includes an alternative dispute settlement procedure that is binding on both parties. Public managements often have opposed interest arbitration as a procedure because it means, in some instances, that a neutral outsider will determine employment conditions.[10]

While the ultimate resolution of these conflicting objectives is determined by the relative political power of the various groups, the impact of the different state policies can be evaluated by careful research. Our major objective in this study is to examine some of these policies and to determine, if possible, the effect the various strike penalties have on the propensity of public employees to strike, on the bargaining relationships, and on the

bargaining outcomes. In the remainder of this chapter we briefly discuss the normative assumptions that underlie our study and the major issues that are raised by the public sector strikes we analyze.

Conflicting Policy Goals and Research

As the introduction suggests, state policymakers have a number of options in formulating legislation to deal with strikes by public employees. The basic issue is whether or not the right to engage in collective bargaining enjoyed by private sector employees should be extended to government employees. Once having determined that public employees should have these rights, the lawmakers then have to decide whether or not they will permit these employees to strike, and they have to fashion legislation that they hope will either prevent strikes or minimize their impact. These goals could be achieved by a combination of such devices as an interest arbitration procedure, penalties for unions and employees who participate in illegal strikes, and contingency plans for the provision of essential services if strikes occur.

The value judgment reached regarding the wisdom of allowing strikes by government employees will be an important determinant of any measures designed to prevent them. If a state's policymakers decide that strikes cannot be permitted, the legislation is likely to include strong strike-prevention measures and penalties. For example, the assessment of an additional day's pay over and above the loss of pay for every day public employees are on strike in New York represents the value judgment of that state's lawmakers about public employee strikes. Similarly, strikes by police and firefighters are prohibited by law in both New York and

Pennsylvania, and a system of compulsory arbitration is provided for the settlement of disputes between these employees and their employers.[11] Alternatively, if a state's legislature elects to permit strikes, then the measures it chooses to discourage them will be less extreme. In Pennsylvania, where most strikes by nonessential employees are permitted, factfinding through the Pennsylvania Labor Relations Board (PLRB) is available but may not be required prior to the employees' exercising their legal right to strike.

Although the value judgments made about the appropriateness of prohibiting strikes and the methods used to prevent them are interdependent, the research approaches to these questions should be different. In this study we will attempt to evaluate the impact of the various strike prohibitions and the alternatives, analyzing in each case both effectiveness and cost. The reader should be reminded, however, that we cannot evaluate all of the costs objectively because many depend on value judgments made about the propriety of public sector strikes. Unions may value the right to strike so highly that any restriction on it is "too costly" and unacceptable. Employers may prefer for strikes to be prevented at any cost, including prohibiting all collective bargaining by public employees.

While the authors have their own opinions regarding strikes by public employees, we have tried to keep them separate, as far as possible, from the fundamental question of whether or not strikes in the public sector should be legal and from our evaluation of the effectiveness of strike prohibitions and of dispute-resolution procedures. We support

the right of public employees to bargain collectively with their employers if they so choose; therefore we would reject the option of eliminating strikes by prohibiting bargaining. But this does not mean that in our study we do not try to evaluate the efficacy of the bargaining prohibitions, strike substitutes, or strike penalties in preventing public employee strikes. However, the question of strike prevention represents only part of a policy decision. Policymakers must also consider the social, economic, and political costs of a policy. We have attempted to evaluate some of these costs, realizing, of course, that we have not fully explored all the factors that policymakers may take into account in formulating a strike policy.

Although the focus of this study is on the impact of various labor policies on public sector strikes, we recognize that there are other state policies that may also affect strikes. Thus, a failure to include the effects of these other policies may bias our evaluation of the impact on strikes of strike substitutes and penalties. An obvious example of the effect of a nonlabor state policy can be seen in teacher strikes where state aid formulas and minimum teaching-day requirements determine how much aid a school board loses as a result of a strike. This, in turn, may determine whether the income losses the teachers suffer during their strike are later reduced if the school board is required to reschedule the lost teaching days. In teacher strikes, this variable is likely to be as important as the strike penalties and substitutes included in collective bargaining legislation. Thus, each of the states in which

we conducted extensive field investigations, we have tried to identify and evaluate the effects of both the collective bargaining laws and these other policies on the relative costs of a strike to labor and management.

Strike Substitutes and Penalties in the Public Sector

The three broad policy options that state policymakers have in addressing the question of whether or not strikes should be legal and in fashioning policies to prevent strikes were outlined earlier. Here we trace briefly the evolution of public policy toward strikes and discuss the key issues involved in the use of various strike penalties and substitutes.

Prior to the 1930s, strikes were accorded very similar treatment in both the public and private sectors. Strikes by private sector employees frequently were enjoined as illegal acts that interfered with commerce or resulted in irreparable harm to the employer. This situation changed in 1932 with the passage of the Norris-LaGuardia Act which prohibited the use of the injunction in most peaceful labor disputes.[12] The National Labor Relations Act (NLRA) of 1935 expanded this protection of private sector employees by permitting strikes in most primary labor-management disputes. However, government policy toward public sector strikes remained unchanged during the first half of the century. As long ago as 1919, for example, the Boston Police Strike was enjoined and harsh penalties were imposed on the strikers.[13] This trend continued after World War II when many states followed the example set by Congress in the Taft-Hartley Amendments to the NLRA and outlawed strikes by government employees.

The current policy of some states toward public sector bargaining is not unlike the policies of 30 years ago. In 1976, 13 states banned strikes and either completely prohibited bargaining or allowed it only at the discretion of the employer.[14] In Virginia and North Carolina, the law forbids public employers to bargain with their employees; thus, because bargaining does not exist, the issue of public sector strikes is largely irrelevant. In the remaining 11 of these 13 states, bargaining is allowed if the employer agrees to it, but a negotiated settlement may not be binding on the employer. These states have chosen not to provide either strike substitutes for resolving disputes in contract negotiations or election procedures for deciding representation questions.

In the two states where bargaining is prohibited and in most of the other 11, public employee strikes have been infrequent. However, this may be due to the absence of union activity in both their public and private sectors and a poor indicator of the effectiveness of an unregulated public sector bargaining environment in a state where there is extensive public sector collective bargaining. This point is emphasized when the experience of two other states, Illinois and Ohio, is examined. Neither has any comprehensive public sector bargaining legislation; yet about 19 percent of all public sector strikes between October 1973 and October 1977 occurred in these two states.[15]

An explanation for this disparity may be that while Illinois and Ohio are like the other 13 states in that they have no comprehensive bargaining law, they are unlike them in that collective bargaining is well developed in their private and public sectors.[16] If the policy of

not having comprehensive bargaining legislation is effective only in the general absence of bargaining, then an increase in collective bargaining in less organized states presently without laws may result in additional strikes and clearly would not be a realistic policy option for states that already permit bargaining.

A second problem in states without comprehensive legislation is that the parties are left with no institutional arrangement for resolving questions of union recognition. These questions, which are usually decided peacefully in the private sector through election procedures, are simply left to the parties to settle by themselves. If election procedures are acceptable substitutes for recognition strikes, then we might expect more such strikes in states that do not now have comprehensive bargaining legislation. This means that if union activity increases in future years in states that now have no laws, we should expect them to have more union recognition strikes.

In the majority of the states, the laws that only prohibited strikes have been replaced by comprehensive bargaining legislation. Most states have chosen to provide bargaining rights that are secured through representation elections. To prevent strikes after recognition, they rely on various forms of third party intervention and penalties for illegal strikes that impose high costs on the union compared to other methods for resolving disputes. Types of intervention range from mediation to compulsory arbitration. Table I-1 summarizes the statutory provisions on third party intervention in disputes involving different groups of

employees in these states. Mediation is the most common and arbitration the least common dispute resolution procedure. In the table, states that permit interest arbitration are grouped with states that require it for certain employee groups. In 1979, only about 20 states made interest arbitration compulsory, usually for employees in protective service occupations.[17]

The availability and use of various dispute resolution procedures raise a variety of research issues. The one that has probably received the most attention by academicians is the propensity of the parties to use the procedures and the impact of the procedures on the concession behavior of the parties. Although these research issues are important, we do not address them here. An equally important question that has not received as much attention is the effectiveness of these procedures in preventing strikes.[18] Yet few across-state studies have attempted to evaluate these procedures along this important performance dimension.[19] In this study we direct our analysis primarily to this issue.

In states with comprehensive bargaining legislation, a strike substitute as a strike prevention measure is usually coupled with strike prohibitions and penalties for violations. From a theoretical perspective, these two types of policies attempt to prevent strikes by different means. On the one hand, providing a strike substitute represents an attempt to move the parties to a bilateral agreement by replacing the pressures on both parties that are created by a strike threat by pressures created by the threat of third party intervention.[20] The effectiveness of penalties depends on the extent to which they force the union to make more concessions

Table I-1

Number of States with Different Types or Combinations of Dispute Resolution Procedures; July 31, 1976

	Number of States
Mediation only	6
Factfinding only	4
Arbitration only	8
Mediation and factfinding	12
Mediation and arbitration	9
Mediation, factfinding and arbitration	17
Mediation, factfinding and other	4
No procedure	13

Source: This table was adapted from Helene S. Tanimoto, Guide to Statutory Provisions in Public Sector Collective Bargaining: Impasse Resolution Procedures, Industrial Relations Center, University of Hawaii, April, 1977, pp. 155-161.

Note: The figures do not add to 50 because some states have multiple laws that fall into more than one category.

than it would if there were no penalties by increasing the cost to the union of striking. If these additional concessions increase the size of the contract zone, then penalties may be effective at preventing some strikes.

From a research perspective, each approach needs to be evaluated because states typically have adopted both penalties and substitutes; thus an unbiased evaluation of one of the policies requires that the other be controlled. From a policy formulation perspective, most states have viewed the policies as complementary. However, if each has an independent impact on strikes, a state might choose to adopt just one of them. Another reason for comparing penalties and substitutes is that it forces a consideration of the fairness or equity of each procedure. Penalties are clearly directed at the union or the employees, while substitutes impose an obligation on both parties. Since both are responsible for the bargaining relationship, imposing costs on only one of them may be inequitable and, perhaps, less effective than a policy that imposes additional costs on both. For this reason, the public might prefer strike substitutes to penalties, and the preference might well be strong if substitutes are as effective as penalties at preventing strikes and if the costs of the substitutes do not exceed the costs incurred from the strikes that might result if the strike substitutes were not available.

The types of strike penalties that are included in the states' comprehensive legislation are more varied than the types of dispute settlement procedures that have been written into these laws. Penalties

may be against individual strikers and/or their union organization and may be one or more of the following sanctions: fines, jail terms, loss of seniority, loss of dues, checkoff and/or recognition rights, or revocation of agency shop provisions. These penalties may be in addition to fines imposed by a court if the union and the striking employees disobey a court injunction to return to work. Table I-2 summarizes research by Tanimoto and Najita on the number of states that include each of the various strike penalties in their legislation.[21]

The most common penalty against individual strikers is the loss of pay they would have received were it not for the strike. This "penalty" is nothing more than the costs assumed by striking employees in the private sector and is not an additional cost that might be imposed because a public sector strike is illegal. New York is the only state where the loss of pay from a strike exceeds what it would be in a private sector strike. There the individual loses not only the pay for the day not worked, but also is penalized and additional day's pay because the strike is illegal.[22]

For teachers in some states, the pay lost during a strike may be less than one day's pay for each strike day. While several states prohibit an employer from paying employees for days they do not work, school districts closed during a strike may schedule make-up days to meet the state's mandated requirement of a certain number of teacher-student contact days. Where the law does not waive the minimum teaching day requirement, teachers would not be paid for the days they are on strike,

Table I-2

Number of States That Had A Specific Strike Penalty, December 31, 1977

	Number of States
Penalties Against Employees	21
Loss of pay	10
Discharge	3
Discipline	5
Discharge or discipline	9
Fines	7
Imprisonment	5
Other	1
Penalties Against Employee Organization	18
Loss of exclusive representation status	6
Loss of due checkoff	10
Loss of representation status or checkoff	1
Fines	11
Imprisonment	3
Other	1

Source: This table was adapted from Helene S. Tanimoto and Joyce M. Najita, Guide to Statutory Provisions in Public Sector Bargaining: Strike Rights and Prohibitions, Industrial Relations Center, University of Hawaii, November, 1978, Table 4.

but they would be paid later for any make-up days scheduled so as to meet the state requirement. When this occurs, striking teachers would incur loss of pay only for teaching days that are not rescheduled and the costs of having to give up vacation or holidays during or at the end of the school year.

The next most frequent penalty for employees violating a strike prohibition in a state law is discharge or discipline by the employer. These penalties typically involve either a discharge, often followed by a rehire as a "new employee" after the strike, or simply the loss of seniority and/or reimposition of a probationary period.

Penalties against unions for illegal strikes vary substantially, the most common being fines and revocation or suspension of dues checkoff or fair share payments for some time period following the strike. As in the case of employee fines, the law may specify that the fine or dues checkoff revocation is to be imposed in contempt proceedings, or that it may be imposed regardless of any court action. In most cases in New York, for example, the dues checkoff suspension is the prescribed penalty when the union is found responsible for the strike, and this penalty is usually entirely independent of other penalties that might be imposed for contempt of court.[23]

The Enforcement and Administration of Strike Penalties

In addition to deciding what fines will be assessed for illegal strikes, state policymakers must also formulate two other penalty policies that are of equal importance. One issue is whether or not there should be any discretion in determining the magnitude of the penalty for violating

the strike prohibition, including the possibility that the penalty might be waived. The alternative is to specify precisely what the penalty is to be for participating in an illegal strike. In New York, individuals participating in an illegal strike are fined one day's pay for each strike day. Providing in the law for some discretion may ensure that penalties will not preclude early strike settlements, but it may also reduce, or possibly eliminate, the deterrent effect of the penalty on the decision to strike.

When formulating strike penalties, policymakers must also reach a decision on who is to administer the penalties--the employer, the public employee relations board, or the courts. There are advantages and disadvantages in each instance.

If the employer administers the penalties and has some discretion with regard to their magnitude, he may either bargain them away or attempt to use them to punish the union and the employees. The former strategy weakens the deterrent effect that the penalties are supposed to have, while the latter may have a long-term detrimental effect on the bargaining relationship that may ultimately affect the quality of public services.

Specifying that the PERB administer the penalties helps ensure that they are handled by individuals with expertise in public sector labor relations. However, a potential disadvantage in having the PERB administer them is that this role may be, or at least may appear to be, incompatible with its primary dispute-resolution function. In most states where there is a PERB, it is responsible for any mediation efforts

the state provides, and since the parties' trust is a prerequisite for the success of mediation, a PERB's effectiveness in this area during a strike may be reduced if it is also responsible for administering strike penalties.

Court administration of public sector strike penalties comes about when an "interested" party goes to court seeking an injunction against a strike or a threatened strike. While the interested party may be a taxpayer or the PERB, it usually is the employer. In some cases an employer may decide that court involvement would not help the parties reach a favorable settlement. Although there have been a number of instances where individual judges have been of assistance, the employer may believe that many of them lack experience in labor relations matters.[24] Also, the employer may fear that once the court is involved, the outcome of the dispute is no longer solely controlled by the parties, a situation that may be detrimental to its bargaining objectives.[25]

Once an injunction is requested, the court's role in a strike may vary, depending upon the state bargaining legislation, a judge's willingness to become involved, his/her sophistication in labor relations, and state law governing a court's action in matters of equity. A judge may simply prod the parties to make additional concessions, under the threat of contempt. If he orders the employees to return to work and they disobey, he usually can exercise discretion in imposing penalties. His ability to reduce or waive any penalties once an agreement is reached gives him tremendous influence in negotiations.

Despite a court's broad equity power, there are limits on it. In several states a judge is not permitted to impose a settlement or to order the parties to submit their dispute to arbitration.[26] In others, judicial involvement in a strike is limited to requiring that certain conditions be met before an injunction may be issued. In Michigan, for example, where public employee strikes are illegal, the supreme court stated:

> We here hold that it is insufficient merely to show that a concert of prohibited action by public employees has taken place and ipso facto such a showing justifies injunctive relief. We so hold because it is basically contrary to public policy in this State to issue injunctions in labor disputes absent a showing of violence, irreparable harm, or breach of peace.[27]

These standards are based on standards required for an injunction in the private sector and do not reflect any explicit standards provided in the Michigan Employment Relations Act.

In a very few states the standard or standards for an injunction are limited by the bargaining law. In Pennsylvania, where most strikes are legal, a strike can be enjoined only if its continuation is a serious threat to public safety, health, or welfare.[28] The Hawaii law is similar, but does not include the word "welfare."[29] In Vermont, where teacher strikes are illegal, the statute reads:

> No restraining order or temporary or permanent injunction shall be granted . . . except on the basis of findings of fact . . . that the commencement or continuation of the action poses a

> clear and present danger to a sound program of school education . . . . Any restraining order or injunction . . . shall prohibit only a specific act or acts expressly determined in the findings of fact to pose a clear and present danger.[30]

In 1980 a county court in Vermont denied an employer's request for an injunction under the statute because there was no evidence showing that a sound program of education was endangered. The court held that the strike was illegal, but since make-up days could be rescheduled to avoid any loss of state aid, it was not injoinable.[31]

Numerous problems may arise from court administration of penalties. Without a clear legislative policy that defines the court's obligations and limits, there is likely to be substantial variation in strike penalty enforcement as different judges take different approaches. However, if the limits are defined, making it difficult to secure an injunction against a strike, the deterrent effect of the penalties may be weakened. Policymakers should not be surprised by the number of illegal strikes that occur when statutory limits on a court's involvement make it costless for the parties to violate the law.

Strike Policies and Outcomes

State public policymakers may choose to attempt to prevent strikes by outlawing them and penalizing strikers, or individual public employers may make concessions during negotiations that are so favorable to public employees that they will not want to strike. Another option is to provide

an alternative to the strike that is acceptable to the unions as a quid pro quo for their giving up the use of the strike. While these policies are not mutually exclusive, each produces a different balance of power between employers and unions that is reflected in bargaining outcomes. The policy that the public, the employers, or the unions prefer will depend upon what each expects to gain or lose under it.

Since the policy a state adopts is a product of the political process in which the parties participate, its long-term survival and effectiveness requires that both the public and the parties be minimally satisfied with the outcomes under the procedures. If strike penalties seriously limit the bargaining power of the unions, in the short run, the taxpayers may benefit from lower settlements, but the effectiveness of the policy may deteriorate in the long run if the unions resort to illegal strikes in frustration or in an attempt to demonstrate to legislators that the law should be changed because it is no longer effective. If the long-term effectiveness of a procedure depends on outcomes and outcomes depend on the procedure in use at a given point of time, an evaluation of what the various parties gain and lose is a critical part of any study of strike penalties and strike substitutes.

The key question that follows an evaluation of outcomes is where the balance of power should lie to ensure fair benefits for employees and efficient and fairly priced services for the public. Critics of the right to strike argue that prohibitions and penalties are necessary because, without these constraints, wages paid to employees would be excessive and the democratic process would be undermined.

Wellington and Winter summarized this position and its rationale:

> Distortion of the political process is the major long-run social cost of strikes in public employment. The distortion results from unions obtaining too much power, relative to other interest groups, in decisions affecting the level of taxes and the allocation of tax dollars. This distortion therefore may result in a redistribution of income by governments, whereby union members are subsidized at the expense of other interest groups.[32]

Evidence gathered since this argument was made does not provide strong support for it. Bargaining has become more widespread and the wage impact of public sector unions appears to be less than the union wage impact in the private sector.[33] In addition, both the public and the public sector managements appear to be willing to incur significant strike costs rather than concede to what are believed to be unreasonable demands.

However, a case could be made that the Wellington and Winter hypothesis has not been thoroughly tested. While most states allow bargaining, strikes remain illegal and infrequent. We do not yet know what impact unions would have if strikes were legal everywhere. If they were and if Wellington and Winter were correct, the public would be faced with conceding to union demands or suffering the consequences of strikes. Without strike penalties and with the right to strike written into state laws, the relative power of unions clearly would increase, resulting in the employees' being able to negotiate more costly benefits that the public would have to finance.

Many unions offer another opinion on where the balance between strikes and outcomes should lie. According to their position, prohibitions and penalties deny public employees the rights that private sector employees enjoy. These prohibitions and the lack of any economic costs to a public employer that is struck mean that public employees are unable to secure equitable employment benefits. Therefore, when strike prohibition and penalty laws are effective in preventing strikes, the public gains unfairly at the expense of the employees because it receives low cost, uninterrupted services and the employees are forced to work under laws that are repressive by private sector standards. If wages increase as a result of the exercise of legal right to strike, it does not reflect unreasonable union gains, but merely a correction of the previously unfair settlements the employees had to make under strike prohibition laws.

The proponents of strike substitutes, such as interest arbitration, adopt a position between those who favor strong penalties against illegal strikes and those who favor giving public employees the right to strike. They argue that arbitration is minimally acceptable to employees because the wage outcomes are more acceptable than those they could achieve under strike penalty laws and a nonbinding dispute-settlement procedure such as factfinding. If employees believe that they will achieve acceptable outcomes under an alternate procedure, they will be less likely to strike and a reduction in the number of strikes will promote public acceptance of arbitration because public services will

not be interrupted. However, because the acceptability of arbitration by the public is also determined by outcomes, if settlements under the procedure are "too high," there may be public pressure for a change in policy. Public sector employers have consistently opposed interest arbitration, claiming that it interferes with management and public decision making authority. If public employers can convince the public that this interference results in major distortions in the political process, then arbitration may not survive public scrutiny.

From this discussion of bargaining outcomes, it is clear that the impact of strike penalties and substitutes on outcomes is important to the success, or even the survival, of a policy designed to minimize strikes. The data required to analyze the impact of the legality of strikes and substitutes on outcomes is now becoming available because of the limited right to strike in some states and the use of different substitutes in other states. In this study we will not consider the impact of all the different strike policies on outcomes, but we will theoretically examine how outcomes vary under policies that impose different strike costs on public employees.

Chapter I

Footnotes

1. B.V.H. Schneider, "Public Sector Labor Legislation -- An Evolutionary Analysis," In Public-Sector Bargaining. Edited by B. Aaron, J.R. Grodin and J.L. Stern (Madison, Wisconsin: Industrial Relations Research Association, 1979): 195.

2. Condon-Wadlin Act of 1947, New York Civil Service Laws, Section 108, Chapter 391.

3. See Wisconsin's Municipal Employment Relations Act, Section 111.70(7) of Subchapter IV, Chapter II, Wisconsin Statutes. The strike prohibition does not apply for nonessential employees if both the union and employer withdraw their final offers. See footnote 4 and the corresponding material in the text.

4. In this chapter we loosely use the term "essential employees" to refer to public employees that are subject to strike penalties or strike substitutes that are different from the policies applied to other public employees in a state. The different treatment is provided because the services of these employees are considered more essential than the services provided by other employees. In some states, (i.e., Hawaii, New York, Pennsylvania, and Wisconsin), separate dispute settlement procedures are provided to police and/or firefighter bargaining units because of the essential services they provide. Other employees may be "essential employees" as a result of a court or PERB determination that a strike by the particular employee group endangers the public health, safety, and/or welfare. Determining whether employees are

"essential" is an important issue in states with a limited right to strike. This issue is discussed in detail in subsequent chapters.

5. If an agreement is not reached in a reasonable time period during mediation-arbitration, the Municipal Employment Relations Act of Wisconsin provides: . . . either party may, within a time limit established by the mediator-arbitrator, withdraw its final offer and mutually agreed upon modifications, the labor organization, after giving 10 days written advance notice to the municipal employer and the Commission, may strike. Unless both parties withdraw their final offers and mutually agreed upon modifications, the final offers of neither party shall be deemed withdrawn and the mediator-arbitration shall proceed to resolve the dispute by final and binding arbitration . . . (Section 111.70(CM) (6) (C)).

6. Section 179.64(7) of the Minnesota Employment Relations Act. In 1980 the Minnesota law was amended to permit strikes by "nonessential" employees provided mediation requirements and strike notice requirements are met. See Section 179.64 of the Minnesota Statute, as amended by S.F. 2085, L. 1980.

7. Section 243.726 of the Oregon Revised Statutes.

8. Hawaii Revised Statutes, Chapter 89, Section 89-12 (1970) and the Public Employee Relations Act, Pennsylvania Statutes Annotated, Title 43, Section 1001-1010 (1970).

9. Holland v. Holland Education Association 66 LRRM 2415 (1967), 67 LRRM 2916 (1968).

10. The U.S. Conference of Mayors adopted the following resolution opposing arbitration in 1976:

"Whereas, substantial gains have been made by public employees in wages, benefits, and working conditions without binding arbitration; and whereas, arbitration is an expensive time-consuming process; and whereas, the alternative of binding arbitration tends to discourage the resolution of wage and benefit issues in good faith bargaining sessions; and whereas, arbitrators, even with the best intentions, have neither a sense of trend of local public employee relations nor any accountability to local citizens and taxpayers; and whereas, arbitration strikes at the heart responsibility and authority of elected officials in local government by usurping budget and other decisons they alone are charged with, now, therefore, be it resolved that the U.S. Conference of Mayors opposes the imposition by the Federal Government of mandatory binding arbitration on local government employer-employee relations."

11. Pennsylvania Act 111 (1968), Section 4-8 and Section 209.4 of the Taylor Law (1967), as amended.

12. For an analysis of the use of the labor injunction prior to the Norris-LaGuardia Act, see Edwin Witte, The Government in Labor Disputes (New York: McGraw-Hill, Inc., 1932).

13. For a detailed account of this strike, see David Ziskind, One Thousand Strikes of Government Employees (New York: Columbia University Press, 1940): 39-51; Richard L. Lyons, "The Boston Police Strike" of Don Berney, "Law and Order Politics: A History and Role Analysis of Police Officer Organizations" (unpublished Ph.D. Dissertation, University of Washington, 1971).

14. The 13 states were Alabama, Arizona, Arkansas, Colorado, Illinois, Louisiana, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia.

15. These figures are discussed in greater detail in Chapter IX.

16. In 1977, 12.6 percent of the employees in the 13 states without laws were covered by contract. In the remaining 37 states, 35.7 percent of employees were covered by a contract in 1977. In Illinois the percentage was 29.8 percent and in Ohio 32.6 percent of employees were under a contract. These figures were calculated from U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, 1977, Census of Governments, 1979, Table 3.

17. In 1979 states with compulsory and binding interest arbitration were Alaska, Connecticut, Hawaii, Iowa, Maine, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and Wyoming. See Peter Feuille, "Selected Benefits and Costs of Compulsory Arbitration," 33 Industrial and Labor Relations Review (October, 1979): 64-76.

18. For example, see Section 101 of the Pennsylvania's Public Employee Relations Act (1970) Section 200 of New York's Taylor Law (1967), Section 20.1 of the Iowa Public Employment Relations Act (1974), Section 179.61 of the Minnesota Employment Relations Act (1971) and Section 89-1 of the Hawaii Statute (1970).

19. The major previous analysis of state public policy and strikes was done by Burton and Krider. They found that public policy variables did not have a significant impact on strike activity. See John F. Burton, Jr. and Charles E. Krider, "The Incidence of Strikes in Public Employment" in Labor in the Public and Nonprofit Sectors, edited by Daniel S. Hamermesh (Princeton: Princeton University Press, 1975): 135-177.

20. Henry S. Farber and Harry C. Katz, "Interest Arbitration, Outcomes and the Incentives to Bargain," 33 Industrial and Labor Relations Review (October, 1979): 55-63.

21. Helene S. Tanimoto and Joyce M. Najita, Guide to Statutory Provisions in Public Sector Collective Bargaining: Strike Rights and Prohibitions (Honolulu, Hawaii: University of Hawaii, Industrial Relations Center, November, 1978).

22. Section 210(2) (g) of the Taylor Law of New York (1967).

23. See Chapter V for a detailed discussion of these issues.

24. The lack of state court experience in labor relations can be explained by federal preemption of most private sector labor law issues.

25. This happened in the 1979 Indianapolis teacher strike. See Chapter VIII for a description of these events.

26. In the 1979 teacher's strike in Indianapolis a judge tried to impose settlement terms on the parties following a taxpayer request for an injunction against the strike. This action was overturned by the Indiana supreme court. See Chapter VIII for description of this strike and the legal actions taken during the strike. A similar ruling

limiting the court's equity powers was made in Pennsylvania where most strikes are legal. See Armstrong School District v. Armstrong Education Association 5 Pennsylvania Commonwealth Court 387, 291 A. 2D 120, (1972).

27. See footnote 9.

28. Section 1003 of Pennsylvania's Public Employee Relations Act, (1970).

29. Section 89-12 of Hawaii's Public Employment Relations Act, (1970).

30. Section 1720 of Vermont's Municipal Employee Relations Act, (1969).

31. Board of School Commissioners of the City of Rutland v. Rutland Education Association et al. Docket No. 5371-79RC, reported in Bureau of National Affairs, Government Employee Relations Reporter, 854:45, March 24, 1980.

32. Harry H. Wellington and Ralph K. Winter, Jr., The Unions and the Cities (Washington, D.C.: The Brookings Institution, 1971): 167.

33. Sharon P. Smith, Equal Pay in the Public Sector: Fact or Fantasy (Princeton University, Industrial Relations Section, 1977).

34. Wellington and Winters expressed this view when they stated: "There simply cannot be an effective ban on strikes if public employees believe that they are being treated in a relatively unfair fashion without running in the risk of a major political crisis in which the ultimate coercive power of the state must be used on a large scale against its own employees." See Wellington and Winter, The Unions and the Cities: 169.

Chapter II

An Overview of the Study Design and Methodology

Several methodologies and data sources were used in this study to analyze the issues presented and discussed in Chapter I. In some cases, an intensive field investigation was the appropriate methodological technique since it permitted identification of the sequence of events in a particular strike, the reaction of the parties to the timing and use of penalties, and the impact of a court intervention, if any, on the dispute. It also permitted a follow-up to see if any penalties were imposed and, if so, if they were reduced as part of the strike settlement. From these field investigations we hoped to obtain an understanding of the reasons for the strikes as well as the role of strike penalties and of statutory procedures in resolving the disputes.

A statistical analysis of data from a variety of sources was the more appropriate technique for investigating other issues. For example, the impact of particular penalties prescribed by state law on the frequency or duration of strikes in that state can best be assessed by comparing the data on strikes in several states having different public policies and/or by following strike trends in a state over a time period during which the policy changed. Therefore, for this study we conducted a statistical analysis of strikes in seven states and interpreted the results in the context of our field investigations. What we hoped to learn was why some policies were more or less effective in preventing strikes.

Selection of the Seven States

The seven states chosen for the field investigations—Hawaii, Illinois, Indiana, New York, Ohio, Pennsylvania, and Wisconsin—were not randomly selected. Rather, a deliberate attempt was made to include some states with comprehensive legislation on public sector labor relations, some states without such legislation, and states that have granted some public employees a limited right to strike. While other states might well have fitted into one of our three categories, the seven chosen were readily accessible to the research team within the resource contraints of the study.

There also was significant variation among the states in the number of strikes, the propensity of public employees to strike, and the extent of bargaining in both the public and private sectors. As can be seen in Table II-1, where public sector strike data for all 50 states are displayed, strikes in the seven states of our sample accounted for from 25 to 60 percent of all strikes in the U.S. since 1958. While the number of strikes increased in all states over this 20-year period, the trends were notably different. The simple correlations between the number of strikes in each of the states in the study, shown in Table II-2, confirm this conclusion. While some pairs of states with the same general legislative framework, such as Illinois and Ohio, had similar strike patterns, correlations for other pairs of states indicate that there was little simple relationship between the number of public sector strikes over the 20 years. In this study we will attempt to find out if the across-state differences can be explained by the different public policies toward public sector strikes.

Table II-1

Public Sector Strike Frequencies in U.S. and 7 States

YEAR	Total U.S.	Hawaii	Illinois	Indiana	New York	Ohio	Pennsylvania	Wisconsin	7 State Total
1958	015	000	000	002	002	001	000	000	005
1959	026	000	002	004	002	002	002	000	012
1960	038	000	006	000	004	002	004	002	018
1961	028	000	004	001	002	001	001	000	009
1962	028	000	003	000	002	001	000	001	007
1963	029	000	004	003	002	002	002	001	014
1964	041	000	007	002	004	002	000	002	017
1965	042	000	003	002	004	001	000	002	012
1966	142	000	011	002	015	015	004	003	050
1967	181	000	018	004	015	028	010	005	080
1968	254	000	022	009	023	024	013	002	093
1969	409	002	036	014	015	065	038	015	185
1970	409	001	042	009	036	054	030	010	182
1971	329	001	031	003	019	040	087	015	196
1972	375	002	029	012	027	030	073	014	187
1973	387	001	032	007	016	044	065	024	189
1974	384	002	026	005	018	042	078	009	180
1975	478	001	041	006	032	053	107	007	247
1976	377	001	043	004	015	044	093	010	210
1977	411	000	029	018	014	062	059	008	190
1978	480	000	038	023	016	067	069	004	217

Source: U.S. Department of Labor, Bureau of Labor Statistics, Work Stoppages in Government, various years.

Table II-2

Simple Correlation Matrix Between the Number of Strikes in Study States and the Rest of the Nation, 1958-78

	Illinois	Indiana	New York	Ohio	Pennsylvania	Wisconsin	Rest of U.S.
Illinois	.6368						
Indiana	.2506	.6291					
New York	.5802	.8335	.4536				
Ohio	.5586	.9362	.7819	.7246			
Pennsylvania	.6629	.8479	.4515	.6552	.7739		
Wisconsin	.7440	.7123	.3433	.5516	.6622	.6780	
Rest of U.S.	.6121	.9400	.7780	.8258	.9631	.7875	.6646

The probability that a strike will occur in a unit of government that bargained with at least one group of employees also varies significantly across the seven states. In Table II-3 are the statistics for 1977. If strikes occurred only in governmental units that reported having at least one bargaining unit, and if, at most, one strike per year occurred in a particular unit of government, these figures give the average probability of a strike in a government in each of our seven states. The probabilities ranged from 0 to .0774. In terms of these strike probabilities, the seven states in our sample represent a broad cross section of the 50 states. Three of them were below the average for all 50 states; four were above.

There is at least one dimension along which our seven states are clearly not representative of the entire nation. Six of the seven are midwestern or eastern states characterized by a high level of public and private sector unionization. New York ranked second in the U.S. in the percent of the nonagricultural workforce that was unionized in 1976, Hawaii ranked third, Pennsylvania fourth, Illinois seventh, Ohio tenth, Indiana eleventh, and Wisconsin twelfth.

Our interview states also are highly organized along three dimensions of public sector unionization. The first two columns of Table II-4 show the percent of state and local government employees who were union members or included in bargaining units in 1977. The last column gives an indication of union penetration of state, county, municipal, township and school district governmental units by reporting the percentage of these governments having at least one bargaining unit. The numbers in parentheses in each column show the rank order of each state along the particular dimension of unionization.

Table II-3

The Relationship Between the Number of Strikes and Governments With at Least One Bargaining Unit, 1977

	(1)Number of Strikes	(2)Number of Governments with at Least One Bargaining Unit	(3)Strike Probabilities (1)/(2)
Total U.S.	485	12,146	.0399
Hawaii	-	4	0.0
Illinois	37	692	.0535
Indiana	18	316	.0570
New York	14	1,043	.0134
Ohio	50	646	.0774
Pennsylvania	67	1,081	.0620
Wisconsin	8	549	.0146
Rest of U.S.	291	7,815	.0372

Source: U.S. Bureau of the Census, 1977 Census of Governments, Labor-Management Relations in State and Local Governments, Vol, 3, Number 3, 1979, Tables 4 and 6.

Table II - 4

Extent of Unionization and Collective Bargaining In State and Local Government By State, 1977 [1]

State	% Fulltime Employees Organized	% of all Employees in a Bargaining Unit	% of Gov't. w. Bargaining Units
Hawaii	83.9 (1)	76.4 (2)	20.0 (20)
Illinois	45.6 (21)	34.8 (24)	10.5 (27)
Indiana	34.7 (29)	27.3 (29)	27.3 (8)
New York	72.1 (3)	73.8 (3)	31.5 (7)
Ohio	45.2 (22)	40.5 (17)	19.4 (22)
Pennsylvania	64.2 (10)	60.9 (7)	20.6 (17)
Wisconsin	64.4 (8)	51.0 (12)	21.8 (14)

Source: U.S. Bureau of the Census, 1977 Census of Governments, Labor- Management Relations in State and Local Governments, Vol. 3, Number 3, Tables 2 and 4.

1. The numbers in parentheses corresponds to the rank order of the state along each measure of unionization.

According to any of these three measures of public sector unionization, the seven states chosen for our field analysis are highly organized. The percent of full-time employees who belong to unions or employee association ranged from 34.7 in Indiana to 83.9 in Hawaii. These two states also define the range for the percent of employees in bargaining units in the seven states. These two measures indicate that all of the field site states except Indiana were more organized than the median state in the nation.

The obvious disadvantage of confining the field analysis to seven highly organized states is that the use of penalties, the reaction of public officials and the public to strikes, and the acceptability of collective bargaining are likely to be very different in those states as compared to the majority of the less unionized states in the nation. These differences mean that many of our interview results may not apply to bargaining in these other states.

Thus, while we recognize that our results may not generalize to other states and other parts of the country, we see several advantages that are gained by confining the analysis to states that are comparable in terms of unionization. If we had chosen a southern state with one type of policy and compared it to a central or northwestern state with a different policy, regional variations might have seriously confounded our evaluation of policy differences. For example, a study that attempted to compare Pennsylvania, where there is a limited legal right to strike, with Texas, which imposes harsh penalties on strikers, would have been much more difficult than comparing Pennsylvania with the neighboring state of New York,

where there is a severe strike penalty law but which is very similar to Pennsylvania along other dimensions. Because of these similarities, we can be more certain that observed differences are due to strike policy variations and not to other variables that may affect labor relations.

A second advantage gained by confining the analysis to seven highly organized states is that these states have had significant experience with strikes and policies designed to deal with public sector strikes. This advantage is important because the field research is designed to analyze what has actually happened when public employees strike. While our results may not generalize to states where public sector employees are currently less organized, if unionization increases in this latter group of states, they are likely to be confronted with many of the same sort of issues that our seven states have already addressed.

Field Investigations and Data Collection

The field research consisted of a series of interviews with neutral members of state labor relations agencies or boards in the seven states we studies as well as with labor and management representatives. In each state where there was a public employee relations board (PERB), we interviewed individuals from these boards and solicited their views on public sector strikes and the operation of the law in their particular state. These neutral agencies also served as valuable sources of state strike statistics.

Most of the field research consisted of phone and field interviews with labor and management officials in approximately 75 bargaining

relationships in the seven states. The field interviews were conducted at a selected sample of 45 sites where there had been strikes since 1976; phone interviews and questionnaires were used to gather information about the other bargaining relationships. In this way we hoped to assemble sufficient information to be able to compare the experiences at strike and nonstrike sites.

At the sites in our strike sample, we attempted to interview in person both a labor representative and a management official who were familiar with the overall bargaining relationship and the events surrounding the strike. Members of the research team completed these field interviews by the early summer of 1980. To ensure that an interviewee responded to a common set of questions, we had prepared one interview schedule for the labor representatives and one for the management representatives for use in the strike sites and another pair for use at the nonstrike sites—four in all. Since the latter interviews were done by phone, we supplemented them with mail questionnaires to collect data that could not be obtained easily over the phone.

BLS and Census Data on Public Sector Labor Relations

The information gathered in the seven states was supplemented by data on public sector strikes and bargaining across the entire nation. For example, the analysis of national trends in public sector strikes in Chapter III draws on data that the Bureau of Labor Statistics (BLS) has been collecting and publishing since 1946.

A second source of information on national trends is the Survey of Governments of the Bureau of the Census. In the early 1970s, the Census Bureau began collecting information of labor relations policies and practices in approximately 16,000 governmental units, including data on strikes and their resolution, contract and union membership coverage, and bargaining unit structure. For each governmental unit, these data have been matched with BLS work stoppage reports to create a single file of labor relations information for state and local governments. The published summary statistics from this file for each year since 1974 were used extensively in the seven state analyses.

Labor relations data comprise only one part of the Census Survey of Governments. In addition, information on employment, wages, revenues, and government expenditures is collected for an almost identical sample of governments. Data tapes from the labor relations, employment, and finance surveys were obtained for 1975 and 1976, and from these tapes we constructed a single data file, including all this information, for each of our surveyed governments. We also obtained the employment and finance surveys for 1973 and 1974, and these additional data were matched to the 1975 and 1976 data file. The end result was a data file for more than 10,000 municipal, township, county, and school district governments that included employment and finance data for 1973 through 1976 and labor relations data for 1975 and 1976. These were the data that were used in the statistical analysis of strikes in six of the seven states, reported in Chapter X. That chapter also includes a detailed description of the sample of governments included in the data file.

Chapter III

Strike Trends in the Public Sector

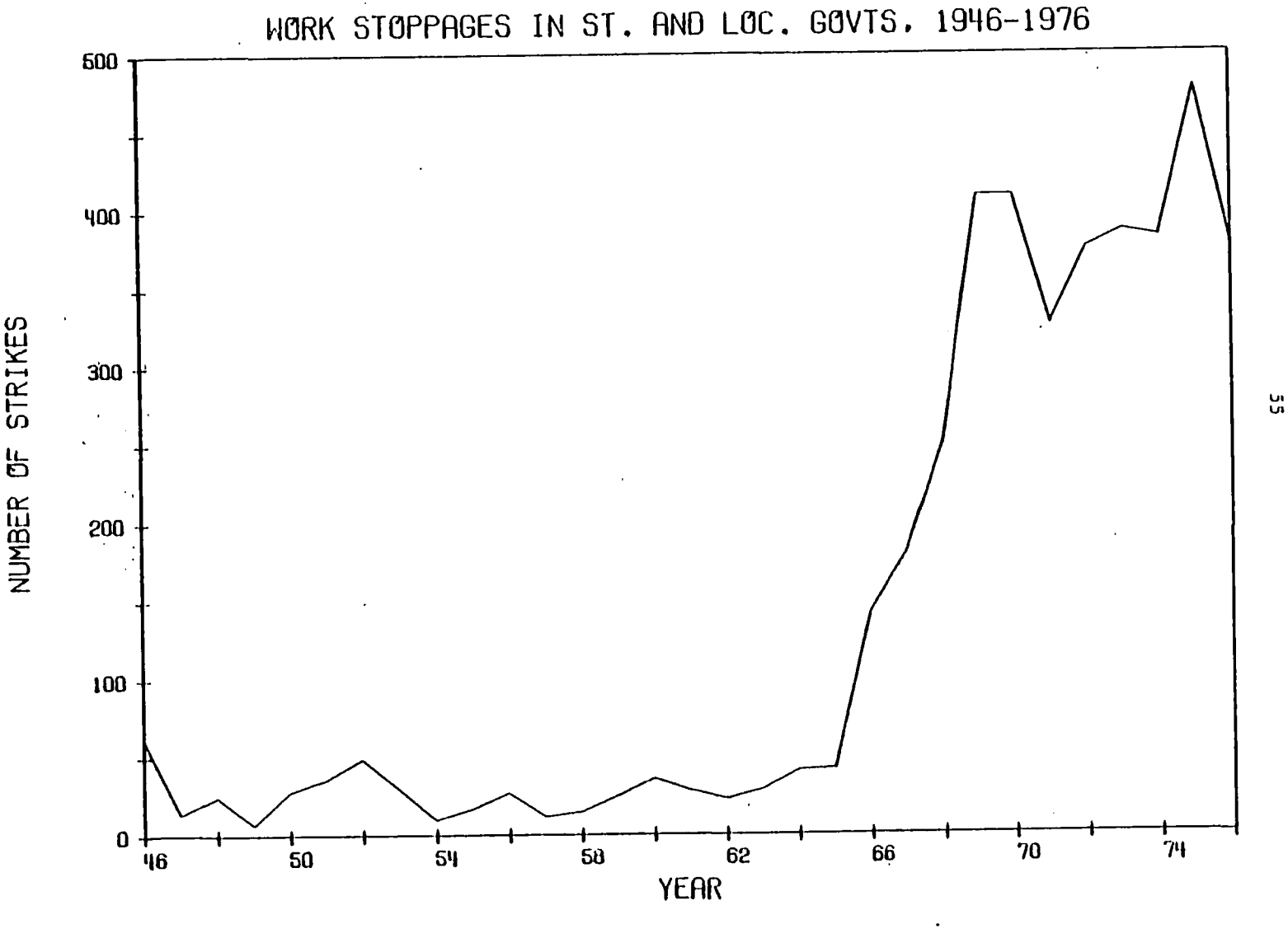
In this chapter we use annual strike statistics since 1946 to test three different models of public sector strike activity. One is a simple private sector spillover model where strikes in the public sector are a function of private sector strike frequency. The second is a version of the Ashenfelter-Johnson model applied to the public sector, and the third postulates that strikes are a function of the growth of unionization in the public sector.[1]

With these models we hope to identify the variables that are important in explaining the increase in the absolute number of strikes in the public sector over the past 30 years. Although there were important public policy changes in many states during this period that may have influenced strike activity and certainly had an effect on union growth, we make no attempt to evaluate them here, since such an evaluation can be done only by comparing strike trends across states and within individual states over time. We do this in later chapters where we assess the policies of the seven states where we conducted field investigations.

The Number of Public Sector Strikes

In 1946 there were appromixately 50 strikes by public employees throughout the nation. In 1978 the number was 480. As shown in Figure III-1,[2] there were only modest variations in the number of strikes until the late 1960s when the number increased from considerably less than 100 a year to an average of more than 400. Since 1969 there has been no

Figure III-1


WORK STOPPAGES IN ST. AND LOC. GOVTS. 1946-1976
NUMBER OF STRIKES
500
400
300
200
100
0
46
50
54
58
62
66
70
74
YEAR

noticeable upward trends, as the total annual number has remained at about the 400 level, plus or minus 75.

Several factors contributed to this increase. An important one, of course, was the rapid expansion of bargaining in state and local governments that began in the mid-sixties. No statistics on either contract coverage or the number of contracts negotiated in the public sector are available for years prior to 1972. However, the rapid growth in public sector unions over these years certainly would be an indication of an increase in collective bargaining. The membership of the American Federation of State, County, and Municipal Employees (AFSCME), for example, increased from 73,000 in 1946 to 750,000 in 1977.[3] One result of the growth of this and other public sector unions and the concomitant increase in bargaining was more opportunities for public sector strikes to occur.

A second factor that may have contributed to the higher levels of strike activity in the 1970s was the change in some state policies toward strikes by public employees. In the five years prior to the time Pennsylvania enacted its law in 1970, giving nonessential public employees a limited right to strike,[4] there was an average of 19 strikes a year; in the five subsequent years, 1971-1976, the average increased to 82.

Other factors such as changes in the real earnings of public employees, unemployment, and national economic policy may also account for some of the variation in the number of strikes. For example, the 1971 decline may have been a result of the imposition of the Nixon wage and price controls in the late summer of that year, at exactly the time when many teacher-school board negotiations were reaching a critical stage. Thus, the wage freeze may have discouraged teacher strikes that year.

The total number of strikes per year is certainly higher in the private than in the public sector, but if external variables affect the number of work stoppages, we might expect the trends to be similar. The graph in Figure III-2 confirms this conjecture. There were very few strikes in either sector in the early 1960s and sharp increases in the late sixties and early seventies. Although it may be only a coincidence, this similarity suggests that some underlying economic and societal factors may have contributed to industrial conflict in both sectors.[5]

Another possible explanation for the similar strike patterns is that there was a spillover effect from the private to the public sector. That is, public employees, who had traditionally been hesitant about striking, changed their attitudes as they saw the strike as a bargaining weapon being used with increasing effectiveness in the private sector, beginning in the late 1960s.

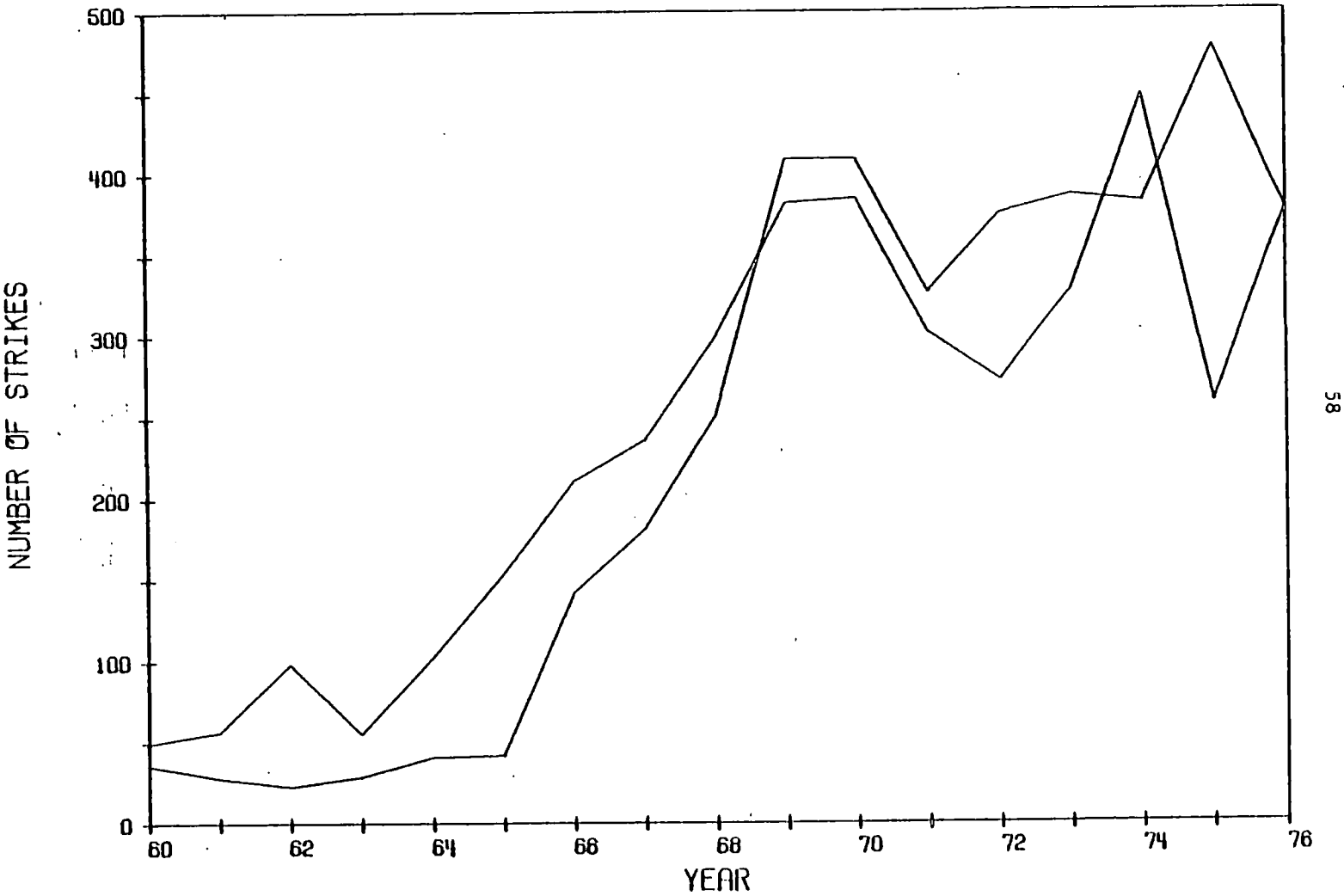
In subsequent sections of this chapter we test the validity of these explanations of strike activity. The results of tests of several econometric models of strike trends are reported and evaluated in the following section.

Determinants of the Number of Public Sector Strikes

Any statistical analysis of the number of public sector strikes in the nation is severely limited by lack of information. Private sector strike data are available on a monthly or quarterly basis, but data on the public sector consists of single yearly observations, thus constraining the number of independent variables that can be included in a model. Despite this constraint, three models were estimated and compared. The first was a simple regression of the number of public sector strikes on the number of private sector strikes:

Figure III-2

WORK STOPPAGES, PUBLIC AND PRIVATE, 1960-1976[1]



[1]The number of strikes in the private sect[illegible]ere rescaled using the following formula:
Strikes' = (Actual Number of Strikes-3000

(1) Public sector strikes = f(Strikes in the private sector)

As we saw in Figure III-1, the number of strikes in these two sectors during the 1960s and early 1970s appeared to be highly related. A behavioral interpretation of equation (1) is difficult because the spill-over effect may be operating in either direction, or one set of determinants may be influencing strikes in both sectors. If the latter explanation is correct, then the impact of unobserved variables on public sector strikes is proxied by the effect of the number of private sector strikes, in which case the coefficient on the number of strikes in the private sector is seriously biased because of omitted variables. Even though the equation may only describe an empirical and not a structural relationship between public and private sector strikes, the results do provide a bench mark that can be used to evaluate other models.

The results from estimating various forms of model (1) are presented in Table III-1. The estimates in columns (1) and (2) were obtained using the ordinary least squares (OLS) estimation technique, and those in columns (3) and (4) were obtained from a one-step Cochrane-Orcutt procedure to correct for first-order autocorrelation.[6] The coefficients for private sector strikes in columns (1) and (3) are positive; however, after correcting for autocorrelation, the effect becomes statistically insignificant. The last rows of Columns (2) and (4) report the results obtained by including a one-year lagged value of private sector strikes in the equation. In the OLS results the impact of the previous year's strike activity on public sector strikes is greater than that of strike activity in the current year. However, like the column (1) results, these ~~do~~ change when the data are

Table III-1

Public Sector Strike Model I

	OLS		C.-O.	
	w/o lagged Private Sector Strikes	w lagged Private Sector Strikes	w/o lagged Private Sector Strikes	w lagged Private Sector Strikes
Independent Variables				
CONSTANT	-372.139 (2.925)	-533.66 (3.8578)	43.622 (.3710)	88.4367 (.5387)
PRIVATE SECTOR STRIKES$_t$	.1175 (4.083)	.06857 (1.8604)	.0227 (.896)	-.00762 (.3103)
PRIVATE SECTOR STRIKES$_{t-1}$		.08822 (2.141)		.02301 (.912)
N	32	31	31	30
D.W.	.72617	.69382	.77141	1.005
SSE	500583	411381	207629	154418

Absolute t - values are in parenthesis

corrected for first-order autocorrelation. The results imply that, after correcting for autocorrelation, private sector strike activity is unrelated to public sector strikes in a simple bivariate relationship.

For our second estimation, we used the Ashenfelter-Johnson model of strikes, modified to reflect public sector employer characteristics:

(2) Public sector strikes = f(U, W, P, REV, FED)

where U = the national unemployment rate in year t; W = the percentage change in average public sector earnings per employee between a previous year and year to; P = the change in the GNP implicit price deflator; REV = the percentage change in local government revenues between a previous year year and year t; and FED = the change in federal government aid to state and local governments as a percent of total state and local government revenues between a previous year and year t.

W and P measure the differential impact of changes in real and money wages on strike activity. If private sector results hold for the public sector, the effect of P should be positive and that of W should be negative. Unemployment (U) has been shown to have a negative effect on the number of strikes in the private sector. However, in the public sector where employees traditionally have enjoyed greater job security, U may have lesser impact.

FED is a measure of the effect of strikes on federal aid to state and local governments. It is hypothesized that changes in the amount of federal aid as a percent of total state and local government revenue will have positive impact on strikes by creating an unexpected revenue gain or

loss to those governments. If a loss of federal funds is significant, the governments will be unable to meet employee wage expectations without increasing local taxes, a move that would be unpopular with taxpayers. Alternatively, an increase in federal funds should lead to lower strike activity because the additional funds allow greater employer flexibility in meeting union demands without increasing local taxes.

The change in federal aid as a percent of state and local revenues rather than the percentage change in aid is used because the latter would not measure the change's impact on taxpayers. For example, if 2 percent of local revenues came from federal sources and this aid was cut by 50 percent, total local government revenue would be reduced by only 1 percent. But if the federal government was the source of half of all local revenue and this amount were halved, total revenue available to the local government would decrease by 25 percent.

A change in government revenues can have two different strike effects. First, an implication of revenue increases is that local and state governmental units are growing and, thus, that there are more opportunities for public sector jobs and higher wages. This may lead to more strikes as employees try to capture a portion of the added revenues. Second, additional revenues may be the result of higher local tax rates, and, as taxes increase, taxpayers may become increasingly unwilling to support concessions to employee wage demands unless a strike is threatened.

Table III-2 shows the results of estimating alternative forms of the modified Ashenfelter-Johnson model. The first two columns report OLS

TABLE III-2

Public Sector Strike Model II

	OLS		C.-O.	
	Nominal Wage and Price Changes	Real Wage Changes	Nominal Wage and Price Changes	Real Wage Changes
Independent Variables				
CONSTANT	-319.85 (.094)	504.527 (.1619)	-807.594 (.7193)	-197.101 (.1705)
UNEMPLOYMENT	42.1346 (1.983)	42.6295 (2.0309)	23.63 (2.247)	24.302 (2.171)
MONEY WAGES	-303.767 (.3146)		-37.895 (.1325)	
PRICES	1020.17 (3.031)		765.40 (3.70)	
REAL WAGES		-901.201 (3.234)		-515.339 (3.140)
LOCAL REVENUE	1993.49 (1.801)	2234.95 (2.1686)	1509.88 (3.4706)	1474.31 (3.180)
FEDERAL AID	-2734.66 (1.1176)	-3079.20 (1.304)	-1565.04 (1.628)	-1383.50 (1.358)
N	31	31	30	30
D.W.	.24723	.28104	1.1889	1.0217
SSE	463234	470992	68535.3	81102.2

Absolute t - values in parentheses.

results for changes in prices and money wages and for changes in real wages; columns (3) and (4) report the results for the same model after correcting for first-order autocorrelation.

Overall, these results show that the variables other researchers have found to be predictive of private sector strike activity do a reasonable job of predicting it in the public sector. Inflation is a key factor. A comparison of the results when real wage changes are used with those using price and money wage changes indicate that strike activity is more responsive to the former than to the latter. Even when real wages remain unchanged, more strikes occurred during periods of high inflation and high wage gains than when wages and prices were stable. The finding that a 1 percent increase in both prices and wages will result in more strikes than if prices and wages had remained unchanged may reflect the impact of inflation on public employers. Taxpayers may apply more pressure on public employers to hold down taxes during periods of rapidly rising prices, and this pressure, coming at the same time that employees are demanding real wage protection, may result in the parties' taking more divergent bargaining positions and, thus, greater strike activity.

The financial condition of the public employer also can affect strikes. Our results show that as additional revenues become available, employees and governments are likely to disagree about how they should be allocated. It should be noted, however, that most of this analysis was of a time period when many cities were not facing financial crises. Thus, our yearly aggregate strike statistics do not provide an adequate

test of whether these cities' recent critical financial problems have resulted in more strikes.

The most unusual result shown in Table 2 is the positive effect of unemployment on public sector strike activity. Previous studies have shown that when unemployment increases, strikes decrease,[7] the explanation being that when unemployment rates are high, the number of alternative employment opportunities for striking workers are reduced and the supply of replacement workers available to a struck company is large. These arguments may not apply in the public sector because most strikes are of such short duration tha alternative employment is unimportant, or because it may be difficult for public employers to find trained replacements for teachers or police officers, for example. While these differences may explain why unemployment was insignificant in our analysis, it does not explain why it had a significant positive effect on strike activity. We can only speculate that when private sector unemployment is high, unemployed taxpayers may be quite unsympathetic to public employee demands for improved working conditions, causing the public employers to be less willing to compromise. Thus, more strikes would result.

For our third test we used a union growth model of strikes that included the percent of public sector employees organized by unions. Because a strike is a collective act by workers, it is more likely to occur if such workers are members of a formal bargaining organization.

Unfortunately, it is difficult to measure the extent of unionization and bargaining in the public sector for each year since 1946. Even if yearly membership figures were available, the public employee members of some predominantly private sector unions, such as the Teamsters, would be excluded. A second problem is that many public employee organizations did not endorse bargaining until the mid-sixties. Until then, membership in state employee associations or affiliation with the National Education Association (NEA) did not imply support for collective bargaining. Thus, including the membership of these organizations during the first half of the time period of our analysis would overstate the number of public employees who would be willing to strike.

Although we were unable to overcome these measurement problems completely, we did construct two proxy measures based on membership in AFSCME and the American Federation of Teachers (AFT). One was AFSCME membership as a percent of the total number of public employees other than teachers. The second was AFT membership as a percent of all teachers. Each measure suffers from limitations, as neither organization was very active in collective bargaining until the early 1960s. Also, the AFT membership measure underestimates teacher bargaining because NEA affiliates became increasingly active in collective negotiations beginning in the mid-sixties. Despite these limitations, these measures were the best available proxies of public sector unionization.

The results from the union growth model are shown in Table III-3. The first column includes only current values of the two unionization measures, while the second includes lagged values of each measure. AFSCME membership as a percentage of noneducation public employment is positive and statistically significant; the coefficient on AFT membership is negative and insignificant.

The AFT membership variable may have turned out to be insignificant because it omitted the tremendous changes in contract coverage that occurred as NEA affiliates increased their bargaining activity. An estimated 208,000 teachers were covered by collective bargaining contracts in 1966; in 1973 the number was 935,000, with increased bargaining by NEA affiliates accounting for all but 85,000 of this growth.[8] Thus, it is apparent that the AFT measure failed to capture this increase in bargaining.

The significance of the AFSCME measure in the equation does not imply that this union was responsible for the increase in public sector strike activity. Although AFSCME has been the major force behind the spread of bargaining outside the education area, other unions also bargain and other unions strike. We interpret our results to mean that the growth of AFSCME closely parallels the growth of all bargaining activity in the public sector.

An Overall Model of Strike Trends

The only way we can compare the impact of the variables from the

Table III-3

Public Sector Strike Model III

Independent Variables	OLS	C.-O.
CONSTANT	-37.7648 (1.920)	.0471 (.0017)
AFT	.00027 (1.1108)	.00028 (1.075)
AFSCME	.000552 (3.839)	.000404 (2.905)
N	32	31
D.W.	.888586	1.5874
SSE	128707	78019.2

Absolute t - values in parentheses.

different models is by putting them in to a single equation, so we estimated an overall model but included only the key variables to conserve degrees of freedom. AFT membership was dropped because it was statistically insignificant in the third model. Private sector strike activity and money wage changes were initially retained because of their theoretical importance in models (1) and (2). Table III-4 reports the results from estimating the single equation.

A number of differences between the results of the combined model and the individual models are evident. First, the unemployment rate which was significant and positive in Table 2 became insignificant when private sector strike activity and unionization were added to the equation. Second, private sector strike activity, which was insignificant after correcting for first-order autocorrelation, became significant when combined with the variables from the other models. This change means that after variables that are likely to influence strike activity in the public sector (unemployment, wage and price changes) are controlled, private sector strike activity had a significant effect on the number of public sector strikes. This supports our earlier speculation that the increase in public sector strike activity is at least partially due to a spillover or "demonstration" effect from the private sector.

Two other variables having a signficiant effect on strikes are inflation and the growth in state and local revenues. The consistently

Table III-4

Combined Model of Public Sector Strikes

Independent Variables	OLS Nominal Wage and Price Changes	OLS Real Wage Changes	C.-O. Nominal Wage and Price Changes	C.-O. Real Wage Changes
CONSTANT	-1652.19 (1.3847)	-1374.09 (1.2706)	-1735.92 (1.64)	-1227.96 (1.163)
PRIVATE SECTOR STRIKES$_t$	.0511 (2.5522)	.0539 (2.802)	.03602 (1.726)	.04032 (1.876)
AFSCME	.0006 (6.568)	.00059 (6.643)	.00050 (4.069)	.00055 (4.503)
UNEMPLOYMENT	.4379 (.0413)	1.3498 (.1303)	9.7611 (.818)	8.247 (.6704)
Δ MONEY WAGES	-111.407 (.3271)		41.33 (.1435)	
Δ PRICES	341.408 (2.732)		628.55 (2.936)	
Δ REAL WAGES		-302.621 (2.885)		-372.37 (2.408)
Δ LOCAL REVENUE	886.719 (2.2609)	964.27 (2.645)	1199.39 (2.689)	1091.58 (2.388)
Δ FED. AID	202.07 (.217)	64.183 (.0723)	-480.54 (.5007)	-189.779 (.1934)
N	31	31	30	30
D.W.	1.7831	1.8510	1.9240	1.97366
SSE	49703.2	50458.0	41763.5	47181.9

Absolute t-values are in parentheses.

positive and significant coefficient on changes in local revenue show that changes in local and state taxes have led to more strikes. As noted above, this may reflect taxpayer opposition to employee demands. The results in column (4) show that real wage changes have a negative effect on strike activity. When real wage changes are separated into nominal wage changes and price changes, we obtained the results in column (3). Price changes are significant but nominal wage changes are not. This suggests that inflation is a more important explanation of the number of public sector strikes than nominal wage changes.

The general conclusion to be drawn from this analysis is that the growth in the number of public sector strikes over the past 30 years can be explained primarily by the increase in unionization and bargaining, by growing local government revenues, and by the rising average inflation rate. The results were generally consistent with those of studies of private sector strike activity except that unemployment in the total economy did not have the negative effect that had been found in studies of private sector strikes.

In subsequent chapters we evaluate the impact of different state policies and incorporate variables similar to those used in this chapter into our micro analysis of strikes in seven states.

Chapter III

Footnotes

1. Orley Ashenfelter and George E. Johnson, "Bargaining Theory, Trade Unions and Industrial Strike Activity," 59 American Economic Review (March, 1969): 35-49.

2. The pre-1958 strike figures are approximations because prior to 1958, strikes were classified as public employees strikes by the BLS only if they involved public employees who provided administrative, protective, or sanitary services. Strikes by all other public employees were not counted as public employee strikes. Instead, these strikes were classified according to the industry in which the employees work. For example, teacher strikes in public education were counted as education strikes rather than public employee strikes prior to 1958. Although it was not possible to completely correct the undercounting of public employee strikes in the pre-1958 statistics, we were able to add in teacher strikes in education for this time period using figures on teacher strikes from several other published BLS reports.

3. These data were taken from proceedings of the National AFSCME Conventions, various years.

4. Section 1001-1010 of Public Employee Relations Act of Pennsylvania (1970).

5. These factors are discussed in Michael Shalev, "Trade Unionism and Economic Analysis The Case of Industrial Conflict" 1 Journal of Labor Studies (Spring, 1980): 133-174.

6. The autocorrelation between the error terms in OLS estimates will yield unbiased coefficient estimates but biased standard error estimates. The Cochrane-Orcutt procedure, which corrects for first order autocorrelation, takes the OLS residuals and computes an estimate of the correlation between the error terms. The variables in the model are then corrected for this correlation, and OLS estimates are computed using the transformed variables. Residuals are then calculated from the transformed data and the steps described above are repeated. For a description of the procedure see Jan Kmenta, Elements of Econometrics, (New York: Macmillan Publishing Co., Inc., 1971): 287-289 or the section on autoregressive disturbances in most other econometric texts.

7. Albert Rees, "Industrial Conflict and Business Fluctuations," 60 Journal of Political Economy (October, 1962): 3710382; A.R. Weintraub, "Prosperity vs. Strikes: An Empirical Approach," 19 Industrial and Labor Relations Review (January, 1966): 231-238; Orley Ashenfelter and George Johnson, "Bargaining Theory, Trade Unions, and Industrial Strike Activity," Henry S. Farber, "Bargaining Theory, Wage Outcomes and the Occurrence of Strikes: An Econometric Analysis," 68 American Economic Review (June, 1978): 262-271, and Michael Shalev, "Trade Unionism and Economic Analysis."

8. These data were provided to the authors by Greg Saltzman and were based on the results of a survey conducted by the National Education Association. Unfortunately, yearly data on contract coverage were not available for inclusion in the models.

Chapter IV

A Model of Strikes and Strike Penalties

Public policymakers assume that unions and managements will be more likely to settle contract disputes without a strike if strike penalties are imposed because the penalties raise the relative costs of a strike to the union and employees. In this chapter we develop a theoretical model of bargaining behavior which formally evaluates this assumption.[1]

In the first of the following two sections we develop a model of bargaining under the threat of a strike. This model specifies the offers the parties will make to avoid a strike given their expectations about strike outcomes. If the union is willing to concede to a wage that is lower than the maximum wage the management is willing to offer to avoid a strike, then a positive contract zone will exist and a strike will not occur. Here we establish that the size of the contract zone is determined by strike costs and the parties expectations about the length and outcome of a strike.

In the second section we analyze the impact of strike penalties on strikes and wage settlements, incorporating the effect of strike penalties into the model as an exogenous cost imposed on the union and employees. We derive conditions required for penalties to decrease the probability of a strike and demonstrate their impact on average outcomes.

A Strike Model With Settlement Expectations

In this section we specify a strike model which shows that the size of the contract zone depends on each party's expectations about how long a strike will last, the wage settlement that will result if a strike occurs,

and the costs of a strike. This analysis is developed in a public sector context, but a similar approach would be equally appropriate for a private sector analysis.

Public sector management is assumed to have a utility function that depends upon political support in the community. When negotiations for a new contract begin, the elected officials have a stock of political support, Z. One outcome of the bargaining process that might erode this political stock is a wage settlement - any amount greater than W_m^* - that results in a tax increase unacceptable to the taxpayers. Another outcome of the process that would affect the employer's political stock is a strike, as the public would be expected to react negatively to the interruption in public services. But since striking employees are not paid when they are on strike, public expenditures on wages decrease or cease, and this savings in taxpayers' money might partially offset any decline in the public employer's political stock caused by the strike. Thus, the threat of a strike will motivate the employer to make concessions to avoid it only if the political costs of interrupted services exceed the political benefits of the money saved during the strike.

The union membership is assumed to be similarly motivated. The union approaches the contract deadline with a maximum wage, W_u^*, that the rank and file would like to achieve peacefully in negotiations. This wage is assumed to be exogenous. The utility of the actual settlement depends on how it compares to a peaceful settlement at W_u^*. The utility to the union of the settlement is reduced by either the income lost during a strike or the reduced

earnings stream caused by a wage settlement below W_u^*.

Assuming $W_u^* > W_m^*$, each party would view conceding with a strike or allowing a strike to occur as a less desireable outcome than one in which it could unilaterally and peacefully impose its preferred wage outcome (W_u^* or W_m^*).

Formally, the preceding points can be demonstrated by assuming that each party approaches the contract deadline with expectations about the length of a strike (S_i), if one should occur, and the wage settlement (W_i) that will result from the strike. The subscript "i" assumes the value of either m or u to denote, respectively, management and union expectations. Although these expectations imply that during the bargaining process each party has developed a schedule of expected wage concession that will be made during a strike, we assume these expectations are exogenous.

Before the contract expires the expected present value to the average union member of striking rather than conceding to the employer's preferred outcome without a strike is equal to:

$$(1)\quad PV_u = \int_{S_u}^{\infty} W_u e^{-r_u t}\, dt + \int_{0}^{S_u} W_a e^{-r_u t}\, dt - \int_{0}^{\infty} W_m^* e^{-r_u t}\, dt$$

where r = the discount rate union members apply to the stream of wages produced by a settlement; and W_a = either the wage striking workers could obtain from alternative employment during the strike or a household wage (leisure).

The first term is the present value of the earnings stream following a strike settlement at W_u, the second is the present value of a striking worker's alternative use of time during the strike and the third is equal to the present value of the wage stream produced by accepting the employer's prestrike offer and avoiding a strike. If $PV_u > 0$, then the union would expect to gain from a strike, and if $PV_u < 0$, the union would be better off agreeing to the employer's preferred position.

After simplifying (1) reduces to:

$$(2)\quad PV_u = (w_u/r_u)e^{-r_u S_u} + (W_a/r_u)(1-e^{-r_u S_u}) - W_m^*/r_u$$

By setting (2) equal to zero and solving for W_u, one obtains the minimum wage, W_{uo}, required from a strike to make the union member indifferent between striking and conceding peacefully to the employer's preferred position. W_{uo} is equal to:

$$(3)\quad W_{uo} = W_a + (W_m^* - W_a)e^{r_u S_u}$$

The importance of the wage alternative during a strike can be illustrated by noting the value of W_{uo} if W_a equals either zero or W_m^*. If W_a equals W_m^*, then union members can earn a wage for the duration of a strike that is identical to the employer's preferred outcome. In this case <u>any</u> wage concession by the employer to settle at any time during a strike will make the strike worthwhile.[2] If W_a equals zero, then the expected wage from a strike must exceed W_m^* by an amount sufficient to offset the income forgone as a result of a strike.

An equation corresponding to (3) that describes the expected present value of a strike to the employer also can be developed. However, there are two complicating factors. First, unlike a struck private sector employer, who loses revenue and thus must forgo profits as a result of a strike, alternative use of time during a strike, and the third is equal to the present value of the wage stream produced by accepting the employer's prestrike offer and avoiding a strike. This means that following a strike the public employer has assets that have increased by an amount equal to the wages that were not paid because employees were on strike. For the public official these revenues can be used to enhance his/her political stock by increasing services or decreasing taxes after the strike, or by ending the strike "early." Second, the only costs of a strike to a public employer are political. A public employer would have no incentive to settle a strike if it were not for the political pressure created by the interruption of public services. The following equation incorporates these effects and describes the expected present value of the <u>savings</u> an employer

will realize from taking a strike rather than conceding to the preferred position of the union:

$$(4)\quad PV_m = \int_0^{\infty} W_u^* e^{-r_m t}\,dt - \left(\int_{S_m}^{\infty} W_m e^{-r_m t}\,dt - \int_0^{S_m} W_c e^{-r_m t}\,dt + V_m(e^{PS_m} - 1)\right)$$

where r_m = the interest rate applied by the employer to the wage stream that results from a strike or settlement; W_c = the current wage that is being paid to union members; and V_s and P are parameters that define the political costs to an employer of a strike due to the interrupted public services. It is assumed that $V_s > 0$ and $P > 0$.

The first term in (4) is the present value of the earnings stream created by peacefully conceding to the union's preferred position. All of the remaining terms (in brackets) describe the costs of a strike to the employer. The first is the present value of the wage stream for the wage settlement following a strike. The second is the money saved during the strike, and the third reflects, the political costs created by public services interrupted during a strike. Although a variety of other functional forms could be used to represent these political costs, this specification has the feature that the marginal political costs of an additional strike period increase as the strike progresses.

After simplifying and rearranging terms, equation (4) becomes:

$$(5)\quad PV_m = (W_u^*/r_m) - (W_m/r_m)e^{-r_m S_m} + (W_c/r_m)$$

$$(1-e^{-r_m S_m}) - V_m(e^{PS_m} - 1)$$

If (5) is greater than zero, the employer would prefer a strike over conceding to the union's most preferred settlement point. By setting (5) equal to zero and solving for W_m, one obtains W_{mo}, the expected wage an employer must achieve from taking a strike so that the benefits from a strike and from conceding without a strike are exactly equal. This manipulation yields:

$$(6)\quad W_{mo} = W_u^* e^{r_m S_m} + W_c(e^{r_m S_m} - 1) - V_m r_m e^{-r_m S_m}$$

$$(e^{PS_m} - 1)$$

Only if $W_m < W_{mo}$ would the employer consider a strike preferable to a peaceful settlement at the union's preferred position.

The importance of the political costs of a strike in motivating employer concessions is clear from examining each of the terms in (6). If it were not for the last term, which corresponds to the political costs of a strike, an employer would not have any incentive to reach a peaceful

settlement because any wage settlement between W_u^* and W_m^* would be more favorable after than before a strike. This can be seen by noting that $W_u^* e^{r_m s_m} > W_u^*$ and $W_c (e^{r_m s_m} - 1) > 0$. The employer would be willing to pay more than W_u^* after a strike rather than pay W_u^* to prevent a strike! Although the condition of zero political strike costs will rarely exist, this exercise shows the important role political strike costs play in pressuring the employer to make concessions that help move the parties toward a peaceful settlement.

To this point we have assumed that when the contract expires each side must choose between a strike and accepting the most preferred position of the other party. If the net benefits of a strike to the union are negative ($PV_u < 0$), then it is also true that $W_u < W_{uo}$ and the union would be willing to concede peacefully to W_m^*. If the net savings to the employer from pursuing a strike strategy are negative ($PV_m < 0$), then $W_m > W_{mo}$ and the employer would be willing to concede to W_u^*. If each side is willing to concede, then the contract zone for a peaceful settlement is equal to the set of wage settlement points between each party's preferred position. This situation creates the largest possible positive contract zone and the prediction is that a peaceful settlement will occur somewhere in this zone.

However, if $W_u > W_{uo}$, then the union would prefer a strike to conceding, and if $W_m < W_{mo}$ then the employer would prefer the strike to conceding to the union's preferred position. However, even in these situations there is a last wage offer each side would be willing to make to avoid a strike. If the union's and employer's last wage offers

are denoted as W_{lou} and W_{lom}, respectively, they correspond to the wages that have a present value equal to the expected benefits from a strike. W_{lou} and W_{lom} can be obtained by setting (2) and (5) equal to zero, substituting W_{lou} for W_m^* in (2) and W_{lom} for W_u^* in (5), and solving for the two last offers:

$$(7)\quad W_{lou} = W_a + (W_u - W_a)e^{-r_u S_u}$$

$$(8)\quad W_{lom} = (W_m + W_c)e^{-r_m S_m} - W_c + V_m r_m (e^{PS_m} - 1)$$

Provided $W_a < W_u$, the last wage offer of the union will always be less than the expected wage from the strike. The last offer of management will be greater than the wage outcome it expects from a strike only if the political costs of a strike exceed the political value of the money saved from the strike. In other words, $W_{lom} - W_m > 0$ only if

$$(9)\quad V_m r_m (e^{PS_m} - 1) > \left| (W_m + W_c)(e^{-r_m S_m} - 1) \right|$$

The last offers of the parties define the contract zone. If the contract zone is negative a strike will occur, and if it is positive a peaceful settlement will be reached somewhere in the contract zone. The size of the contract zone is equal to

$$(10)\quad CZ = W_{lom} - W_{lou}$$

The size of the contract zone depends on each of the variables that affect the final offers of the parties. If equation (9) holds and the parties have identical expectations about the wage outcome from a strike ($W_u = W_m$), then the contract zone will be positive. This is clear from the discussion above. The union's last wage offer will always be less than the wage settlement expected from a strike, and if (9) is true, $W_{lom} > W_m$. Thus it follows that if $W_u = W_m$, then $CZ > 0$. This illustrates the very important point that if the parties have identical expectations about the wage outcome from a strike and a strike is costly to both sides, then there will always be a positive contract zone.

Conflicting Expectations and Strikes

It is clear from the preceding discussion that the contract zone will be positive and a strike will not occur when the parties have identical expectations. In negotiations, however, identical expectations about the outcome from a strike may be the exception rather than the rule. One reason for differing expectations is that each set of negotiations is different so that information a party acquires in previous bargaining rounds about an opponent's strike costs may be obsolete in later rounds. External economic factors or internal political events could create great changes in the costs of a strike to one of the parties — changes that are not fully appreciated by the other.

A second reason for differing expectations is that each side has an incentive to misrepresent its true strike costs. If an opponent can be lured into underestimating a party's strike costs, the opponent may concede more at the time the contract expires. If this strategy is successful, the contract zone will increase in size. However, if a party is "second guessed" by his opponent, the opponent may "discount" the strike costs communicated to him; if he discounts them "too much" or if the party was not trying to misrepresent his strike costs, the opponent may actually underestimate the party's true strike costs. This strategic behavior by either side is likely to lead to numerous instances where the parties' strike expectations in negotiations are not identical.

A negative contract zone may exist at the time the contract expires if the parties have different expectations about the wage settlement from a strike. Starting from a situation where the expectations are identical ($W_u = W_m = W$), the contract zone equals:

$$(11)\quad CZ = W e^{-r_m S_m} - W e^{-r_u S_u} + W_c(e^{-r_m S_m} - 1) + W_a(e^{-r_u S_u} - 1) + V_m(e^{PS_m} - 1)$$

If ΔW_u and ΔW_m represent the deviation of each party's expectations from W and the last four terms in (11) equal Q, the contract zone becomes:

$$(12)\quad CZ = (W + \Delta W_m)e^{-r_m S_m} - (W - \Delta W_u)e^{-r_u S_u} + Q$$

If the parties' expectations about the outcome from a strike are more favorable than W, ($\Delta W_m < 0$ and $\Delta W_u > 0$), the contract zone will shrink relative to (11).[2] Also note that the contract zone will increase in size if either side expects a strike settlement to be less favorable than W.

In order for a negative contract zone to exist at the time the contract expires, the combined impact of the parties' differing expectations must be sufficient to offset the effect of the other variables. In particular, in order for $CZ \leq 0$, the following condition must prevail:

$$(13)\quad \Delta W_u e^{-r_u S_u} - \Delta W_m e^{-r_m S_m} > W(e^{-r_m S_m} - e^{-r_u S_u}) + Q$$

If it does, then the differing expectations will produce a negative contract zone and there will be a strike. This condition is one interpretation that might be given to Hicks' statement that strikes are "mistakes" made by the parties. The "mistakes" simply reflect the differing expectations of the parties about the likely outcomes of a strike.

The Impact of Strike Penalties

Our model suggests that most strikes occur because differing expectations create a negative contract zone that offsets the positive zone created by strike costs. Strikes can be minimized by trying to reduce differences in expectations through mediation or by increasing the size of the contract zone so that for a given difference in expectations a negative zone will be less likely. This result has important implications for the evaluation of public sector strike penalties.

As noted in Chapter I, most state public sector bargaining laws include penalties against unions and/or employees who strike. These penalties are designed to deter strikes by increasing the costs of a

strike to unions or employees as well as by encouraging the unions to make concessions to avoid a strike. The legislators' implicit assumption is that additional concessions will increase the size of the contract zone and thus prevent some strikes that would have occurred if there were no penalties. According to our results, in some bargaining situations where a negative contract zone exists, this assumption will hold but in other cases it will not.

We can easily incorporate strike penalties into the framework developed above if we assume that the penalty is a fixed dollar amount that will be imposed, with certainty on each day of the strike. This assumption abstracts from reality in two important respects. First, the magnitude of the penalty incurred by striking an additional day in many states is not independent of the length of time employees have already been out on strike. Courts frequently impose more costly penalties if the strike has been in progress for some time. Second, penalties are not always enforced. With few exceptions, when employees make strike decisions, they know the strike is illegal but they are uncertain about the penalties that will be imposed for striking. While these two abstractions affect the magnitude of the impact of penalties, they will not change the direction of the impact of penalties on strikes.

A penalty equal to P_u dollars per strike day imposed on each striking employee will effect a decrease in the strike length wage settlement set that the union would find preferable to accepting the employer's offer and will also decrease the union's last wage offer. Incorporating the cost of the penalty into (2) and solving for W_{lou} as described earlier, yields:

$$(14)\quad W_{1ou} = W_a + (W_u - W_a)e^{-r_u S_u} - P_u(1 - e^{-r_u S_u})$$

Since the last term in (13) is positive; the last offer of the union will decline when a penalty is imposed for striking.

Assuming the employer does not modify his expectations because of the penalty, the size of the contract zone will increase because of the lower union offer. This means that the probability of a strike also will decrease since some negative contract zones that previously were negative because of differing expectations are now positive because the union is willing to make additional concessions to avoid a strike.

The conclusion that penalties will prevent some strikes depends on how they influence the employer's behavior. We have not made any assumption about how each side forms its expectations about strike outcomes. However, if the introduction of penalties causes the employer to expect a more favorable outcome from a strike (a lower wage settlement or a shorter strike), then some strike outcomes that previously were not preferred over conceding become more attractive than conceding. When this occurs, the employer will be less generous in his last offer to prevent a strike and

the contract zone will shrink, thus offsetting some portion of the enlarged contract zone created by the impact of the penalties on the union's last offer.

A second and more direct way in which an employer's response may lessen the strike-reducing effect of a penalty is if the employer benefits directly from the penalty. This occurs in New York where the penalty of an additional day's pay for each strike day is collected and kept by the employer. Because such a penalty represents an employer gain from a strike, he will decrease the last offer he is willing to make to prevent a strike, which reduces the size of the contract zone.

Using this model it is impossible to determine the net impact of a penalty on the size of the contract zone or the probability of a strike where the employer directly benefits from the penalty. Whether the reduction of W_{lom} is greater than, equal to, or less than the reduction in W_{lou} depends on the political gains the employer can achieve with the penalty money and the differences between the parties' discount rates and their expectations about the length of a strike.

Strikes may be more common if an employer's response to a penalty reduces the size of the contract zone unless the penalty is so severe that the union's last offer will typically fall below the preferred wage settlement the employer would like (W_m^*). Under these circumstances, the union might always concede to W_m^* to avoid a strike. Thus, even if penalties made the employer less willing to compromise, strikes may be less frequent because of the union's willingness to capitulate.

In addition to explaining when strikes might occur, the model developed above can also be used to analyze the wage outcomes the parties will reach under the threat of a strike. Assuming that a positive contract zone exists when the contract expires, the parties will agree on a wage somewhere in that zone. Although each side would prefer any point in the contract zone to a strike, each would like to capture 100 percent of the contract without a strike. While we are not able to predict exactly how the contract zone will be split, we can use the mean of the zone as our estimate of the average outcome. If the parties have identical expectations, the mean of the contract zone relative to the expected wage from a strike is biased against the party with the greater strike costs. Bias in this context refers to the mean of the contract zone relative to the parties' wage expectations from a strike. If the mean of the contract zone lies below (above) the wage expected from a strike, then the contract zone is biased against the union (employer).

The impact of strike costs on the midpoint of the contract zone can be seen from examining the equations (7) and (8) which estimate the parties' last offers of the parties. If the parties have identical expectations, the last offer of the party whose strike costs are greatest will be farthest from W and the midpoint of the contract zone will be biased against that party. Since strike penalties lower the final offer of the union and may also lower the employer's offer, the midpoint of the contract will be lower in jurisdictions where strike penalties are imposed. Thus, regardless of the impact of penalties on strikes, average settlements will be lower in jurisdictions where there are penalties.

Chapter IV

Footnotes

1. This analysis draws heavily from Henry S. Farber and Harry C. Katz, "Interest Arbitration, Outcomes and the Incentive to Bargain," 33 Industrial and Labor Relations Review (October, 1979): 55-63, and Henry S. Farber, "An Analysis o f Hicks' Theory of Industrial Disputes," presented at the Annual Meeting of the American Economic Association, Denver, 1980.

2. In this analysis we have concentrated on how differences in expectations about the wage outcome from a strike affects the size of the contract zone. Differences in expectations about the duration of a strike will also influence the last offers of the parties and the size of the contract zone. If strikes are costly to both sides, the last offer of the union (employer) will decrease (increase) as the expected length of a strike increases. The possible impact of strike penalties on S_m is discussed later in this chapter.

Chapter V

Public Sector Strikes in New York

Public employees in the state of New York are among the most organized in the 50 states. Table 1 shows what percent of public employees belong to unions or employee organizations in the different levels of government. In state government, about 58 percent of all fulltime employees belong to union or employee associations and at the local level the figure is about 76 percent.

For those covered by contractual agreement, the percentage is even higher.[1] In 1977, 74 percent of fulltime state employees and 69 percent of fulltime local government employees were covered by contractual agreement.[2] In 1977, the total number of these employees, 750, 995, were located in 1043 government units and 3138 bargaining units.[3] New York City employment dominates these figures but contractual coverage and union membership percentages decline only slightly when it is removed from the totals.

Given the amount of public sector bargaining in the state, public employee strikes have been relatively infrequent. According to statistics provided by New York's PERB, there were a total of 234 public employee strikes from 1967-1978. Table 2 shows the annual number of strikes for different levels of government and functional area. Almost half the strikes in the state have been by education employees. While the total number of public employee strikes represented 5 percent of all public sector strikes in the nation in this period, a disproportionate share of the bargaining also occurred in New York. The 3,138 bargaining units in the state in 1977 represented over 10 percent of all the reported public sector bargaining units in the nation.[4]

Table V-1

Employment (Fulltime), Extent of Unionization and Contractual Coverage, New York State Public Employees, 1977

Function	Employment and Unionization	
	Employment[a]	Unionization (%)
State	188,273	57.9
Highways	15,999	~~69.9~~ 69.1
Public welfare	2,463	44.1
Hospitals	67,750	75.3
Police	4,696	79.6
Local	674,268	76.1
Education	285,861	80.2
Highways	27,726	50.5
Police	53,222	84.2
Fire	19,690	89.4
Public welfare	46,139	54.4

Government Level	Contractual Coverage	
	% of all Employees Covered By Contract	% of Employers With At Least One Bargaining Unit
State	74.43	100.0
Counties	66.45	93.0
Townships and municipalities	72.60	21.77
School districts	66.25	86.7

a. Employment by function does not add up to total employment at each government level because some functions are omitted.

Source: U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, 1977, Tables 2-4.

Table V-2

Summary of New York State Public Employee Strikes by Year and Function, 1967-1978

Year	State Gov't	Educ. Teachers	Educ. Nonteachers	Police	Fire-fighters	Highway & Sanitation	Hospitals	Public Welfare	Others/ Uncertain	Total
1967-68	4	7	2	3	1	7	-	1	3	28
1969	-	3	3	2	-	1	1	-	3	13
1970	2	20	-	1	-	3	-	-	5	31
1971	3	11	-	3	1	1	-	1	2	22
1972	4	14	1	2	1	2	-	-	3	27
1973	-	7	2	2	1	1	2	1	1	17
1974	-	7	1	3	1	1	-	-	4	17
1975	4	18	-	2	-	3	1	-	5	33
1976	-	7	1	-	-	-	1	-	4	13
1977	-	3	6	3	-	-	-	-	4	16
1978	-	4	4	-	-	2	-	-	7	17
Total	17	101	20	21	5	21	5	3	41	234

Source: Data provided by N.Y. PERB.

Figure 1 shows the distribution of strikes in New York State for 1967-1978 by strike length. Most strikes are relatively short. The mean length was 5.4 days, the median length strike was 3 days, and 31 percent of the strikes lasted one day or less.

The Taylor Law

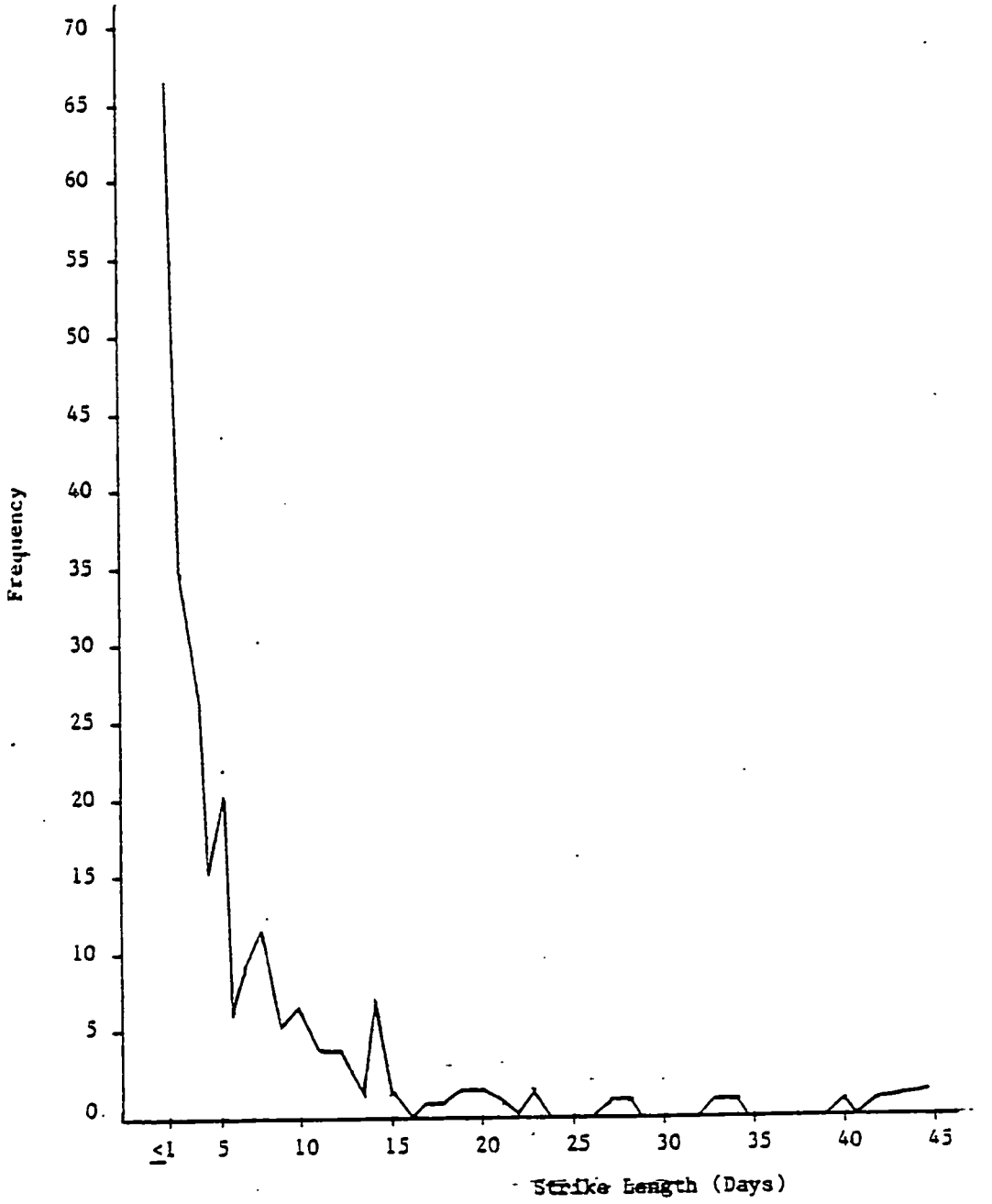
The Taylor Law, which was passed in 1967, was one of the early public sector bargaining laws in the nation. In place of the strict strike prohibition of the Condon-Wadlin Act, it provided a comprehensive framework for collective bargaining, specifying representation, strike substitutes, strike prohibitions and penalties.

The Taylor Law was heavily influenced by the recommendations of the Governor's Committee on Public Employee Relations chaired by Professor George Taylor.[5] This committee recommended that the Condon-Waldin Act be replaced with a law providing for employee representation and bargaining rights, the outlawing of strikes, sanctions for violators of this prohibition, mediation and factfinding and a PERB to help resolve bargaining impasses.[6]

The Taylor Law reflected many of the Committee's recommendations. Mediation and factfinding were adopted as the methods of resolving disputes, strikes were prohibited and specific penalties established for violation of the strike prohibitions. The penalties included the loss of dues check-off for up to 18 months and limitations on court-imposed fines levied against employee organizations for criminal contempt. The original law set a maximum contempt fine: the lesser amount of $10,000 per day or one week of union dues. The minimum fine was a $1,000 for each day of contempt. In addition

Figure V-1

Frequency of Strikes in New York by Strike Length, 1967 - 1978



Source: Constructed from data obtained from New York's PERB.

Table V-3
Strikes by Teachers in
New York, 1970-1978

School Year	Number of Strikes	Mean Length (Days)	Median Length (Days)
1970-71	9	3.4	2
1971-72	12	3.9	3.5
1972-73	12	8.2	6.0
1973-74	5	16.4	14.0
1974-75	7	6.1	6.0
1975-76	17	10.6	9.0
1976-77	4	9.3	7.5
1977-78	6	13.5	6.0
Average 1970-79	9.0	8.1	7.0

Source: Constructed from data provided by N.Y. PERB

to these dispute resolution procedures, the Act permitted local government to establish mini-PERBs to oversee their public employee relations if their ordinances and administration were "substantially equivalent" to the Taylor Law. The implications of this arrangement for administering penalties are discussed below. Key changes in the strike penalty and strike substitute provisions of the Act were made in 1969, 1974 and 1978. In 1969, four changes were made which increased the penalties against striking employees and the unions that represent them. The changes were the result of both the 1969 report of the Governor's Committee on Public Employee Relations and of concern over a possible strike by state government employees.[7]

The two changes influenced by the Governor's Committee were elimination of the 18-month limit on suspension of the dues check-off so that the courts or the PERB could set any period it deemed proper, and elimination of the $10,000 maximum fine for criminal contempt because it might not be an effective strike deterrent for a large union.

The other two changes established penalties for striking employees rather than their unions. Under one of these, employees found to have participated in a strike would be placed on probation for a period of one year. It therefore eliminated the job security and other benefits enjoyed by striking employees who were nonprobationary employees prior to the strike. The second employee penalty was the "2 for 1" penalty. It specified that an employee would lose two days pay for each day he/she is on strike. This penalty is collected and kept by the employer who is struck.

These employee penalties were prompted by a threatened job action by the state Civil Service Employee Association (CSEA) in February of 1969. After the PERB had enjoined continued negotiations to allow for resoltuion of several questions on unit determination, the state had broken off negotiations. When the Civil Service Employee Association threatened a job action unless the state returned to the bargaining table, the state quickly amended the law to strengthen employee and union penalties.

In 1974, the law was further amended to provide for compulsory arbitration of police and fire disputes in communities outside of New York City, a change patterned after legislation in other states. The last amendment in 1978 reversed a 1969 amendment: employees found in violation of the strike prohibition were no longer returned to probationary status.

The Strike Penalties and Their Administration

The Taylor Law defines a strike as "any strike or other concerted stoppage of work or slowdown by public employee."[8] Strikes are prohibited in Section 210 (1), which reads, "No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage or condone a strike."[9] Public employers are similarly prohibited from authorizing, approving, condoning or consenting to a strike. Employee organizations seeking recognition or certification must affirm that they do not assert the right to strike or impose an obligation to conduct, assist, or participate in a strike.[10]

The chief executive officer of the government allegedly struck is authorized to determine whether a strike has occurred and to notify the employees. The statute presumes that an employee absent from work without

permission during a strike engaged in the strike. An employee may file written objections to this judgment. The officer may then either (1) sustain the objections, or (2) if he determines that a question of fact is involved, must appoint a hearing officer to decide the question. If the chief executive officer sustains the objections, or if the hearing officer determines that the employee did not violate the strike provision, penalties cease and previous penalties are refunded.[11]

When a strike occurs or is threatened, the chief executive officer of the government must also notify the chief legal officer of the government unit and the PERB. The chief legal officer or PERB must then institute PERB proceedings to determine whether an employee organization has violated the law. The PERB must consider whether the employee organization called the strike or tried to prevent it, and whether the employee organization made good faith efforts to terminate it.[12]

Under the statute, public employees in violation of the strike provision "may be subject to removal or other disciplinary action provided by law for misconduct." Employees may also suffer payroll deductions equal to twice their daily rate of pay for every day they were on strike.[13]

The law does not appear to offer much discretion in the administration of the penalties, but there are at least two ways an employer might avoid imposing the "2 for 1" penalty. First, he could simply deny a strike had occurred. Since the law does not give either PERB or the Courts authority to force the employer to impose the penalty, this step would effectively eliminate it. There is a provision in the law that allows taxpayers to sue an employer who fails to impose the penalty.[14] No instance of such a suit has been found, but its mere possibility may have encouraged otherwise reluctant employers to enforce the penalty. The penalty can also be avoided

through the hearing process; an employer's testimony could contribute to a finding that the employee did not participate in the strike.

The loss of dues check-off is usually administered by PERB, rather than employers.[15] In fixing the duration of the forfeiture, PERB is required to consider all the relevant facts and circumstances, including but not limited to: (i) the extent of any willful defiance of the strike prohibition; (ii) the impact of the strike on the public health safety, and welfare of the community; and, (iii) the financial resources of the employee organization. The board may also consider the following: (i) the refusal of the employee organization or the appropriate public employer to submit to the mediation and factfinding procedures; and, (ii) whether, the public employer engaged in acts of extreme provocation that detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization.[16]

Most of these criteria are self-explanatory. One however, extreme provocation by the employer, deserves additional comment. If the union proves extreme provocation, it is used only as a mitigating factor by the Board in determining the length of the check-off period. It does not constitute a legal justification for the strike nor does it have any effect on the employer-administered "2 for 1" penalty.

If the union makes the extreme provocation defense, the PERB is placed in a potentially sensitive position because it must conduct the hearing to determine the organization's responsibility for the strike and apply any penalties. In the case of an extreme provocation defense, the Board can thus find itself in the position of defending the employer against these charges.

This responsibility is not consistent with the other primary functions of the Board, namely to serve as a neutral agency to administer the laws, to direct the state's mediation efforts and to ensure that the parties negotiate in good faith. Where a charge of extreme provocation is at issue, the Board's conflicting roles may well cause the employer and the employee organization to lack total confidence in the Board mediation efforts. To resolve this problem, the Board has made an administrative change in the hearing procedure for an extreme provocation defense. Instead of the Board, it is now the employer which must defend itself against the union charge.

While there is no general procedure to determine extreme provocation, the Board has ruled that the following employer activities constitute extreme provocation: requiring that employees work on a previously scheduled holiday, making concessions during negotiations, and subsequently withdrawing them, and refusing to explain a bargaining position. Usually the PERB decision in these cases is based on a review of the total conduct of the employer, a review standard similar to that used to evaluate good faith bargaining.[17] A finding that an employer bargained in bad faith, however, does not necessarily establish that there was extreme provocation. Separate nonstrike remedies for employer bad faith bargaining are provided in the Taylor Law.

The Court is involved in a strike when the employer petitions it to enjoin the strike. The law provides that the chief legal officer "shall forthwith apply to the supreme court for an injunction."[18] Non-compliance by striking employees is subject to the judiciary law which states in part that punishment for contempt is a fine not exceeding $250 or imprisonment not exceeding 30 days, or both. Willful disobedience or resistance to a lawful court mandate by a union is punishable by a fine to be determined by the court.[19]

Judges are free to base contempt penalties on the extent of willful defiance of the court order, the impact of the strike on the public and the unions' recources. In addition to these penalties, courts in mini-PERB jurisdictions may impose the dues check-off penalty for contempt.

Finally, the law requires the chief executive officer to report to PERB in writing within 60 days following termination of a strike. The report must be made public and must contain the following information: "(a) the circumstances surrounding the commencement of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating, or encouraging the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee."[20]

Penalties in Mini-PERB Jurisdictions

Under the Taylor Law, a local government can establish a labor relations board to administer public employee labor relations in the local jurisdiction.[21] New York City and thirteen other jurisdictions have such boards,[22] but only two or three outside of New York City have been very active. The Taylor Law requires that the state PERB approve the ordinance establishing a local board except for New York City's. To be approved, the ordinance must be "substantially equivalent" to the state PERB provisions.[23]

Section 212 of the Taylor Law also gave New York City the option to establish its own ordinance. While it also has to be "substantially equivalent" to the state provisions, there was no requirement that PERB make this determination before the implementation of a local law. Instead,

following adoption and implementation of a New York City plan, the Board could seek a court ruling declaring that the city plan was not "substantially equivalent" to the State's. In 1967, New York City did pass its own ordinance and established the Board of Collective Bargaining and the Office of Collective Bargaining (OCB) to administer it.[24] This ordinance covers all public employees of the City of New York.[25]

The Board of Collective Bargaining is a seven-member tripartite body that administers the city ordinance. Its chairman is one of the neutral members and also directs the Office of Collective Bargaining which administers the ordinance on a day-to-day basis. In its treatment of dispute settlement, the New York City Collective Bargaining Law (NYCCBL) differs from the Taylor Law in several important respects. The first difference was raised by the 1969 Taylor Law amendments which directed the City to submit a plan to establish a final step in the dispute resolution procedures. Instead of following Taylor Law provisions for legislative action as the final step, the City of New York chose to amend the NYCCBL in 1972 to provide for compulsory arbitration to resolve interest disputes.[26] The impact of this procedure on strikes in New York City is evaluated later in the chapter.

With reference to strikes, the second major difference between NYCCBL and the Taylor Law is the mechanism used to enforce the dues check-off penalty. Striking unions under PERB jurisdiction lose their dues check-off as a result of an administrative decision by the PERB. This penalty can only be imposed by PERB and is independent of any court proceedings against the union for contempt. Unions representing employees under the jurisdiction of a mini-PERB may have the dues check-off penalty imposed by either the mini-PERB or a court. In these jurisdictions, a court may impose the dues

check-off after determining that the union has violated a back-to-work order. The mini-PERB may also impose the dues check-off after it holds a hearing similar to the PERB hearing. In four of the thirteen mini-PERB's outside of New York City, the local jurisdictions have decided not to exercise this option when a court has imposed the dues check-off penalty in contempt proceedings. By approving these local ordinances, the PERB has in effect ruled that these restrictions on local board action meet the "substantial equivalent" test of the Taylor Law.

Unions under OCB jurisdiction are subject to a different mechanism for enforcing the dues check-off penalty. The Board of Collective Bargaining does not have the authority under the NYCCBL to impose penalties against striking unions or employees. Under OCB jurisdiction, therefore, only the court can impose the dues check-off as punishment for contempt.

Two legal questions have recently been raised about the differences in the administration of the dues check-off under PERB and mini-PERB jurisdictions. In 1977, the Buffalo Teachers Federation challenged the administration of the check-off penalty.[27] The union, which had struck for 13 days, asked the district court to enjoin PERB from enforcing the dues check-off penalty because its enforcement violated the equal protection clause of the U.S. Constitution. The union argued that because it happened to be under PERB jurisdiction, a dues check-off penalty would certainly be imposed; had it been under the jurisdiction of a mini-PERB, however, it was unlikely that a penalty would be imposed. Judge Frankel ruled that since the different administrative procedures did not bear a rational relation to a legitimate state interest, there was a likely violation of the Constitution. As the Judge noted:

> They have demonstrated neither a rational basis for treating the two groups of unions unequally nor any legislative purpose which could conceivably be furthered by such treatment. The only difference between the unions subject to PERB's jurisdiction and those within the province of the courts is the accident of whether they operate under a governmental unit which has opted for local control under Section 212 of the Act. The difference is utterly fortuitous, and cannot justify in any remotely rational sense the result that the unions finding themselves willy nilly under PERB's control suffer more severe punishment for engaging in prohibited work stoppages than do those unions under local control.[28]

In 1977 another suit was brought against the Board by the Civil Service Employee Association (CSEA) before a different Federal District Court Judge.[29] As in the Buffalo case, the plaintiffs contended that the Taylor Law violated the equal protection clause of the constitution. In this case, Judge Goettel denied the request for a temporary restraining order because he found a rational relationship between the different treatments of the penalty and a legitimate state purpose. Judge Goettel attributed Frankel's decision to incorrect factual findings which he saw as a result of deficient presentation by the state.[30]

In the Buffalo decision, it was apparent that Judge Frankel understood Section 212 to require that the dues check-off only be imposed in mini-PERB jurisdictions through criminal contempt proceedings. Outside of New York City, however, mini-PERBs can and have imposed dues check-off penalties through administrative proceedings similar to the PERB's. The record before Judge Goettel showed that through November, 1977, there were ten stoppages

in mini-PERB jurisdictions outside New York City. In three of these strikes, check-off suspensions were imposed by mini-PERBs. Of the remaining seven, three were by nonunion employees and one was a wildcat strike where the penalty would not have been imposed under state jurisdiction. Thus, the dues check-off penalty was imposed by mini-PERBs in half of all possible instances. The percentage of strikes where a penalty might have been imposed but was not is higher in mini-PERB than in state jurisdictions but the difference is not overwhelming. Considering these facts and the standard of a minimal rational relationship between the administrative procedures and a legitimate state purpose, Goettel stated that:

> The scheme, then, is not one in which only courts may impose the penalty on unions under mini-PERB jurisdiction. The mini-PERBs, just like the PERB, have the primary responsibility to take action to enforce the penalty; only when a court has already determined the issue is a mini-PERB precluded from taking such action. The distinction between the procedures seems to be one without effective legal difference. Moreover, whatever difference does exist is clearly rationally related to a legitimate state purpose.[31]

After Goettel, Frankel reconsidered his decision in the Buffalo case and decided to defer the constitutional issue until the state courts could address the question of substantial equivalence. Frankel left the court shortly thereafter, and the case was remanded to Judge Cannella for trial. In the spring of 1981 Judge Cannella dismissed the Buffalo Teacher's Federation dispute.[32]

These federal district court decisions dealt only with the constitutionality of differing dues check-off procedures. A second and related question is whether these differences meet the "substantial equivalence" test required by the Taylor Law. PERB has already determined that the existing mini-PERBs (outside of New York City) are "substantially equivalent" to the Taylor Law. Since all of these mini-PERBs have the authority to impose the dues check-off penalty without going through the courts, it seems unlikely their procedures would be found to differ significantly from the PERB procedures.

The state courts have not decided whether the New York City provisions are "substantially equivalent" to the Taylor Law. The Taylor Law assumes that it is until a court judgment finds otherwise. If such a judgment were sought by the PERB, it is difficult to predict the outcome since, unlike PERB and the other 13 mini-PERBs, the Board of Collective Bargaining does not have the authority to impose the dues check-off. In 1977, the PERB threatened to seek such a declaratory judgment, but at the time of this writing it had not formally challenged the City ordinance in state court.

The strike record and dues check-off penalty record differs substantially under OCB from the same record under PERB or the other thirteen mini-PERBs. As noted above, dues check-off penalties have been imposed in three of the six strikes in mini-PERBs where the union was responsible for the stoppage. The percentage is much higher in strikes under PERB jurisdiction. Since the passage of the Taylor Law in 1967 through 1979, 19 strikes have occurred under OCB jurisdiction.[33] While nine were wildcat strikes where the union would not have been held responsible, none of the remaining strikes had the dues check-off imposed by a court.[34]

If only this evidence is considered, the New York City procedure has insulated unions under OCB jurisdiction from the check-off penalty. This history is in sharp contract to the treatment of unions not under OCB jurisdiction, such as New York City employees of the school board and the transit authority.[35] In 1967, 1968 and 1975 when the American Federation of Teachers struck the City school system, PERB imposed a check-off suspension for each strike.[36] The PERB has not yet reached a penalty decision for the 1980 transit strike, but it seems doubtful that the Transport Workers Union will escape without losing its check-off.

If the City's check-off penalty were not found substantially equivalent to the Taylor Law, and the Board of Collective Bargaining has to assume responsibility for this penalty, labor relations might suffer undesirable effects. The Board of Collective Bargaining includes two labor members who could then be participating in penalizing their own constitutency. This could seriously undermine the parties' confidence in the Board's operation.[37]

A problem of equal importance is that Board members frequently involved in mediation would also decide the penalty for unions involved in the mediation.[38] These two roles are not compatible because the parties' trust in the mediator may be undermined if the parties know the mediator will also decide the penalty. This distrust can extend also to the employer. If the union raised the defense of extreme provocation, the city would not view the Board as unbiased because of its mediation role in the negotiations. The state PERB is able to minimize most of these problems because their large staff allows them to insulate the Board from the day to day mediation activities. The smaller OCB staff does not permit this solution.

The New York City experience does illustrate that the administrative mechanism for levying penalties is as important as the actual penalties

when calculating the expected costs of violating the prohibition. Whether the dues check-off penalty deters strikes is a separate question analyzed later in this chapter. It is clear, however, that most unions under OCB jurisdiction probably assume that the chance of losing a dues check-off in a strike is small. On the other hand, if past behavior by PERB is a good predictor, unions under PERB jurisdictions should expect the penalty to be imposed.

The Enforcement of Strike Penalties in New York

In this section, the effectiveness of the penalties and substitutes in preventing or shortening strikes will be evaluated. The evaluation is based on interviews with labor, management and neutral representatives, on the strike data and on the use of penalties. The issues evaluated here are as follows:

1. What has been the experience with the "2 for 1" penalty, the dues check-off penalty, court injunctions and probationary status of striking employees?
2. Have the penalties been imposed in most strikes?
3. What has been the impact of the penalties on the number of strikes in the state?

Table 4 summarizes unpublished data maintained by PERB on the use of strike penalties each year from 1967 to 1978.[39] Several limitations and pecularities of these data deserve mention. First, the "2 for 1" penalty was not included in the legislation until 1969 so the fourth column is not relevant prior to 1969. Second, PERB data is usually available on whether or not the "2 for 1" was imposed for strikes since 1969. These data are based on PERB inquiries of the parties after a strike is settled. There are

Table V-4

Experience With Strike Penalties in New York, 1967-1978

	Number of Strikes	Number of Wildcat Strikes	Dues Checkoff[a,b]	2 for 1	Contempt Penalties
1967	2	1	1-yes 1-no	NA	1-yes 1-no
1968	25	2	13-yes 1-extreme prov. 1-ct. overruled 2-wildcat 8-no	NA	6-yes 19-no
1969	12	4	4-wildcat 5-yes 3-no	5-yes 7-no	1-yes 11-no
1970	32	7	7-wildcats 1-extreme prov. 22-yes 2-no	17-yes 11-no 4-INA	6-yes 26-no
1971	22	2	3-wildcat 13-yes 4-no 2-INA	16-yes 2-no 4-INA	1-yes 2-INA 19-no
1972	27	9	9-wildcat 15-yes 2-INA 1-no	19-yes 4-no 4-INA	7-yes 19-no 1-INA
1973	15	1	1-wildcat 7-yes 7-no	7-yes 1-no 7-INA	3-yes
1974	16	4	4-wildcat 1-extreme prov. 10-yes 1-no	12-yes 4-no	3-yes 13-no
1975	33	1	1-wildcat 23-yes 9-no	26-yes 7-no	8-yes 25-no

Table V-4
(Continued)

	Number of Strikes	Number of Wildcat Strikes	Dues Checkoff[a,b]	2 for 1	Contempt Penalties
1976	16	0	1-extreme prov., no 14-yes (includes 1 case in litigation) 1-no	15-yes 1-no (court overturned)	8-yes 8-no
1977	17	1	1-wildcat 15-yes 1-in process	15-yes 2-no	3-yes 1-pending 13-no
1978	18	4	4-wildcat 6-in process 6-yes 1-no 1-RLA	17-yes 1-no	3-yes 1-pending 14-no

Notes: NA: not applicable
INA: information not available

a. The number opposite "yes" in this column reports the number of strikes during the year in which the checkoff was imposed. In the remaining strikes the checkoff was not imposed. We have tried to determine the specific reason for the failure to impose the checkoff in some strikes each year. These reasons are also shown in this column.

b. In one strike in 1978 the checkoff was not imposed because it was determined that the employees were under the jurisdiction of the Railway Labor Act and were not subject to the checkoff penalty.

Source: Constructed from data provided by N.Y. PERB.

some strikes since 1969 where there was no information available on whether the penalty was imposed. According to PERB's research staff, in most cases where data on the penalty is missing, it is because the employer and/or the union refused to answer PERB's inquiry. Since the law requires employers to impose the penalty, we have interpreted this refusal to mean that the penalty was not imposed.

Third, no mention of the probationary status of striking employees is included in the Table. Until the 1978 amendment eliminated this penalty, all employees who participated in strikes were probationary employees for a one-year period. Data were not available on how many of these probationary employees lost their jobs or were otherwise adversely affected by this penalty. Neutral agency personnel, labor and management officials agreed, however, that relatively few individuals were tangibly affected by the penalty. Although few employers took advantage of this penalty, the job insecurity created by this penalty cannot be understated. For example, tenured teachers who participated in a strike could face nonrenewal without the elaborate procedure normally required to carry out nonrenewal for a tenured teacher.

Of the 236 strikes from 1967-1978, a dues check-off penalty was imposed 144 times or in 61 percent of all strikes. In the 92 strikes where the union was not so penalized, 36 of the strikes were found to be wildcat strikes where the union was not responsible, in four strikes a penalty was not imposed because of extreme provocation by the employer, in two, the penalty was overturned in court, and in seven, the penalty charge had not been resolved at the time of this study.

There remain only 37 strikes where a penalty might have been imposed under the law but was not. These 37 strikes were relatively short. In 22, of this group, the strike lasted two or fewer days.

And the 15 strikes lasting three or more days, six were under OCB jurisdiction so that the penalty could only be imposed by the courts in a contempt proceeding.

Table 5 shows the length of the dues check-off penalties which were imposed. A strong, positive relationship is shown between strike length and the length of the dues check-off penalty. This corresponds to one legislative criteria which is to be used by PERB in determining the severity of the penalty.

In addition to this relationship, several other factors affect the administration of the penalty. A PERB spokesman stated that penalty severity varies by the occupation of the strikers and by their previous strike record. Police and firefighters have thus received longer check-off suspensions than teachers. In four of the five one-day strikes by police or firefighters, a penalty of six months or more was imposed. In ten of the 15 one-day strikes by teachers, however, a penalty of three months or less was imposed.

A second strike by a union has also led to a more severe penalty. In the Lakeland Central School District, a four-day strike in 1968 resulted in a two-month suspension, a seven day strike in 1970 in a month's suspension and a 42-day strike in 1977 in an indefinite suspension of at least 27 months. While the latter was partially a function of the length of the strike, the fact that it was the third strike in 10 years was also important. A comparison between this penalty and that imposed for the Levittown teachers' strike supports this interpretation. In Levittown, a 15-month suspension was imposed for a 34-day strike in 1978. The length of these two strikes was not very different, but the Levittown teachers were striking for the first time.

Table V-5

Length of Dues Checkoff Suspension
by Strike Length

Strike Length (Days)	Penalty (Months)													
	<3	3	4	5	6	7	8	9	10	11	12	>12	Indef.	Total
<1	1		1											2
1		13	4		9			1						27
2		4	3		5				1			1		14
3		2	4	4	4			2			1			17
4	1	1	1	1	3			1						8
5				2	5		1	1	1		2	1		13
6					4									4
7		1			1	2		2	1		2			9
8					3	2		3	1			1		10
9		1							1		1			3
10					2					1	1			4
11										1	3			4
12								1	1		1			3
13										2	1			3

Table V-5
(Continued)

Strike Length (Days)	Penalty (Months)													
	<3	3	4	5	6	7	8	9	10	11	12	>12	Indef.	Total
14										2	1	1		4
15											1			1
16														0
17											1			1
18														0
19											2			2
20											1			1
≥21	1				1						4	2	1	9
Total	3	22	13	7	37	4	1	11	7	6	22	6	1	139

Source: constructed from data provided by N.Y. PERB.

Table 6 summarizes the experience with the fine of two days pay for each strike day. Since this penalty became part of the law in 1969, it was collected by employers in 149 of a total of 208 strikes. In 40 strikes or slightly less than 20 percent of all strikes, the penalty was not collected and in 19 cases, the PERB was unable to determine if the penalty was imposed. Assuming that the penalty was not imposed in these 19 strikes the enforcement probability was about .7.

In cases where the "2 for 1" penalty was not imposed, the strike was usually very short and the employer was willing to forego the penalty as part of the settlement. Almost 70 percent of strikes where no "2 for 1" penalty was imposed, lasted two or fewer days. The other noteworthy characteristics of these strikes is that half of them were wildcat strikes and fully 80 percent were either wildcat strikes or strikes of two days or less.

While the law does not allow any exceptions from this penalty, many employers did not fulfill their legal responsibility to impose it. This may be undesirable from the legal view but may be appropriate from a labor relations perspective. Imposing the penalty in all wildcat or short strikes may, by unnecessarily limiting employer flexibility, prolong the strike or create an unhealthy labor relations climate.

This is not to suggest that flexibility should be explicitly built into the statute or that wildcat strikes should be exempted. Such flexibility might lead to too much bargaining over the penalty and completely undermine its effectiveness. If it is effective, it is partially because unions and employees expect it to be imposed if they strike.

Court-imposed penalties are less common in New York than other penalties. Contempt fines were imposed in only 20 percent of the strikes.[40] A summary

Table V-6

Summary of the Experience With the 2 for 1 Wage Penalty Against Striking Employees

Number of strikes, 1969-1978	208
Number of times the 2 for 1 was imposed according to the employer.	149
Number of times the 2 for 1 was not imposed according to the employer.	40
Strikes where it is not known if the 2 for 1 was imposed.	19

Source: Constructed from data provided by N.Y. PERB.

was made of several tables from Douglas' study on the labor injunction in the public sector in New York State and is shown in Table 7. From 1969 to 1978, injunctions were issued in 50 percent of the strikes and contempt was adjudged in about 37 percent of them. In cases where contempt was found, fines were imposed in all the fifty cases in this group: individual fines were set in 37 and jail sentences in 23 cases. Fines were usually then imposed when unions were found in contempt, still, in half the strikes no injunction was issued.

The Impact of the Taylor Law Penalties on Strikes

Ideally an evaluation of the Taylor Law's impact on strikes should either compare New York's experience under the Taylor Law with the experience of other states, or the experience in New York for a time period before and after the Taylor Law. In this chapter, both comparisons are made using aggregate strike data for New York and other jurisdictions. More elaborate statistical comparisons of New York's experience with that of other states is reported in Chapter X. Regardless of the comparison group, it is very difficult to determine how any particular penalties in the law influenced strike activity. At a given point in time, all strikes are potentially subject to all of the Law's penalties so that cross-sectional data do not allow analysis of one particular penalty. Therefore, this issue has been studied through our interviews in the state, the enforcement data described above, and an evaluation of the severity of each penalty.

The number of strikes in New York and the nation since 1958 was presented in Chapter II. This data can be used to evaluate how the Taylor Law and its 1969 amendments affected the number of strikes. To do so, the annual number of public sector strikes in New York from 1958-1978 was regresse

Table V-7

The Use of Court Injunctions Against Public Employee Strikes in New York, 1967-78

	Number	Percent of Stoppings
Work stoppages	272	100%
Injunctions issued	136	50
Contempt adjudged	50	18.38
Contempt fines against:		
individuals -	37	13.6
unions -	50	18.38
Jail sentences	23	8.46

Source: Joel M. Douglas, "The Labor Injunction: Enjoining Public Sector Strikes in New York" 31 Labor Law Journal (June, 1980): 340-352, Tables 2 and 3.

on the comparable number for the other 49 states, a linear time-trend variable, and on a dummy variable corresponding to the passage of the Taylor Law. In one regression this variable assumed a value of "1" for each year since 1966; in a second, it assumed a value of "1" for the period after 1968. Each equation was estimated using ordinary least squares and a two-stage Cochrane-Orcutt procedure to correct for first order autocorrelation. The estimates from these procedures are shown in Table 8.

The estimates show that the number of strikes in New York declined after 1967 compared to strikes in the rest of the nation. The negative sign on the post-1966 dummy in the second column is statistically insignificant at the .05 level. The coefficient on the post-1968 dummy for the harsher 1969 penalties, however, is statistically significant. The post-1968 coefficient suggests that an average of 27 fewer strikes per year occurred in New York after 1968 compared to both pre-1968 strike trends in New York and to strike trends in the rest of the nation for the same period.

The results in the last column were used to estimate the number of strikes that would have occurred in New York had the 1969 amendments not been passed. This was done by inserting the observed values for all the independent variables except the post-1968 dummy into the estimated equation. The post-1968 dummy was set equal to zero for the years to correspond to the strikes that would have occurred were it not for the 1969 amendments. This simulation showed that there were about 25 percent fewer strikes because of the 1969 Taylor Law amendments.

Compared to other states for the period 1973 to 1977, New York's raw strike probabilities suggest that the penalties and strike substitutes have reduced the number of strikes. Table 9 shows strikes as a percentage of governments, bargaining units, and contract renegotiations in the entire nation

Table V-8

Regression Results Explaining The Number of Strikes in New York, 1958-78

	After 1966 Dummy		After 1968 Dummy	
Independent Variables	OLS	C-O	OLS	C-O
Constant	5.7514 (1.808)	18.7081 (.5397)	4.5568 (1.4132)	13.7675 (.4951)
Time trend	-.7146 (1.130)	-1.2973 (.5504)	-.8406 (.6235)	-1.2265 (.6524)
Public sector strikes	.0494 (1.6125)	.06168 (1.5294)	.10728 (3.310)	.12929 (3.066)
Post-1966 dummy	8.4143 (1.1831)	-1.0860 (.1125)		
Post-1968 dummy			-10.987 (1.4353)	-26.949 (2.6481)
N	21	20	21	20
D.W.	2.4316	3.3646	1.9297	2.5454

Absolute t - values are in parenthesis

and in New York. These data are based on Census of Governments data. For each 12-month period from October, 1973 to October, 1977, the table shows strikes as a percentage of negotiated contracts and bargaining units.[41] As Table 9 shows, the propensity to strike averaged only slightly more than one percent of the negotiations. The highest percentage was 1 percent of negotiations in 1974 and 1975. This "high" figure reflects the high level of strike activity in the entire economy after the Nixon wage and price controls were lifted.

These strike propensities are low compared to the rest of the public sector and to the private sector. Depending on the denominator, the probability of a strike in New York was 50 to 66 percent lower than in other states. Comparable strike propensities for major collective bargaining agreements in the private sector for this same period range from 15 to 30 percent of negotiations.[42] The New York figures are also lower than the reported average strike propensities of 2-3 percent for the entire <u>private</u> sector.[43] These raw probabilities do not control for other variables that affect strike probabilities, but they do strongly suggest that the combined impact of the penalties has been to reduce the number of strikes.

There are several other explanations for the low strike propensities in New York. A key factor was the fiscal crisis in the later years of this analysis. The threat to job security created by this crisis prompted some employee protests, but many unions in the state and City were apparently willing to accept contracts that would have been unacceptable in other times. The impact of the fiscal crisis on strikes is most evident in New York City. Since the five-day New York City teachers strike in September, 1975, there have been only four city strikes. Two were wildcat strikes in the

Table V-9

Strike Propensities in New York and the

Rest of the U.S., 1973-1976

	The U.S. Outside of New York			
	Number of Strikes	Strikes/ Gov't w/LR Policies	Strikes/ Contractual Agreements that became Effective	Strikes/ Bargaining Units
10/73- 9/74	455	.0428	.0424	.0248
10/74- 9/75	457	.0420	.0406	.0218
10/75- 9/76	360	.0318	.0259	.0160
10/76-10/77	471	.0391	.0386	.0174
Mean data[a]	436	.0388	.0375	.0196

Table V-9
(Continued)

New York

	Number of Strikes	Strikes/ Cov't w/LR Policies	Strikes/ Contractual Agreements that became Effective	Strikes/ Bargaining Units
10/73-9/74	16	.0158	.0094	.0064
10/74-9/75	33	.0329	.0120	.0125
10/75-9/76	17	.0165	.0102	.0061
10/76-9/77	14	.0133	.0098	.0045
Mean data[a]	20	.0195	.0124	.0072
New York strike propensity/ Rest of U.S. strike propensity		.503	.331	.367

a. These mean figures were calculated by dividing the mean number of strikes per year by the mean values of each of the denominators for the ~~three~~ four years.

Source: Constructed from data in U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years.

municipal hospitals, one was a 20-day strike in the spring of 1979 by the off-track betting clerks, and the last strike was the Transit strike in the spring of 1980. Since the transit employees are employed by a state agency, this strike was only indirectly influenced by the city's financial condition.

A second factor influencing strikes is the state's interest arbitration statute, enacted under amendments to the Taylor Law in 1974. There have been few reported strikes among police and firefighters outside of New York City since these workers were covered by interest arbitration. By comparison, from October, 1973 to October, 1976, there were 107 strikes among this same group in the rest of the nation. The arbitration provisions in the NYCCBL have probably also prevented some City strikes. From 1972 thru 1975, about 411 contracts were negotiated under the NYCCBL and only two union-sanctioned strikes occurred. Thus, while the dues check-off penalty has not been applied against striking unions under OCB jurisdiction, the city and the unions have been able to peacefully resolve almost all of their disputes. Only when the City's financial health improves will it be possible to evaluate how much of the labor peace was attributable to the fiscal crisis or to the City's procedures for resolving disputes.

In the final analysis, however, it is the penalties which have undoubtedly been the most important influence on the number of strikes in New York. The results of the time series regression and the aggregate propensities shown in Table 9 cannot be explained solely by financial conditions, or the arbitration statute. Most communities in the state have not faced the City's severe financial problems and most employees are not covered by arbitration. If disputes cannot be peacefully resolved in these localities, the parties rely on mediation or factfinding, or the threat of

an illegal strike. However, mediation and factfinding probably do not explain why strike propensities in New York are lower than in other states. Many other states have similar procedures, but on average, they have significantly higher strike propensities. In addition, the parties to New York strikes were interviewed and they stated that factfinding had not been effective in resolving disputes.[44] Their view is consistent with previous research and experience in other states.[45]

Interviews with labor, management, and neutral officials confirm that the penalties have acted as a strong strike deterrent. Of the penalties that could be imposed, the interviewees felt that the "2 for 1" penalty has had the biggest impact on strikes for two major reasons. First, unlike court-imposed fines or the dues check-off penalty which are directly primarily or exclusively at the union, the "2 for 1" penalizes each striking employee. A successful strike requires the support of the rank and file, and this penalty makes the high strike costs immediately apparent to each union member. Since legislation requires that the penalty be imposed, employees know there is little or no chance of negotiating the penalty away as part of the strike settlement. The size of the penalty and consistent enforcement means that the expected strike cost per employee is substantially higher in New York than in other states. This penalty has been especially influential on a union's willingness to strike a second time, a fact commented on by several union officials.

Opinions on the effectiveness of the dues check-off penalty were more varied. Most agreed that it was far less important than the "2 for 1" penalty. In small bargaining units, the dues check-off penalty was of almost no importance. Collecting dues in a small unit is easy and relatively inexpensive, but

large units stand to lose substantial dues income and incur substantial dues collection expenses. Still, even in large districts, this penalty was not seen as important in deciding whether to strike, nor in affecting strike length. Strike length and the length of the check-off suspension are positively related, but the relationship is too weak to decide the question of striking an additional day.

Strike Penalties, Outcomes and Equity

Most union representatives agreed that the "2 for 1" penalty was an important deterrent, but they also pointed out that it may have caused or prolonged some strikes. In all cases, they felt that the penalty raised serious questions of equity. They claimed that some employers wanted or prolonged a strike because the penalty generated additional revenue that could be used to either finance the settlement, reduce taxes or the rate of tax increases, or both.

Union representatives asked why only one party is penalized when both are responsible for an impasse and argued that an employer is not hurt by a strike, but actually profits from it. The counterargument made by employers was simply that while both parties are responsible for the impasse, the union has committed an illegal act by striking and should be penalized.

In theory, there is support for the union's objection to the "2 for 1" penalty. Since the penalty is kept by the employer he may be less willing to make concessions to prevent or end the strike. The theoretical model of strikes in Chapter IV is consistent with this conclusion. In Chapter IV we argued that penalties against the union that directly benefit the employer may lead to fewer management concessions. If this model is valid, less severe penalties and fines against employees which did not benefit the employer would have an effect on strikes similar to the current penalties.

Chapter V

Footnotes

1. The differences between contract coverage and union membership can be explained by the fact that the union shop is not a mandatory subject of bargaining in New York. Unions that achieve exclusive bargaining rights may have an agency shop clause in their contract. However, individuals that pay only the service fee and do not join the union would not be included in the Census membership figures.

2. The percentages underestimate the percent of fulltime employees in bargaining units if, compared to fulltime employees, part-time employees are less likely to be in a bargaining unit. If the percent of all employees in bargaining units is divided by the percent of fulltime employees, the contract coverage figures increase to 91 percent for state government and 86 percent for local governments. These figures are undoubtedly too high because there are some part-time employees in bargaining unit jobs. (See U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, 1977 Census of Governments, October, 1979, Table 3.)

3. Ibid., Tables 4 and 5.

4. Ibid.

5. The other members of the committee were E. Wight Bakke, Dave L. Cole, John T. Dunlop, and Frederick H. Harbison.

6. State of New York, Final Report of the Governor's Committee on Public Employee Relations, March 31, 1966.

7. State of New York, The 1969 Report of the Legislative Committee on Public Employee Relations, 1969, pp. 13-20.

8. Section 201(9) of the Civil Service Law of New York (1967).

9. Section 2109(1) of the Civil Service Law of New York (1967).

10. Sections 210(2) (c) and 207(3) (b) of the Civil Service Law of New York (1967).

11. Sections 210(2) (b) and 210(3) (f) of the Civil Service Law of New York (1967).

12. Sections 210(2) (b), 210(3) (c) and 210(3) (e) of the Civil Service Law of New York (1967).

13. Section 210(2) (a), (9) of the Civil Service Law of New York (1967).

14. Section 210(2) (e) of the Civil Service Law of New York (1967).

15. Section 210(2) (b) of the Civil Service Law of New York (1967).

16. Section 210(3) of the Civil Service Law of New York (1967).

17. See Dutchess County Employees Unit of the CSEA, 10 PERB 3021 (1977); Falconer Education Association, 6 PERB 3029 (1973); Board of Education, Union Free School District, No. 4, 6 PERB 3020 (1973); Nyack Teachers Association, 5 PERB 3060 (1972); Central Islip Teachers Association, 4 PERB 3082 (1971); Malverne Teachers Association, 4 PERB 3028 (1971); Vestal Teachers Association, 3 PERB 3057 (1970).

18. Section 211 of the Civil Service Law of New York (1967).

19. Section 751(2) (a) of the New York Judicial Law.

20. Section 210(4) of the Civil Service Law of New York (1967).

21. Section 212 of the Civil Service Law of New York describes the local government option for establishing a mini-PERB.

22. The 13 local boards are located in Nassau County, Westchester County, Tomkins County, City School District of Syracuse, Village of Valley Stream, Town of Hempstead, City of Syracuse, Town of Oyster Bay, Suffolk County, Onondaga County, Town of Rye, Delaware County, and Town of North Castle.

23. Section 212(1) of the Civil Service Law of New York (1967).

24. New York City Administrative Code, Chapter 54 (1967), as amended.

25. Not all unions that represent public employees that work in New York City are covered by the OCB. The New York City Collective Bargaining Law (NYCCBL) covers unions that represent employees that are employed by an agency whose director is appointed by the mayor of New York City. The two major unions in the city that are under PERB jurisdiction are the AFT which represent employees (mostly teachers) of the New York City School Board and the TWU local which represents employees that are employed by the Metropolitan Transit Authority (MTA). The MTA is a special state governmental unit.

26. For a description and analysis of experience under the NYCCBL, see Arvid Anderson, Eleanor Sovern MacDonald and John F. O'Reilly, "Impasse Resolution in the Public Sector Collective Bargaining — An Examination of Compulsory Interest Arbitration in New York," 51 St. John's Law Review (Spring 1977): 453-515.

27. Buffalo Teachers Federation, Inc. v. Robert D. Helsby et al., United States District Court, Southern District of New York, 435 F. Supp. 1098, 95 LRRM 3251 (1977).

28. Buffalo Teachers Federation, Inc. v. Robert D. Helsby et al., 95 LRRM 3256 (1977).

29. Civil Service Association, Inc. v. Robert D. Helsby et al., United States District Court, Southern District of New York, 439 F. Supp. 1272 (1977).

30. Judge Goettel stated that:

The record before Judge Frankel in the Buffalo Teachers case indicated that the jurisdiction of a mini-PERB could be punished with a dues check-off suspension.

The record before this court, however, evidences that this statement is simply incorrect, not only in its conclusion about the law, but also in its historical statistical summary. Under the substantial equivalency standard, all mini-PERB's are required by the PERB to have the capability to impose the suspension sanction through an administrative proceeding like that used by the PERB. The mini-PERB's like the state PERB, are directed to institute suspension proceedings when it appears that a violation of the act has occurred... The record before Judge Frankel was therefore erroneous. The mini-PERB's are not required to go to court to impose the suspension penalty; rather, they have the same power as the PERB to conduct administrative hearings and to impose the sanction through that vehicle.

31. Civil Service Association, Inc. v. Robert D. Helsby et al., United States District Court, Southern District of New York, 439 F. Supp. (1977).

32. The Buffalo Courier Express (Buffalo, New York, March 19, 1981): 34.

33. Under OCB Jurisdiction, there were four strikes in 1963, two in 1970, three in 1971, four in 1973, three in 1975, one in 1976, and two in 1979.

34. Copy of an exhibit supplied by the city of New York in the case of Albert Shanker v. Robert D. Helsby et al., United States District Court, Southern District of New York, 76 CIV. 4965 (1979).

35. See Footnote 31 for an explanation of why these employees are under OCB jurisdiction.

36. In 1967 a 12-month check-off suspension was imposed, in 1968 the period was for 10 months, and in 1975 the suspension lasted 24 months.

37. The Board currently has the authority to prevent and remedy employer or union improper practices. In this role, members of the Board do judge the activities of their organization. However, the determination of strike penalties is very different from the activities the Board might take to remedy an improper practice. In addition, the strike penalty would always be imposed against the union. Whereas, improper practices may be committed by either party.

38. Arvid Anderson, Director of the Office of Collective Bargaining, has argued that:

> . . . I am firmly of the opinion that the performance of the essentially prosecutorial functions entailed in the administration of the penalty provisions is inconsistent with the mediatory functions which constitute a significant element in the role of both PERB and the OCB in the performance of their functions in the mediation process, whether as participants or supervisors, the administrators of labor relations agencies such as the OCB or PERB necessarily gain knowledge and information which may be confidential or privileged. We believe it is fundamentally wrong to require persons who have acted in such capacities subsequently to sit in judgment of those with whom they have dealt in confidence. The duality of roles undermines the trust necessary in the mediation process and deprives the judgmental process of its essential freedom from bias and prejudice. That is why we believe the question of penalties belongs in the courts.

I would therefore recommend that in any legislation intended to create a uniform system for the administration of such penalty provisions, the functions be given wholly to the courts rather than to labor disputes settlement agencies such as PERB and OCB.

Statement before the Senate Standing Committee on Civil Service and Pensions, State of New York, March 16, 1978.

39. The authors are indebted to the cooperation that we received from PERB in obtaining these data. While the data was collected by PERB, the authors are solely responsible for the interpretation of the data.

40. An analysis of injunction experience under the Taylor Law is contained in Joel M. Douglas, "The Labor Injunction: Enjoining Public Sector Strikes in New York," 31 Labor Law Journal (June, 1980): 340-352.

41. The use of the number of renegotiated contracts as the denominator has serious drawbacks because strikes may also occur over representation issues or during the life of the contract. However, in New York representation strikes were unlikely during this period because of the high level of unionization and the representation election provisions included in the state's legislation.

42. Bruce E. Kaufman, "The Propensity to Strike in American Manufacturing," In Proceedings of the 30th Annual Meeting of the IRRA, Edited by Barbara D. Dennis, December, 1977, 419-426.

43. Thomas A. Kochan, Collective Bargaining and Industrial Relations (Homewood, ILL: Richard D. Irwin, Inc., 1980): 249-251.

44. Although this sample is biased toward reporting the failure of factfinding because if a strike has occurred then factfinding has obviously failed, the point was also made about factfinding by parties that had not struck.

45. For an anlysis of factfinding for police and fire employee and employers in New York prior to the arbitration law, see Thomas A. Kochan, Mordehai Mironi, Ronald G. Ehrenberg, Jean Baderschneider and Todd Jick, Dispute Resolution Under Factfinding and Arbitration (New York: American Arbitration Association, 1979).

Chapter VI

Public Sector Strikes in Pennsylvania

Collective bargaining in the public sector in Pennsylvania has special significance because it is one of the few states that has granted many of its employees the right to strike. While the legal right to strike in Pennsylvania is limited in several important respects, its law represents a close parallel to the private sector model.[1] The experience in Pennsylvania under Act 195, which granted the limited right to strike to all public employees except police, firefighters, guards, and court employees, provides a rare opportunity to evaluate the impact of legal public sector strikes on the public, employers, employees, and unions.

Pennsylvania can therefore serve as a control or treatment group in a study that compares strike experience across different states. The state is also of interest because it confronts a number of practical policy problems for which there is little other public or private sector experience. Few other public sector jurisdictions have confronted many of these issues because few other states have such an unrestricted right to strike. Nor is private sector experience a reasonable guide since strike costs between the public and private sectors are so different.

The most dramatic example of the cost differences can be found in teacher strikes. In the private sector, employees who strike lose one day of income for each strike day, less whatever income they obtain from alternate employment and union strike benefits. In Pennsylvania, the state mandates a 180-day minimum teaching year so

that teachers who strike usually lose only the difference in pay between their scheduled school days and the 180-day minimum.[2] They lose additional pay only if the school district hires substitutes or decides not to meet the 180-day requirement.

The costs of a strike for the employer in the private sector are the foregone profits from lost sales. By contrast, Pennsylvania school boards have local revenues which are not directly affected by the strike. The state also continues to provide state aid according to a complex formula based in part on the district's actual expenditures. When a strike occurs, state aid is reduced in the next year only if state money was saved as a result of the strike. If all strike days are rescheduled, there is no savings and consequently no reduction in state aid in the next year. The state has had to decide if the school day requirements and aid payments offer proper incentives for the parties to reach an agreement without a strike. While other states have had to confront this question, it has usually been in the context of illegal strikes. This and several other policy issues will be discussed later in the chapter.

Collective Bargaining and Strikes in Pennsylvania

Like New York, bargaining by public employees in Pennsylvania is widespread. In the state government, 66 percent of the employees were included in bargaining units in 1977. This is significantly greater than the national average of 23 percent. Among all local governments in Pennsylvania, 59 percent of all employees are included in bargaining units, while the comparable figure for other states is 41 percent. Table 1 summarizes the union membership and the

contract coverage for Pennsylvania by different functional areas and types of government.

As the lower half of Table 1 shows, not only are a large percent of Pennsylvania employees organized, but collective bargaining is common to almost all sizes of county and school district governments. The percent of governments with at least one bargaining unit is larger than the percent of all employees in county and school district bargaining units. The high employee contract coverage rate cannot be explained, therefore, by bargaining among only a few large counties or school districts. For municipalities and townships, the discrepancy between the two figures suggests that bargaining in 1977 was more common in large cities.

Statistics on public employee strikes in the state are available from a number of sources. The State Bureau of Mediation has collected strike statistics since 1974; as part of its data on work stoppages for all public sector strikes, the U.S. Bureau of Labor Statistics has published Pennsylvania public sector data since 1958. Using these sources, we have constructed Table 2 which summarizes strike activity for 1974 to 1978. (The total number of strikes for years prior to 1974 were shown in Table 1 of Chapter II).

The first column of Table 2 gives the total number of strikes for each year. The figures in the total column report the Census and BLS data. These two figures do not agree because the Census figures apply to an October 1 to September 30 year, while the BLS data report calendar year totals. It should also be pointed out that the breakdown by functions sum to a number greater than the

Table VI -1

Unionization and Contract Coverage in Pennsylvania, 1977

Public Sector Unionization in Pennsylvania, 1977

	Fulltime Employment	Organized Employees as a % of Fulltime Employment	% of Fulltime Public Employees Organized in other States
State Government	127,555	60.9	36.5
Highways	18,265	70.8	50.1
Public Welfare	13,096	62.8	35.9
Hospitals	29,023	71.1	46.8
Police	4,794	86.6	44.6
Local Governments	324,332	65.4	50.9
Education	182,176	75.0	60.5
Highways	11,067	43.2	35.5
Police	23,421	76.5	52.9
Fire	6,805	87.0	72.4
Public Welfare	16,342	34.3	38.8

Table VI-1: (cont.)

Contract Coverage by Government Type in Pennsylvania, 1977

Type of Government	% of All Employees in Bargaining Units	% of Employer With at Least One Bargaining Unit
State	66.0	100.
County	31.6	57.6
Municipalities and townships	52.8	15.9
School districts	67.6	91.6

Source: U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, 1977, Various tables.

Table VI-2

Public Sector Strikes in Pennsylvania, 1974-77

Year	Total [a,b]	State Gov't	Local Gov't	Education-Teachers	Education-Non teachers	Police
1974	80/78	2	78	35	37	--
1975	105/107	1	80	53	39	--
1976	88/93	--	88	48	41	1
1977	67/59	2	65	38	30	--

	Firefighters	Highway and Sanitation	Public Welfare	Other
1974	--	10	2	14
1975	--	13	3	19
1976	--	15	4	17
1977	1	9	1	16

a. The first number in the total column and the rest of the numbers in the table are from the Census publications. The second number in the total column is from Bureau of Labor Statistics data. The discrepancy in the total column is because the Census data refers to an Oct 1 - September 30 year while the BLS figures are calendar year totals.

b. The figures in each row do not add up to the total figure because a strike involving more than one functional area in a government is counted under each functional area.

values in the total columns. This occurs because a single strike is counted under more than one functional category if employees in more than one functional area of the government participated in a strike. Most strikes in Pennsylvania have been in school districts, and most school district strikes were by teachers. Outside of education, strikes by highway and sanitation employees were the most frequent.

Further details on teacher strikes in Pennsylvania over the past decade are shown in Table 3. Over the nine school years from 1970 to 1979, an average of almost 34 teacher strikes occurred each year. The mean and median strike length for teacher strikes has increased in recent years: while the number of strikes peaked at 53 in 1975-1976, the strikes since then have been longer. Most teacher strikes lasted less than two weeks (before the 1976-1977 school year). After 1975-76, however, half the strikes in each year lasted almost four school weeks or more.

The number of strikes in these years are difficult to compare to those in other states because they may reflect widespread bargaining rather than the legal right to strike. To clarify this issue a table of strike probabilities was constructed for Pennsylvania and the rest of the nation for 1973-1977. In this period, about 23 percent of all public sector strikes in the nation occurred in Pennsylvania. The strike probabilities that correspond to these figures are shown in Table 4. Outside of Pennsylvania, a government with a labor relations policy had a .0328 chance of experiencing a strike; in Pennsylvania the probability was three times as great,

Table VI-3

Strikes by Teachers in Pennsylvania, 1970-1979

School Year	Number of Strikes	Mean Length (Days)	Median Length (Days)
1970-71	35	7.9	8.5
1971-72	29	10.1	9.0
1972-73	36	14.5	8.5
1973-74	30	9.4	6.0
1974-75	37	7.6	6.0
1975-76	53	12.6	9.0
1976-77	42	18.1	19.0
1977-78	24	16.3	18.0
1978-79	19	17.2	18.0
Totals	305		
Average 1970-79	33.9	12.6	9.0

Source: Constructed from data provided by the Pennsylvania Department of Education, Teacher Strike Report, 1978-79.

Table VI-4

Strike Propensities in Pennsylvania and the Rest of the U.S., 1973-1976

The U.S. Outside of Pennsylvania

	Number of Strikes	Strike/ Gov't w/IR Policies	Strikes/ Contractual Agreements that Became Effective	Strikes/ Bargaining Units
10/73-9/74	391	.0364	.0340	.0200
10/74-9/75	385	.0351	.1321	.0174
10/75-9/76	289	.0252	.0224	.0123
10/76-9/77	418	.0348	.0330	.0150
Mean	371	.0328	.0302	.0159

Table VI-4
(Continued)

Pennsylvania

	Number Of Strikes	Strike / Gov't w/IR Policies	Strikes / Contractual Agreements that Became Effective	Strikes / Bargaining Units
10/73-9/74	80	.0892	.0840	.0596
10/74-9/75	105	.1155	.1123	.0609
10/75-9/76	88	.0920	.0878	.0522
10/76-9/77	67	.0167	.0694	.0308
Mean	85	.0833	.0882	.0504
Pennsylvania strike propensity/ Rest of U.S. propensity	.2291	2.692	2.921	3.170

Source: Constructed from data in U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years.

or almost .09. As the second and third columns show Pennsylvania and the nation also differ for the probability that contract negotiations will result in a strike, or that a bargaining unit will be struck.[3]

Although strikes were more frequent in Pennsylvania over the entire period, there was a significant drop in this relative frequency in 1977. In the year ending September, 1977, all the probabilities for Pennsylvania were about twice the national average; in the other years, the probability ratios were significantly greater. There are undoubtedly a variety of explanations for this change. One important factor may have been the Governor's Commission Study, undertaken in December, 1976 to investigate the experience under the Act 195 and Act 111 and recommend changes in the law. When the commission was appointed, the parties to the bargaining process undoubtedly expected that the impact of the legal right to strike would be a key area of investigation. To minimize the possibility of a modification of this right, the unions may have tried to moderate their strike activity during the study period.

A second explanation for the drop in the probability would suggest a more permanent decline. With additional strike experience the parties realize there is less to gain from a strike and are then less willing either to strike or be struck. The continual decline in teacher strikes since 1975-76 supports this interpretation.[4]

Although these statistics show that strikes were more frequent in Pennsylvania than in other states, they do not necessarily

indicate a failure of Pennsylvania's collective bargaining process. Rather, these propensities are what might be expected in a legal environment where the strike is the primary method of resolving public sector disputes. If teachers are not included, the propensity of the state's public sector employees to strike is comparable to that for private sector employees and the use of compulsory interest arbitration in at least one state.

Table 5 compares Pennsylvania strikes as a percentage of negotiated contracts with a similar figure for major collective bargaining agreements in the private sector and the propensities of Wisconsin police and fire bargaining units to use arbitration. The total Pennsylvania percentage is high relative to strike propensities in other public jurisdictions which outlaw the strike and penalize the participants, but it is less than the corresponding private sector figure for major collective agreements. The Pennsylvania percentage is almost half that of the estimated arbitration figure for Wisconsin police and fire employees.

Finally, the national average for the probability of a private sector strike is lower than all three measures — than the total strike propensity in Pennsylvania, than the arbitration percentage in Wisconsin, and then strikes by major private sector bargaining units in Pennsylvania. Using data on FMCS notice requirements, Kochan reports that 2-3 percent of negotiated agreements in the private sector ended in a strike.[5] By comparison, legal strikes in Pennsylvania are far more frequent. However, as the last two columns in Table 5 show, the high strike probabilities in Pennsylvania

Table VI-5

Strikes Propensities in Pennsylvania, the Private Sector and Arbitration Propensities in Wisconsin[a]

Year	Private Sector[b]	Interest Arbitration[c]		Pennsylvania Strikes		
				Total	Sch. Dist.	Other Gov't
1954-1975	.1275					
1974	.297	.1360	.0964	.0840	.1232	.0444
1975	.153	.1494	.1352	.1123	.1460	.0735
1976	N.A.	.1848	.1919	.0878	.1097	.0595
1977	N.A.	.1359	.1777	.0694	.0911	.0500
1974-77	N.A.	.1524	.1463	.0882	.1177	.0564

a. These propensities were calculated by dividing the number of times the procedure was used by the number of negotiations.

b. These estimates were taken from Bruce E. Kaufman, "The Propensity to Strike in American Manufacturing," Proceedings of the 30th Annual Winter Meetings of the IRRA edited by Barbara D. Dennis, December, 1977, 419-426.

Table VI-5
(Continued)

c. Two estimates of the propensity of the parties to use arbitration were calculated using two different estimates of the number of negotiations. The first estimate is taken from Craig A. Olson, "Final-Offer Arbitration in Wisconsin after Five Years," Proceedings of the 31st Annual Meeting of the Industrial Relations Research Association, 1978: 111-119. The second estimate is based on the total number of firefighter (62) and law enforcement or security employee (182) bargaining units in the state as reported by the 1977 Census of Governments. It was assumed that the proportion of contracts negotiated in these units correspond to the average percent of contracts negotiated in the Wisconsin public sector for each of the years. The percentage was multiplied by 244 (62 + 182) to obtain an estimate of the number of negotiated contracts for each year.

are largely explained by the high strike propensities in school districts. Among other public employers, the average propensity in the period 1973-77 was slightly above 5 percent, whereas the probability of a school district strikes was 9 percent or more. The 5 percent is substantially below the arbitration probability in Wisconsin, and below the probability for strikes affecting major agreements in the private sector. The high strike propensities in school districts can be explained by the state education requirements and school aid formulas discussed later in this chapter. Thus, outside of education, legal strikes in Pennsylvania are not that much more common than the 2-3 percent figure calculated by Kochan for the entire private sector.

The Legal Framework for Resolving Disputes in Pennsylvania

Before 1968, public employee bargaining in Pennsylvania was regulated by the Public Employee Act of 1947. The law was similar to legislation passed in many states after WW II. It allowed collective bargaining, did not establish a duty to bargain, and prohibited the strike. In 1968, the state passed Act 111 which established collective bargaining rights and interest arbitration for the police and fire employees in the state.[6] In 1970 Act 195 was passed which covered other public employee groups: all covered employees had the right to bargain and most had the limited right to strike.[7]

Act 111 prohibits strikes by police and fire department employees and substitutes interest arbitration. An analysis of the arbitration experience under this Act is beyond the scope of this study. The reader is referred to several studies of this arbitration experience.[8]

It is worth nothing, however, that this statute has been effective in preventing strikes. Over the three-year period, 1974 to 1976, only three police or fire department strikes were reported by the Bureau of Labor Statistics. These figures are in sharp contrast to the large number of legal strikes under Act 195. In addition, as we show in Chapter X, police and fire employee strikes in Pennsylvania and the other two states with arbitration, New York and Wisconsin, were less frequent than strikes in the three states we studied that did not have a dispute resolution procedure for these employees.

Under Act 195, guards in prisons and mental hospitals and court employees essential to court operations have the right to use interest arbitration. The other covered public employees enjoy the right to strike after the other dispute resolution procedures of the statute have been exhausted "unless or until such a strike creates a clear and present danger or threat to the health, safety, or welfare of the public ..."[9]

In addition to the limitations on the right to strike, public employees not engaged in a lawful strike, who refuse to cross a picket line are considered to be engaged in a prohibited strike. Public employees and their labor organizations also commit an unfair labor practice if they participate in a strike, boycott, or picket against a public employer on account of a jurisdictional controversy. Furthermore, a public employee union and its members cannot participate in a strike or boycott for secondary boycott purposes, and a noncertified union cannot engage in a strike or boycott for recognition purposes. Nor can an unfair labor practice by the public employer

be used to justify a prohibited strike.[10]

If a public employee refuses to comply with a lawful court order for violation of the act, strike provisions, the employer shall initiate an action for contempt.[11] A public employee is subject to the following penalties when he or she is found guilty of contempt in refusing to comply with a lawful court order: (1) "suspension, demotion, or discharge at the discretion of the public employer;" and, (2) "fine or imprisonment or both" at the discretion of the court. Public employees cannot receive compensation from the public employer for the period they engage in any strike.[12]

A union found in contempt of a lawful court order may be punished for each day of contempt by a fine fixed at the discretion of the court.[13] In fixing the amount of the fine or term of imprisonment, "the court shall consider all the facts and circumstances directly related to the contempt including but not limited to: (1) any unfair practices committed by the public employer during the collective bargaining processess; (2) the extent of the wilful defiance or resistance to the court's order; (3) the impact of the strike on the health, safety, or welfare of the public, and (4) the ability of the employee organization or the employee to pay the fine imposed."[14] The parties may request the court to reduce or suspend any fines of penalties imposed.[15]

It is important to notice that the injunction standard uses "health, safety, or welfare" rather than "and welfare." The use of "or" has been interpreted to mean that a danger or threat to the public's welfare is sufficient to enjoin a strike. This standard,

therefore, is more restrictive than the alternative language because a threat to welfare is much easier to prove than one to health or safety. Surprisingly, the precise standards for the issuance of an injunction have been enunciated in only a very few court decisions, most of them in the context of school strikes.[16] This may be because most strikes in the state have been by teachers. It could also be due to the fact that the impact of a teachers' strike is inherently a sensitive issue. Based on the court cases which stated an injunction standard and on interviews conducted with school and union officials, most of the injunctions issued have been based on the welfare rather than the health and safety standard.

When the courts have applied the injunction standard, they have concluded that in enacting even a limited right to strike, the legislature recognized that public inconvenience is the natural result of a strike. The courts reasoned that the legislature did not intend inconvenience to be a sufficient grounds for an injunction. As the Commonwealth Court noted in Armstrong Education Association v. Armstrong School District:

> The disruption of routine administrative procedures, the cancellation of extracurricular activities and sports and other such difficulties are most certainly inconvenient for the public, and especially for students and their parents. But these problems are inherent in the very nature of any strike by school teachers. If we were to say that such inconvenience, which necessarily accompany any strike by school teachers from its very inception, are proper grounds for enjoining such a strike, we would

in fact be nullifying the right to strike granted to school teachers by the legislature in Act No. 195.[17]

When, however, the total effect of a strike reaches the point where it threatens public health, safety, or welfare, it may be enjoined. This means that a strike may begin as a legal strike and become illegal as the impact of the strike intensifies. The legal strike determination, which is made on a case by case basis when an employer petitions a court for an injunction, was elaborated on in the case of Bristol Townships Education Association v. School Directors of Bristol Township.[18] In this case the Commonwealth Court considered 17 items relied on by a lower court when it issued an injunction. The items included the following: denial of education to local students; injury to working mothers with school-age children; inability of the district to meet the required number of instructional days; loss of state aid; lost wages to laid-off nonstriking school district employees; the interruption of special education programs for handicapped student and other groups; interruption of adult education programs; the possible adverse impact on admission chances of college bound seniors; and, the curtailment of a variety of extracurricular activities. In its review of a lower court's decision, the Commonwealth Court upheld the injunction.[19]

The precise line between a legal and illegal strike remains fuzzy and will become clearer only with additional injunction proceedings. The few cases which have considered some of the items in the Bristol case have suggested that some are much more important than others. The two most important seem to be the impact of a strike

on state aid and the 180-day minimum school year requirement. In the 1972 case cited above, Armstrong School District v. Armstrong Education Association et al., the Commonwealth Court stated in dictum i.e., in a formal statement on an issue not central to the case, that:

> The danger that the district will lose state subsidies because of a strike would be proper grounds for enjoining a strike if such danger "were clear and present." And, although it is not certain that subsidies will in fact have to be withheld because of the strike, it is a possibility that cannot be ignored. If the strike lasted so long, therefore, that its continuation would make it unlikely that enough days would be available to make up the 180 required (days), the teachers could properly be enjoined from continuing it ... If a strike is to be enjoined on the basis that insufficient make-up time actually will exist, the strike must at the very least have reached the point where its continuation would make it either impossible or extremely difficult for the district to make up enough instructional days to meet the subsidy requirement within the time available.[20]

The injunction standard and its relationship to the state's education standards, Act 195, and teacher strikes are analyzed in a subsequent section of this chapter.

The Impact of Act 195 on Strikes

Based on strike data since 1958, the impact of Act 195 appears to be quite significant. Table 1 in Chapter II shows the total number of strikes in Pennsylvania and the other 49 states. Public sector strikes in Pennsylvania were infrequent through the 1960's and increased dramatically after 1968. From 1960 through 1969 the BLS reported an average of 7.2 strikes per year in Pennsylvania. From 1970 through 1978 this average increased to over 73 strikes per year.

To analyze the impact of Act 195 on the number of strikes, a regression was performed of the number of strikes in Pennsylvania for each year from 1958 to 1978. The independent variables in the equation were the number of strikes in the public sector in the other 49 states, a linear time-trend variable, and a dummy variable that assumed a value of "1" for all years after 1969. This dummy variable, which corresponds to the passage of Act 195, provides an estimate of the impact of Act 195 on the number of strikes after controlling for the other variables in the equation. An OLS regression and a two-step Cochrane-Orcutt procedure were used. The latter technique corrects for first order autocorrelation. The following estimates were produced:

OLS: Strikes = -7.9342 + 2.1742 time - .00325 strikes
(.9017) (1.339) (.0057)

+ 44.5245 Post-69
(3.273)

N = 21, D.W. = 2.2211

C-O: Strikes = -6.1309 + 1.5602 time + .01 strikes
(.7002) (1.557) (.1902)

+ 42.1316 Post-69
(3.345)

N = 20, D.W. = 2.2524

Absolute t-values in parentheses.

In each of the equations, the post-1969 dummy variable is statistically significant at conventional levels. The Cochrane-Orcutt estimates imply that there were an average of 42 more strikes per year in Pennsylvania after the passage of Act 195. If the OLS estimates are used for the number of strikes that would have occurred without the law, then 44 additional strikes would have occurred—a 150 percent average increase in the annual number of strikes because of Act 195.

While it is tempting to conclude that the legal right to strike increased the propensity of represented employees in Pennsylvania to strike, the pre- and post-law comparison may be overstating the difference for three reasons. First, the law may have increased the amount of bargaining in the state so that after 1971 there were more opportunities for strikes to occur. Second, after the law was passed, better strike reporting may have resulted from the more active role in public sector labor relations of state agencies (Bureau of Mediation Services and Pennsylvania Labor Relations Board). Third, while the average number of strikes increased after the law, the upward trend in the number of strikes began in 1969, before the law was passed. In fact, proponents of the 1970 law argued before the legislature that the bill should be passed because of the large

increase in public sector strikes in the late sixties. The presumption was that the law would decrease strikes by providing a set of rules for the bargaining parties. Despite these qualifications, it is difficult to discount the entire difference between the pre- and post-law strike figures. The legalization of a right to strike provided a bargaining framework that was at least as conducive to strikes as the pre-law environment. Certainly, compared to most other states, the strike costs to employees were significantly lower after 1970 in Pennsylvania.

Teacher Strikes, Act 195, and State Education Requirements

The teacher strike experience deserves additional attention because of the complex interaction between teacher bargaining, Act 195, make-up days, and the state educational requirement. State law in Pennsylvania requires that each district provide 180 instructional student days each fiscal year.[21] A long strike in the fall may prevent a district from meeting the required minimum school year. If this requirement is not met, the district will be unable to meet the instructional mandate of the state and may lose its state subsidies. This possibility has been viewed as a threat to public welfare and grounds for an injunction.[22]

The 180-day requirement has served as a basis for an injunction when an employer seeks one to ensure that the district meets the requirements. No injunction is likely, however, if an employer decides not to seek it. In one strike a local taxpayer from a struck district tried unsuccessfully to force a district to reschedule lost school days to meet the 180-days requirement. The court stated that:

> ...The Legislature's direction that schools shall be kept open 180 days of course means that school board shall schedule and attempt to provide for school sessions of this duration. Boards are not, however, thereby required to do either the impossible or the impractical in circumstances not within their control. There are many reasons why, having scheduled the required number of instructional days, the board may be unable to provide them, one of the most obvious which is the strike action by its employees sanctioned by the Public Employee Relations Act, Act of July 23, 1970.
>
> ...Boards must schedule 180 days and provide this number or, if unavoidable cause prevents, amend the schedule so as to provide as many days as sound educational practice would indicate. In this determination, the professional administrators' opinions should have the greatest weight.[23]

The knowledge that a Board will seek an injunction to end a strike appears to have had the effect of causing or prolonging some teachers strikes. This is due to the strike's minimal economic impact on the teachers. Evidence supporting this conclusion is shown in Tables 6 and 7.

In Table 6, the strike propensities are shown for teacher bargaining units, nonteacher bargaining units, school districts, and other local governments with at least one bargaining unit. Panel A of Table 6 shows the number of strikes and strike propensities by school districts and other local governments; strikes are over twice as likely in Pennsylvania school district than in other local governments in the state.

Table VI-6

Strike Propensities for Teachers and Other Public Employees in Pennsylvania Local Governments, 1974-77

Panel A

		School Districts	Other Local Governments
(1)	Number of strikes[a]	236	95
(2)	Number of gov't with at least one bargaining unit[b]	522	558
(3)	Estimated number of contractual agreements that became effective[c]	2005	1821
	(1)/(2)	.4521	.1703
	(1)/(3)	.1177	.0522

Panel B

		Teachers Only	Total, Non-teachers	Employees Outside of School District	Noneducation Employees in School District
(4)	Number of strikes[a]	174	233	86	147
(5)	Number of bargaining units[b]	519	1619	1077	542
	(4)/(5)	.3353	.1439	.0799	.2712

Notes to Table VI-6

a. U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years. The number of strikes by each occupational group exceeds the total number of strikes in the state because for some strikes teachers and other non-teachers in education participated in the same strike.

b. The number of bargaining units and the number of governments with bargaining units was based on the bargaining unit data tape from the 1977 Census of Government and published information in Labor-Management Relations in State and Local Governments, 1977 Census of Government.

c. The number of contractual agreements that become effective for teachers in School Districts and noneducation employees in school districts was calculated as the total number of contractual agreements that became effective in school districts from 1973-1977 times the percent of school district bargaining units in 1977 that were teacher or nonteacher. While this is only an approximation, the only critical assumption is that over this four year period teacher and nonteacher school district contracts were of similar duration and the number of contracts negotiated over this time period was equal for each type of bargaining unit.

Our hypothesis is that the differences in Panel A are explained by more frequent teacher strikes caused by paid make-up days. This hypothesis is not proven by Panel A, however. The more frequent strikes in school districts may be explained by some other characteristics distinguishing school districts from other local governments. Panel B of Table 6 was constructed to further clarify this issue. In Panel B, the number of strikes and the strike propensities of teachers and nonteacher bargaining units are reported in columns (1) and (2). In the last two columns, the nonteacher bargaining units are classified according to the type of employer. If the higher strike probabilities for school districts is explained by paid make-up days for teachers, then in Panel B we would expect the strike probability in column (1) to be significantly greater than the probabilities in the other columns. This expectation is not confirmed. Although the first column shows that strikes were over 30 percent for the teacher bargaining units, the last column shows that the strike probability is almost as high for nonteacher bargaining units which are in school districts. Furthermore, the high strike propensity for nonteaching bargaining units in school districts is significantly greater than the .0799 propensity of nonteachers outside school districts. These results suggest that the greater frequency of school district strikes is not caused by paid make-up days, but by some other characteristic of Pennsylvania school districts; this statement can stand unless strikes by nonteachers are also directly or indirectly influenced by make-up day requirements.

There are at least three explanations why the strike probability for nonteachers in school districts may be indirectly influenced by the school aid requirement. First, if teachers and nonteachers strike

simultaneously and the district is closed by the strike, the non-teachers paid on the basis of a school year are likely to be paid for any rescheduled school days. A second explanation for the high non-teacher strike probabilities may be that school boards are conditioned by their strike experience. If school boards' experience with striking teachers proves less onerous than school boards expected, they may be more willing to take a strike by nonteaching employees. Third, the large number of strikes by nonteacher employees may be partially explained by interrelated strike activity: either teachers might honor nonteacher picket lines which might close a system and require rescheduled days; or nonteachers might honor teacher picket lines which may cause the employer to report that nonteachers were also on strike.

The necessary data to distinguish among these explanations was not available. Each of the explanations, however, implies, either that teachers and nonteachers strike simultaneously, or that a strike by teachers preceded a strike by nonteachers. The summary statistics on education strikes in Pennsylvania published by the Census show that almost two-thirds (94) of the 147 strikes by nonteachers in education from 1974-1977 occurred in districts where teachers struck in the same 12-month reporting period. These statistics tend to support our three explanations on the links between teacher and nonteacher strikes. This issue deserves more research, but the statistics support the hypothesis that education requirements reduce teacher strike costs. This leads to more strikes by non-teaching employees in school districts.

A second difference between teacher strikes in school districts and nonteacher strikes in all local governments is in their length. Table 7 shows the distribution of strikes by strike length for the two

Table VI-7

Percentage of Strikes by Strike Length for Teacher and Nonteacher Strikes in Pennsylvania, 1975-1978

Strike Length	Teacher Strikes (%)	Other Strikes (%)
≤ 3 days	14.49	19.38
4 - 5 days	5.07	15.00
6 - 10 days	20.29	24.38
11 - 15 days	12.32	10.00
16 - 20 days	18.12	6.25
21 - 25 days	12.32	7.50
26 - 30 days	8.70	3.75
31 - 35 days	5.07	5.00
36 - 40 days	2.90	.63
41 - 45 days	-----	.63
46 - 50 days	.72	1.25
≤ 51 days	-----	6.26
	100.	100.
Median	15 days	12 days

Source: Constructed from data provided by Pennsylvania's Department of Education and Bureau of Mediation Services.

groups. Over the four-year period of 1975 to 1978, the median strike length was three days longer for teacher strikes. The major difference between teacher and nonteacher strikes was that there were substantially fewer teacher strikes of two weeks or less, and a corresponding increase in those three to five weeks long.

There were also almost no teacher strikes longer than nine weeks, whereas over 8 percent of the nonteacher strikes lasted nine or more weeks. This difference is undoubtedly due to the 180-day calendar year. By the end of the second month of a strike the parties realize that all the strike days will not be made up and the incentive to reach an agreement increased. Teachers and school boards were therefore unwilling to allow a strike to progress beyond six to eight weeks.

The impact of the 180-day requirement on lost education days and pay to teachers is sharp. Current policy in Pennsylvania is designed to minimize the impact of teacher strike on school days by requiring districts to schedule 180 school days, regardless of a strike. This educational policy decision, however, has also had a strong impact on the pay lost by teachers who participate in a strike. The second column in Table 8 shows the number of districts that did not meet the 180-day requirement. The district scheduled and teachers were paid for at least 180 days (in about two-thirds of the districts that experienced a strike from 1970 to 1979). In these strikes, the days teachers went without pay correspond to the difference between 180 days and the normal calendar which includes instructional and non-instructional days.

If most school calendars include an estimated 182 days, teachers lost at most two days of pay in about 70 percent of the strikes, regardless of the length of the strike.[24] This represents a low strike

cost for this group. The third column in Table 8 shows the number of struck districts that failed to meet the 180-day requirement. In the 30 percent of the strikes in this category the teachers lost pay equal to either the number of strike days or to the difference between the normal school year and the actual school year following the strike. The last column in Table 8 shows the mean number of pay days lost by this category. These figures are substantially greater than the 1 to 2 days of pay lost in 70 percent of the struck districts.

Table 9 summarizes the data on strike days, instruction days, and days of lost pay due to strikes. From the 1970-71 academic year through the 1978-79 academic year, teachers were on strike a total of 3813 days but, assuming a constant 182 day academic calendar, teachers lost only an estimated 1100 days of pay or an average of .29 days of pay for each strike day. These figures were calculated by examining each strike and the calendar year for the struck district. For strikes where teachers worked 180 days, it was assumed teachers lost 2 days of pay. For all strikes where teachers worked less than 180 days, the days of lost pay were calculated as the difference between 182 and the actual length of the academic year. Changing these assumptions by a few days would affect the "days without pay", but it would not alter the basic conclusion: the number of strike days seriously overstates the economic cost of a strike to Pennsylvania teachers.

The large number of strikes caused by this low economic cost has not necessarily been undesirable from an educational point of view. While teachers lost very little pay due to strikes, students in Pennsylvania missed even less education. Assuming two of the days of pay lost due to a strike would have been non-contact days, the student

Table VI-8

Teacher Strikes, Shortened School Calendars and Estimated Lost Days of Pay Due to Strikes

School Year	Number of Strikes	Number of Struck Districts < 180 Days of Instruction	Mean Days of Pay Lost by Districts that did not meet the 1980 Requirment[a]
1970-71	35	7	7.5
1971-72	29	4	10.0
1972-73	36	13	14.5
1973-74	30	10	10.5
1974-75	37	15	7.9
1975-76	53	13	14.3
1976-77	42	16	14.6
1977-78	24	9	9.3
1978-79	19	5	17.0
Average 1970-79	33.9	10.22	

a. These calculations assume that in all cases the school calendar would have been 182 days were it not for the strike.

Source: Constructed from data reported in Pennsylvania Department of Education, Teacher Strike Report, 1978-79.

Table VI-9

Summary of Total Strikes Days, Lost Pupil Days and Lost Pay Days From Teacher Strikes in Pennsylvania, 1971-1979

Total number of strike days	3813
Student contact days missed due to strikes[a]	866
Days of pay lost due to strikes[b]	1100

a. This figure was calculated by subtracting from 180 the number of days of instruction that were missed in districts that failed to meet the 180 day requirement. These differences were summed over the 92 districts that failed to meet the 180 day requirement.

b. This figure was obtained by first taking the 92 differences calculated above and adding 2 to each figure before summing the 92 figures. This is equivalent to assuming that in districts that did not meet the 180 day requirement teachers would have been paid for 182 days were it not for the strike. In addition, there were 33 strikes that lasted either one or two days. It was assumed that in these strikes teachers lost pay for the days they struck.

Source: Constructed from data reported in Pennsylvania Department of Education, Teacher Strike Report, 1978-79.

contact days missed because of a strike was about 866 days over the nine-year period. Instead of starting school in early September, strikes have postponed the opening day of school but also the scheduled conclusion of the school year.

State aid to school districts also affects school board bargaining behavior. Its impact is more complicated than the 180-day requirement, however, because state aid is related to the wealth of a school district. Currently the state aid each district receives in the current year depends on expenses in the previous year and on a complex formula which reflects, among other things, enrollment and school district wealth. Since a district is reimbursed for incurred expenses, state aid may be reduced as a result of a strike only if the district saves money from the strike. If a district schedules the make-up days it is unlikely any money will be saved. The fraction of a district's expenses paid by the state, however, varies across districts, therefore the potential savings by not making up days also varies across districts. Wealthy districts, which receive a smaller portion of their total revenue from the state, may even have an incentive to have their teachers strike. By not scheduling make-up days, these districts may find that the savings in teacher salaries more than offsets any state aid lost because they failed to meet the 180-day requirement. The effect of this incentive on strikes in wealthy school districts may be outweighed by two factors: greater teachers' willingness to make concessions because they fear strike days will not be rescheduled; taxpayer and parental pressure to avoid a strike or, if necessary, to reschedule missed school days.

The state aid formula has the opposite effect on poorer districts, which receive a high portion of their total revenue from the state.

If they did not reschedule make-up days, the loss in state aid would exceed the salaries saved in a strike. Poorer districts may also be less able to make the concessions necessary to avoid a strike. On the face of it, it might seem that poorer districts could pay any price to avoid a strike since they could pass the settlement cost along to the state, but the bargaining process may be influenced by when state aid is determined. State aid in one year is partially dependent on expenses in the previous year. Therefore, if a poor district agrees to a "large" settlement to avoid a strike, its cost must be entirely financed in the current year by local revenues— additional state aid based on incurred expenses would not be available until the next year. For the identical settlement then, the short-run percentage increase in local tax revenue to finance the settlement will be greater in the poorer district. This fact may make citizens of poorer districts resist the wage settlement required to avoid a strike. Teacher strikes may be more likely then in poorer districts for two reasons: resistance to wage settlements because of their impact on local taxes; and, the low strike costs to teachers because strike days will probably be rescheduled.

The statistical analysis of strikes in Pennsylvania school districts reported in Chapter X confirms the hypothesis that strikes are far less frequent in wealthier school districts.[25] The results show that from 1975-78 the probability of a teacher strike declined as the percent of total school district revenue from local property taxes increased. Since wealthier districts receive a smaller portion

of state aid, this means the probability of a strike decreased as the wealth of a district increased. Precisely which of the explanations that were offered above account for this difference in strike probabilities must await additional analysis.

Proposals to Change the 180 Requirement and State Aid Formula

While current Pennsylvania policy has had only a limited effect on student-teacher contact days, the effectiveness of the strike as a dispute resolution procedure may have declined over time. The strike is effective in forcing labor and management to an agreement because of the strike costs and the uncertainty at the time the contract expires about the strike length and final strike settlement. Teachers do not incur major strike costs until the strike approaches the point where the 180-day requirement becomes difficult to meet. If school officials and parents also realize that a strike does not prevent the district from meeting the 180-day requirement until a month or so into the strike, the incentive for either side to settle before a strike or early in a strike is not very great. The trend in average strike length over the past 10 years suggests that both sides recognize the low costs of a strike. The number of teacher strikes has declined in recent years, but the average length has increased significantly. From 1976-1979, the mean and median strike lengths have increased dramatically (See Table 3).

In 1978, a Governor's Commission studied the experience under Act 195 and Act 111 and recommended the law be changed.[26] The report, the Governor's Study Commission on Public Employee Relations, recom-

mended that school districts that have experienced a strike should be exempted from the 180-day requirement and that make-up days should be permitted as a subject of bargaining. If a teacher strike is enjoined by a Court, the law should require arbitration. Rescheduling of lost days, however, would not be subject to arbitration. For each day of the strike, salaries and state aid would be reduced by 1/180 for each strike day, unless the days were rescheduled. If the days were rescheduled, full state aid and salaries would be paid.[27]

The Commission's rationale for this proposal was that:

> Both teachers and school boards lack an economic incentive to end a strike. Due to the unique situation in Pennsylvania educational labor relations, teachers are able to strike without facing the same economic consequences as do other categories of public employes, while some school districts are able to save money through nonpayment of teacher salaries. The intent of our proposal is to remedy this situation. Only when both parties to a labor dispute face the threat of a financial penalty in the event of a strike, will the number and length of strikes by effectively reduced. When days of instruction lost to a strike have to be made up as a matter of law, teachers lack an economic incentive to end that strike. Finally, the rescheduling of days lost to a strike must not be made the subject of an arbitration award, since to do so would contravene the recommendation that rescheduling shall be a permissive subject of

> bargaining. Allowing rescheduling of make-up days to be a permissive subject of bargaining encourges a more dynamic relationship between the negotiating parties. Strictly limiting the matters over which the parties may bargain by mutual agreement discourages creativity in the collective bargaining process.[28]

The argument against this recommendation is that the state is obliged to provide an education to the children of the state. This proposed change places too much emphasis on the labor relations goals of the state and too little emphasis on its educational goals. By removing the 180 day requirement, the state can no longer ensure that each child receives a minimal level of education because the employer could decide not to make up the school days.

The argument against the proposed change is not persuasive for three reasons. First, in one-third of the strikes, districts have not rescheduled make-up days to provide students with the number of instructional days required by state law. Second, the elimination of mandatory make-up days and a change to a prorated state aid formula would increase the costs of a strike to both parties. This would tend to decrease the number and duration of strikes. Under these circumstances, the days of education lost because of strikes may be less than those lost now. Finally, the injunction standard would still apply. Where the length of a strike would harm the public welfare, the strike could still be enjoined.

Chapter VI

Footnotes

1. Other states have given some public employees the limited right to strike. However, the Pennsylvania law provides almost 10 years of experience that analysts can evaluate. Other states with a limited right to strike include Hawaii, Minnesota, and Oregon. Still other states, such as Vermont and Michigan, outlaw strikes but limit the employer's ability to enjoin the strike.

2. The 180-day requirement is mandated by Section 1501 of the state's school code.

3. The probabilities in each column of Table 4 assume that over each of the years either a government (column 2), the parties to a contractual agreement (column 3) or a bargaining unit of employees (column 4) experience only one strike. To the extent that one of the denominators used in Table 4 experiences more than one strike per time period the probabilities shown overstate the probability of at least one strike per denominator. This problem is not serious because the number of multiple strikes per time period for each of the denominators is small so the bias is minimal.

4. A third explanation for the decline in the number of strikes is that increase in contract length has decreased the number of negotiations. While there has been an increase in the number of multi-year agreements, the results shown in the third column of Table 4 show a decline even after correcting for strike opportunities in the last three years.

5. Thomas A. Kochan, Collective Bargaining and Industrial Relations, (Homewood, Illinois: Richard D. Irwin, 1980): 249-251.

6. Act 111 of 1968, Pennsylvania General Assembly.

7. Act 195 of 1970, Pennsylvania General Assembly.

8. See James L. Stern, Charles M. Rehmus, Joseph J. Loewenberg, Hirschel Kasper and Barbara D. Dennis, Final-Offer Arbitration (Lexington, Mass.: Heath Publishing, 1975) and Collective Bargaining and Arbitration for Municipal Policemen and Firemen; A Survey of Pennsylvania's Experience 1968-1976, Report prepared by the Governor's Study Commission on Public Employee Relations, September, 1978.

9. Section 1003 of Act 195 of the Pennsylvania General Assembly.

10. Pennsylvania Annotated Statutes, Title 43, Sections 1101.1101, 1101.1201(b) (6), 1101.1201(b) (7) and 1101.1004 (Purdon) (1979).

11. Pennsylvania Annotated Statutes, Title 43, Section 1105.1005 (Purdon) (1979).

12. Pennsylvania Annotated Statutes, Title 43, Section 1105.1005-1007 (Purdon) (1979).

13. Pennsylvania Annotated Statutes, Title 43, Section 1101.1008 (Purdon) (1979).

14. Pennsylvania Annotated Statutes, Title 43, Section 1101.1009 (Purdon) (1979).

15. Pennsylvania Annotated Statutes, Title 43, Section 1101.1010 (Purdon) (1979).

16. See Mercer County v. USWA, 60 PA D & C. 2d 631 (1973) for an example of a nonteacher strike where an injunction was issued.

17. Armstrong Education Association v. Armstrong School District, 3 Pennsylvania Commonwealth 378, 291 A.2d 124 (1972).

18. Bristol Township Education Association v. School Directors of Bristol Township 14 Pennsylvania Commonwealth 463, 322 A.2d 769 (1974).

19. Ibid.

20. Armstrong School District v. Armstrong Education Association, 5 Pennsylvania Commonwealth 378, 291 A.2d 125 (1972).

21. Section 1501 of the School Code of Pennsylvania.

22. Armstrong School District v. Armstrong Education Association.

23. Root v. Northern Cambria School District, 10 Pennsylvania Commonwealth 174, 179, 180 309 A.2d 175 (1973).

24. Data by school district on the length of the school calendar was not available. However, labor and management officials indicated that a 182-184 day calendar would encompass a very large percentage of the negotiated school calendars. If the subsequent analysis in the text was based on a 184 day calendar the number of days of pay lost by striking teachers would increase substantially if there were no scheduled "non-contract" days provided in the calendar finally agreed to by the striking parties.

25. See Chapter XI for details of these estimates. Note especially the negative coefficients on state aid in Tables AXI-5 and AXI-7.

26. Report of the Governor's Study Commission on Public Employee Relations', Commonwealth of Pennsylvania, June 1, 1978.

27. Governor's Study Commission, p. 28.

28. Governor's Study Commission, p. 30.

Chapter VII

Public Sector Strikes in Hawaii

Hawaii's public sector collective bargaining law was enacted in 1970. Prior to that time employee associations representing state and local government workers lobbied for higher wages and better working conditions and on occasion resorted to demonstrations and short demonstration strikes. In 1969 there were three demonstrations and two brief strikes.

Between 1971 and 1979 the state's 13 bargaining units negotiated 75 new contracts with public employers.[1] Sixty-eight of the contracts were ratified by the parties, two were rejected by the union, and seven settlements were reached after final and binding arbitration.[2] Of the 18 strikes during this nine-year period, 12 were brief protests during the life of various contracts over the interpretation of one or another contract provision. The other six, involving eight public employee unions, occurred in connection with the negotiation of new contracts. Tables 1 and 2 summarize at what point the parties reached agreement in each of the 75 negotiations.

For bargaining purposes, Hawaii's public employees are in one of 13 units specified in the law (see Table 3). Because the state's two-year operating budget begins in odd-numbered years, many negotiations are initiated in the even-numbered years. Work stoppages that result from impasses in contract negotiations thus tend to occur in the odd-numbered years when the legislature is making its budget decisions.

Table VII-1

Public Sector Contract Negotiations, Dispute Resolution, and Work Stoppages
Hawaii, 1969-1979

Year	Number of Negotiations Initiated[b]	Settlements Without Impasse	Formal Impasse	Impasse Resolved Through:				Work Stoppages		
				Mediation	Fact Finding	Arbitration	Other[c]	Total	Related to Mgmt. Practice	Over New Contract Terms
1969[a]								3	3	
1970[a]								2	2	
1971	4	1	3	1	1	0	1	2	2	0
1972	8	5	3	0	1	0	2	5	4	1
1973	11	8	3	2	0	0	1	1	0	1
1974	6	5	1	1	0	0	0	2	1	1
1975	15	7	8	0	0	5	3	2	2	0
1976	15	11	4	1	0	0	3	2	1	1
1977	3	3	0					0	0	0
1978	11	6	5	2	0	0	3	1	1	0
1979	2	1	1	1	0	0	0	3	1	2
Total	75	47	28	8	2	5	13	23	17	6

NOTE: In some cases, the contract negotiations, dispute resolution procedure, and/or work stoppage which arise from the contract negotiations may have occurred in a year other than the one in which the bargaining began. It should also be noted that from 1975 to 1976, there was a period of adjustment when the duration of contracts covering the 13 bargaining units was attuned so that they would coincide with the public employers' two-year budgeting period (See Table 3).

a. Prior to June 1970, the wages and benefits for public employees were determined by the state legislature.
b. Refers to the number of contract negotiations initiated during the year; the dispute may have extended beyond the year in which the bargaining began.
c. "Other" means steps taken to resolve the dispute after fact-finding had been completed and outside the procedure set forth in the law.

Table VII-2

Public Sector Contract Negotiations, Dispute Resolution, and Work Stoppages by Bargaining Units, Hawaii, 1971-1979

	Bargaining Unit[d]												
	1	2	3	4	5	6	7	8	9	10	11	12	13
1971													
Work stoppages over:													
Management practice	2												
New contract terms													
Negotiations initiated[a]	1	1			1	1							
Settled without impasse		1											
Formal impasse	1				1	1							
Impasse resolved through[b]	FF				Oth	M							
1972													
Work stoppages over:													
Management practice	3				1								
New contract terms					1								
Negotiations initiated			1		1				1	1	1	2	1
Settled without impasse			1						1			2	1
Formal impasse					1					1	1		
Impasse resolved through					Oth					FF	Oth		
1973													
Work stoppages over:													
Management practice													
New contract terms					1								
Negotiations initiated	1	1	1	1		1	1[c]	1	1	1	1		1
Settled without impasse		1	1	1		1	1	1	1	1			
Formal impasse	1										1		1
Impasse resolved through	M										Oth		M
1974													
Work stoppages over:													
Management practice											1		
New contract terms											1		
Negotiations initiated			2		1	1		1		1			
Settled without impasse			2		1	1		1					
Formal impasse										1			
Impasse resolved through										M			

Table VII-2 (continued)

	Bargaining Unit												
	1	2	3	4	5	6	7	8	9	10	11	12	13
1975													
Work stoppages over:													
Management practice	2												
New contract terms													
Negotiations initiated	1	1	1	2		1	1	1	2	1	2	1	1
Settled without impasse				1		1	1		1	1	1	1	
Formal impasse	1	1	1	1				1	1		1		1
Impasse resolved through	Oth	Arb	Arb	Arb				Arb	Oth		Oth		Arb
1976													
Work stoppages over:													
Management practice	1											1	
New contract terms													
Negotiations initiated	1	1	1	1	1	2	2	1	1	1	1	1	1
Settled without impasse	1	1	1	1		2	1	1	1	1			1
Formal impasse					1		1				1	1	
Impasse resolved through					M		Oth				Oth	Oth	
1977													
Work stoppages over:													
Management practice													
New contract terms													
Negotiations initiated					1					1		1	
Settled without impasse					1					1		1	
Formal impasse													
Impasse resolved through													
1978													
Work stoppages over:													
Management practice	1												
New contract terms													
Negotiations initiated	1	1	1	1	1	1	1	1		1	1		1
Settled without impasse		1	1	1		1		1					1
Formal impasse	1				1		1			1	1		
Impasse resolved through	Oth				M		M			Oth	Oth		

Table VII-2 (continued)

	Bargaining Unit												
	1	2	3	4	5	6	7	8	9	10	11	12	13
1979													
Work stoppages over:													
Management practice												1	
New contract terms	1											1	
Negotiations initiated									1			1	
Settled without impasse									1				
Formal impasse												1	
Impasse resolved through												M	
Total													
Work stoppages over:													
Management practice	9				1						1	1	
New contract terms	1				2						1	2	
No. of negotiations	5	5	7	5	6	7	5	5	6	7	6	6	5
Settled without impasse	1	4	6	4	2	6	3	4	5	4	1	4	3
Formal impasse	4	1	1	1	4	1	2	1	1	3	5	2	2
Resolution through													
Mediation	1				2	1	1			1		1	1
Fact Finding	1									1			
Voluntary Arbitration		1	1	1				1					1
Other	2				2		1		1	1	5	1	0

a. Refers to the number of contract negotiations initiated during the year; the dispute resolution may have extended beyond the year in which the bargaining began. Likewise, a work stoppage resulting from the contract negotiations may occur in a year other than the year in which the bargaining began.
b. M=Mediation; FF=Fact finding; Arb=Arbitration; Oth=Other.
c. Contract rejected by bargaining unit; no subsequent renegotiation.
d. The bargaining units are defined in Table VII-3.

Table VII-3

Public Employee Bargaining Units in Hawaii

Unit 1	Nonsupervisory blue-collar state and county employees
Unit 2	Supervisory blue-collar state and county employees
Unit 3	Nonsupervisory white-collar state and county employees
Unit 4	Supervisory white-collar state and county employees
Unit 5[a]	K-12 Teachers
Unit 6[a]	K-12 Education officials (mainly principals and vice-principals)
Unit 7[a]	University and community college faculty
Unit 8[a]	University and community college nonfaculty personnel
Unit 9[b]	Registered nurses
Unit 10[b]	Nonprofessional hospital and institutional workers
Unit 11[b]	Firefighters
Unit 12[b]	Police officers
Unit 13[b]	Professional and scientific officers, other than registered nurses

a. The state, rather than independent, school districts, operates the education system.

b. Units in which supervisory employees may be included.

Under the Hawaii law, contracts may be reopened within the two-year contract period, but only over noncost items.

The public employers function within a highly centralized structure. Thus, for the purpose of collective bargaining with other than the representatives of education units (Units 5, 6, 7 and 8), the public employer is defined as the governor and the mayor of each of the state's four counties, with the governor having four votes and each mayor having one vote. For the education units, the public employer is defined as the governor or his designated representatives (not less than three persons) and not more than two members of the state Board of Education or the University's Board of Regents. Any decision reached by the public employer is to be on the basis of a simple majority.

In negotiations between 1971 and 1979, the Hawaii Public Employment Relations Board (HPERB), the agency designated to administer the bargaining law, declared a total of 28 impasses, 15 of which were ultimately resolved through statutory dispute resolution procedures--eight by mediation, five by arbitration, and two by factfinding. Other or extra-statutory procedures following factfinding were used to resolve 13 impasses: three by a return to mediation, one by mediation-arbitration, six by a return to negotiations, one by a special employer's summit meeting; one by final-offer arbitration; and one by the governor's intercession. In seven of the 13 impasses, agreements were reached during the 60-day "cooling off" period that the statute requires if the parties fail to settle their differences in the mediation or factfinding steps of the procedures. Three settlements occurred just prior to a strike, and in

one case the parties had agreed voluntarily to resolve any impasse in final-offer arbitration. There were two strikes--one by teachers in 1973 and one by nonsupervisory blue-collar workers in 1979. Both are described in some detail later in this chapter.

Strike Penalties in Hawaii

The Hawaii public sector bargaining law permits strikes, but only if the parties follow certain procedural steps set forth in the statute. Section 89-11(b) requires them to submit any dispute to mediation and to factfinding; if these two procedures fail, then there is to be a 60-day cooling off period. Finally, if the parties do not mutually agree to submit their dispute to arbitration, the union may strike, but it must file a notice of intent to strike with the HPERB and the employer 10 days in advance of the strike date. If a strike or a threat of a strike presents an imminent or present danger to the public's health or safety, the HPERB determines what steps must be taken to avoid or remove any such danger.

However, most strikes in Hawaii have been illegal because they began before the parties had exhausted the statutory procedures. The police and firefighter union "sickouts" occurred just prior to or during the mediation stage. Although the teachers union did follow the procedure, including the filing of its 10-day notice of intent to strike, its threatened strike was suddenly declared illegal when the circuit court ruled that the HPERB has erred in declaring an impasse in the dispute. The legality of the United Public Workers (UPW) strike also became an issue in the courts when essential employees failed to comply with the

HPERB order, but no action was taken by the employers to have the HPERB declare the strike illegal.

Table 4 shows the penalties that were applied in each of the strikes. There was a total of 23 work stoppages between 1969 and 1979, and penalties were imposed in 11 of them.

Prior to 1970, strikes against the government were considered illegal under Chapter 5, Revised Laws of Hawaii, 1955. Section 5-9 of that law provided: "Any individual employee employed by the government who violates any provision of Sections 5-7 to 5-12 [striking against the government] may be dismissed, suspended or reduced in rank or compensation."

This statutory penalty was superseded by Chapter 89, Hawaii Revised Statutes, which gave the circuit courts jurisdiction and authority to enjoin, in accordance with Chapter 380, actions which did not comply with the requirements for a legal strike set forth in Section 89-12. No specific penalty was stated in Chapter 89.

Judicial penalties have been imposed by the courts upon a finding of contempt against the public employee union or individuals for participating in an enjoined action. The courts have fined unions in two public sector strikes--the 17-day teachers' strike of 1973 and the 41-day blue-collar workers' strike of 1979.

There has been only one contractual penalty. In 1974 the Hawaii Fire Fighters Association (HFFA) agreed to reimburse the public employers for overtime and meal costs incurred because of a firefighter sickout by making adjustments in the effective date of the negotiated wage increase.

Table VII-4

Public Sector Work Stoppages and Penalties/Sanctions, Hawaii, 1969-1979

Year	Work Stoppage Total	Penalized Stoppages	Penalties Against Individuals						Penalties Against Union	
			Jud.	Res.[b]	Cont.	Res.	Adm.	Res.	Jud.	Res.
1969[a]	3	0								
1970[a]	2	2					2			
1971	2	0								
1972	5	1					1			
1973	1	1					1	1	1	c
1974	2	1			1					
1975	2	2					2	2		
1976	2	1					1	1		
1977	0									
1978	1	1					1	1		
1979	3	2	1	1			2	1	1	
Total	23	11	1	1	1		10	6	2	

a. Prior to 1970, strikes against the government were illegal under Chapter 5, Revised Laws of Hawaii 1955. Section 5-9 of that law provided for the dismissal, suspension, or reduction in rank or compensation of the individual employee involved in a strike against the government. This statutory sanction was superseded by Chapter 89, Hawaii Revised Statutes, which does not include statutory penalties to be imposed upon unions or participants in public employee strikes determined to be illegal.

b. Penalties which were later rescinded.

c. The union was fined, but the fine was later reduced by the state supreme court.

The administrative penalty is the one that has been used most frequently. In 1970 the city and county of Honolulu cut the pay of approximately 3500 blue- and white-collar workers for being absent without leave during two walkouts involving the UPW and the Hawaii Government Employees Association (HGEA), and in 1972 the state Department of Education imposed a two-day suspension on about 5000 teachers who had participated in a one-day walkout called by the Hawaii State Teachers Association (HSTA). The suspensions were later rescinded by the Board of Education. Kauai county suspended 28 UPW Unit 1 workers for taking part in two separate sickouts, but these suspensions, too, were later rescinded; and in 1976 Maui county fined 48 police officers one day's pay for participating in a sickout that also involved the police in the city and county of Honolulu and Hawaii county.[3] These fines were later rescinded. The state suspended 10 UPW hospital workers and terminated one CETA worker at Kaneohe State Hospital in 1978 for participating in a sickout, but the suspensions were rescinded later and the CETA employee was allowed to resign. In 1979 the counties of Honolulu, Hawaii, Maui, and Kauai issued written reprimands to individual police officers who walked off their jobs during a police sickout. Also in 1979, during the 41-day UPW strike, the state management sent disciplinary letters to each striker. The letters were later withdrawn. The record detailed above indicates that penalties have been rescinded more often than they have been enforced.

Table 5 shows the breakdown of work stoppages by public employers affected and the types of penalties imposed on striking employees; it also

Table VII-5

Public Sector Work Stoppages and Penalties/Sanctions in Hawaii, 1969-1979

Year	Work Stoppage Total[a]	State			City & County			Hawaii County			Kauai County			Maui County		
		Action Wkrs.	Taken	Res.	Action Wkrs.	Taken	Res.	Action Wkrs.	Taken	Res.	Action Wkrs.	Taken	Res.	Action Wkrs.	Taken	Res.
1969	3	3	0		1	0										
1970	2	2	0		2	2:A		2	0		2	0		2	0	
1971	2				2	0										
1972	5	2	1:A	1:A	3	0										
1973	1	1	1:A,J													
1974	2				2	1:C		1	1:C		1	1:C		1	1:C	
1975	2										2	2:A	2:A			
1976	2				2	0		1	0					1	1:A	1:A
1977	0															
1978	1	1	1:A													
1979	3	1	1:A,J	1:A,J	3	1:A		2	1:A		2	2:A,J		2	2:A,J	1:J
Total	23	10	4		15	4		6	2		7	5		6	4	
Rate of ~~Sanction~~ Imposition		40%			26.6%			33.3%			71.4%			66.6%		

a. Some of the work stoppages involved the participation of both state and county employees. If the employees belong to the same bargaining unit, the work stoppage is counted as one.

Key: A - Administrative; C - Contractual; J - Judicial.

indicates which penalties were rescinded. The work-stoppages recorded for any particular unit of government in a given year reflect job actions taken by members of single bargaining units and therefore, add to more than the total number of recorded work stoppages. There were 23 work stoppages between 1969 and 1979: 10 involving state workers, 15 involving city and county of Honolulu workers, 6 involving Hawaii county workers, 7 involving Kauai county workers, and 6 involving Maui county workers.

In the remaining sections of this chapter, the approach to the analysis of the effects of the law and the penalties will be different from that in the other chapters on individual states. The centralized bargaining structure in Hawaii permitted us to conduct an in-depth analysis of each of the major strikes by public employees, and in the following case studies we describe not only how the law affected stoppages, but how, in some cases, the stoppages led to changes in the law.

Pre-Bargaining Law Work Stoppages

The job actions of the UPW and the HGEA prior to enactment of the Hawaii collective bargaining law reveal the difference in the willingness of these unions to engage in direct job actions, with the UPW blue-collar union for the most part showing militancy and a greater willingness to strike and the HGEA white-collar union being more inclined to call for short demonstrations, usually during the lunch hour.

Two strikes occurred while the legislature was deliberating public employee pay bills. The first, a one-day affair in May 1969, was called by the UPW on the island of Oahu and resulted in a two-and-one-half day

extension of the legislative session. Involved were about 1600 refuse collectors, sewer workers, road repairmen, custodial, building and parks maintenance personnel, and some Board of Water Supply employees who failed to show up for work after the chairman of the senate ways and means committee announced that his committee had agreed to fund a 20 percent pay increase for white-collar employees, but not to add a fifth incremental step to the four-step blue-collar salary schedule.[4] The workers returned to their jobs the following day after being assured that the fifth step would probably have a good chance of surviving in a joint senate and house conference committee. Less than a month earlier the HGEA had staged a one-hour demonstration at the State Capitol in support of its pay increase, with the participating white-collar employees charging the time to an early-lunch or vacation leave. Within a week after the UPW strike, the HGEA called another one-hour demonstration, again charging the time off to leaves. The final wage settlement in 1969 was the 20 percent pay increase for white-collar workers and the fifth step sought by the blue-collar workers. A few days later HGEA members were again marching on the State Capitol, this time to show their gratitude for their raise.

Prior to the 1970 legislative session, the UPW was again expressing dissatisfaction with the wage schedule, claiming that it resulted in its members' wages falling behind because their rates were tied to the prevailing wages in the community; the union wanted a "built-in differential" so that state and local government blue-collar wages would reflect true parity with federal and private sector pay. The union agreed to a

compromise on the differential and announced that it would seek "a meaningful collective bargaining law with teeth" from the legislature. The pay bill, giving the blue-collar workers an extra 5 percent across-the-board adjustment and including increases for white-collar workers, teachers and University of Hawaii personnel became stalled in the senate ways and means committee, raising the fear that the legislative session would end without any action on the measure. In a virtual repeat of the previous year's action, the UPW called for a work stoppage on May 6, during the final hours of yet another extended legislative session. This time UPW members in all of the counties participated in the walkout--not only the Public Works Department blue-collar employees, but a large number of hospital and institutional nonprofessional workers and maintenance and repair crews of the counties' fire and police departments.

Although HGEA leaders initially said that the walkout was "stupid," the union decided to join in the work stoppage the following day, May 7. A decision that prompted the Department of Education to announce that some schools were authorized to close if the cafeteria and sanitation facilities could not be staffed. Hilo Hospital and Maui Memorial Hospital reduced their services and accepted only emergency cases because they were without housekeeping and maintenance staffs. An estimated 13,500 workers statewide took part in the strike--3,500 UPW members and 10,000 HGEA members. The public school began closing at noon on May 7 and remained closed through May 8 (a Friday).

The parties finally were able to reach a settlement, and by May 9 all

striking public employees were back at their jobs. Except for the city and county of Honolulu, the governments involved agreed that the workers would get full pay if they charged the strike time to vacation, compensatory, or sick leave. The Honolulu mayor, however, refused to pay workers who were absent "without authorization." The Hawaii Taxpayers Protective Association took issue with the state government's position of allowing striking employees to claim compensatory or vacation leave, and it filed suit against the state in an effort to block payments to the workers involved.[5]

The enactment of Hawaii's public employee collective bargaining law in June 1970 necessitated a new system of organization for state and local government workers.[6] Until then the two dominant public employee unions had been the HGEA and the UPW. Chapter 89, Hawaii Revised Statutes (HRS), however, established 13 units for the purposes of exclusive employee representation and bargaining on their behalf with their government employers. The law also gave public employees a limited right to strike. In 1971 the law was already being tested as the bargaining units began their first formal negotiations with their government employers.

The 1973 Statewide Teachers' Strike

Although the Hawaii public sector unions had succeeded in 1970 in legalizing public sector strikes if certain procedural requirements were met and if the strike did not affect public health and safety in the state, a circuit court found the 1973 teachers' strike to be illegal and imposed a large fine on the union.

The strike began on April 2, 1973, climaxing more than two years of

hostility between the Hawaii State Teachers Association and state education officials.[7] It is generally agreed that the problems grew from a "confused, unclear, contradictory" first contract arrived at on February 16, 1972, on the eve of a threatened strike. The abruptness of the settlement caught the teachers as they were setting up their picket lines around the schools. Classes were cancelled, and the Department of Education (DOE) gave the teachers administrative leaves with pay for February 17, the day the strike was to begin.[8]

The contract was the target of considerable criticism from many quarters: State legislators were unhappy about its $13 million price tag. Some teachers objected to the vagueness of the contract language and contended that a few of the provisions were not what the HSTA had promised. The president of the State Federation of Labor, who was sympathetic to HSTA's rival, the Hawaii Federation of Teachers, said that the agreement was a "sellout" and called for the teachers to reject it. Worse still, the ambiguities of the contract language led to differing interpretations by the HSTA and the DOE and growing mutual distrust of the motives of the other party regarding its implementation and negotiations over the reopener items in the agreement. Reopener items were salaries, preparation periods, class size and additional fringe benefits, but the dispute soon focused on preparation periods and class size.

The DOE had difficulty in implementing those provisions in part because it meant hiring additional teachers at a time when the state administration had placed a freeze on hiring. The HSTA filed grievances

against the DOE for failure to carry out the contract provisions and publicized its complaints in rallies, press releases and, later, newspaper advertisements, in each case blaming the Board of Education and calling its members "outlaws" for not abiding by the contract provisions.

The Board, on the other hand, filed a petition with the HPERB asking that the union proposals on the reopener issues of a fixed class size and the scheduling of preparation periods be declared nonnegotiable because they fell under the management rights clause of Section 89-9(d), HRS.[9] In a counter move, the HSTA filed a prohibited practice charge against the Board for failure to implement the contract provisions on preparation periods, duty-free lunch periods and custodial duties.[10]

The filing of petitions continued until, at one point, the parties had three times as many cases before the HPERB than the number filed in any other single bargaining relationship. The most significant HPERB decision, in terms of later court actions, occurred when it ruled on both a prohibited practice charge filed by the Board of Education accusing the union of failing to bargain in good faith,[11] and a petition filed by the HSTA asking the HPERB to declare an impasse in the talks.[12]

In this decision, the HPERB criticized both parties for their behavior and ruled in favor of both petitions. The impasse declaration sent the reopener dispute into the statutory resolution procedures which had to be exhausted before a legal strike could be declared. The Board appealed the HPERB's impasse ruling to the circuit court, and in a precedent-setting decision, Judge Kawakami found that the HPERB could

not make an impasse determination where good faith bargaining had not been demonstrated.[13] This court ruling, coming six days after the teachers had voted 4,279 to 1,890 to authorize the HSTA to call a strike in April, had the effect of making the impending strike illegal.

The HSTA reaffirmed the teachers' intention to strike, regardless of the court decision, and that provoked the HPERB to go to the court to seek an injunction against it. That request came before circuit court Judge Doi, who had earlier enjoined the HSTA from engaging in illegal strikes for the duration of its contract. Judge Doi held that the earlier injunction was still in force, as were the penalties that he had specified for its violation; the union was to be fined $100,000 for any illegal strike plus $10,000 a day for each day of an illegal strike. The judge also ruled, however, that these penalties would not be imposed until a strike actually began and only after the HPERB initiated contempt proceedings against the HSTA for violating his order.

On April 2, about 87 percent of the 9,000 public school teachers were on strike against the state. Both sides indicated that they expected the strike to be a long one.

State legislators adopted a "hands-off" policy, preferring to let the parties negotiate their own solution. The approaching adjournment seemed to place pressure on the union, but would affect only the negotiated cost items which require legislative approval under Hawaii law. The strike was timed with the legislative session in mind, but that strategy was quickly placed in jeopardy by the circuit court decision. There

was also little that the legislature could accomplish since the central issue in the dispute was perceived to be the employer's right to manage.

Similarly, there was little public pressure on the employer to end the illegal strike. The public's health and safety were not endangered, and there was no great public outcry about any cutback in public services since the DOE was able to use substitute teachers, regular teachers and volunteers to keep 142 of the 221 schools open during the strike.

The DOE also issued an advisory, stating that teachers who were on strike were not considered to be on a paid status and therefore, if they attempted to return to work any day before the spring vacation for the purpose of getting vacation pay, they would not be paid either for the day they reported for work or for the vacation unless they signed a pledge to return to work after the vacation. This action led to union grievances after the strike ended.

Pressure to end the strike ultimately came from the courts. Judge Kawakami's decision that the strike was illegal had reportedly troubled teachers even before the strike began. Greater pressure came when Judge Doi held on April 11, the tenth day of the strike, that the HSTA was in contempt of his injunction and fined the union $100,000 plus $10,000 for each workday that the strike was in progress, retroactive to April 3. The judge also raised the possibility of jail terms for the union leaders if they failed to call off the strike by noon of April 18.

The threat of further penalties worried the state negotiators who were apprehensive about the prospect of the union leaders being jailed;

some of them said outright that they did not want to see this happen. The large fines worried the union because the HSTA was already operating with a deficit. The governor, prompted by the concern that the strike was on the verge of "breaking" the teachers' union, called in West Coasts mediator Sam Kagel and asked him to try his hand at getting the parties together.[14]

Kagel managed to get both sides to agree to submit the dispute to mediation-arbitration. The major points of this plan were that the strike would be terminated after the teachers gave their approval, that there would be "no discrimination of any kind by any of the parties against the participants or nonparticipants of the strike," and that all decisions on questions of arbitrability or on the merits of any arbitrated issue would be final and binding, without the right of appeal by either party.

By noon of April 18, the HSTA had completed its ratification meetings and the teachers had approved the mediation-arbitration plan by a vote of 4,288 to 576. The strike was officially over. When Kagel issued his award on June 25, 1973, both sides claimed a victory.

Although the state had agreed not to discriminate against the teachers who had participated in the strike, its actions on two issues affecting teachers who had struck had the effect, the union claimed, of imposing penalties on individuals. The first was the Board of Education's refusal to pay teachers for the spring vacation. The union's position was that the teachers were entitled to vacation pay because, since the schools were closed for the April 16-20 spring holiday,

they were not on strike after Friday, April 13. The dispute went to an arbitrator who held that the strike did not end on April 13, but rather on April 18, the day the teachers officially voted to end it. He also held that a teacher's work year contract does not "grant an unconditional right to pay during spring vacation or any other designated holidays, regardless of the pay or leave status of the employees." Since the DOE was able to demonstrate that the requirement to report for work at least one day in the week prior to the spring vacation was applied to all teachers, strikers and nonstrikers alike, the arbitrator ruled that the policy was not discriminatory and that teachers who had not met the requirement were not entitled to vacation pay.

The second dispute arose over the Board's decision not to give seniority credit for the month of April to teachers who had participated in the full 17 days of the strike. For those teachers, this meant that when it became necessary to transfer or lay off teachers because of declining enrollments, they would have less seniority than nonstriking teachers who had the same hire date. The HSTA brought a prohibited practice charge of discrimination before the HPERB, choosing this procedure over arbitration because a speedier remedy could be obtained--if the HPERB chose to exercise its jurisdiction.

The HPERB majority found that the Board's action did not constitute discrimination in violation of the mediation-arbitration agreement or the collective bargaining law. One HPERB member dissented, saying that the "scheme of the DOE" was to discriminate against the striking teachers and that the policy was indeed a penalty since it went beyond the normal

loss of benefits sustained by strikers.[15] The HSTA subsequently challenged the HPERB's ruling, but the decision was upheld by both the circuit court and the state supreme court.[16]

An immediate concern of the union after the strike was to get the supreme court to stay Judge Doi's $190,000 fine while it appealed the contempt finding. The HSTA argued that requiring it to pay the fine immediately or to put up a large bond during the appeal process would bankrupt the union. It got some support in this matter from the executive officer of the HPERB, who said that the agency was not out to break the union.[17] However, the supreme court ruled that the union had to pay the fine immediately or post a $200,000 bond while it appealed Judge Doi's contempt finding.

The HSTA borrowed heavily from banks; one teacher loaned the union $25,000 interest free, the only proviso being that she remain anonymous. Later, in an agreement with the HPERB and with the approval of the circuit court, the union began paying off its fine into an escrow fund on an installment basis. In addition to appealing Judge Doi's contempt of court ruling, the HSTA had also appealed the judge's earlier injunction in which he had specified the fines for an illegal strike and Judge Kawakami's invalidation of the HPERB's decision that the parties were at impasse.

The supreme court upheld the circuits in each of the three cases. Its decision affirming Judge Doi's injunction was unanimous,[18] and it also upheld his finding that the union was in contempt of court when it struck. However, the justices reduced the original $190,000 contempt

fine to $100,000, noting that the HSTA was a "legal trail-blazer" in the "uncharted, complicated new legal field of collective bargaining among the public employees of the State of Hawaii."[19] Later the court ruled that Judge Kawakami was correct in his decision that the HSTA and the Board of Education had not been at an impasse in their negotaitions, the ruling which stripped the teachers' strike of its legality.

It is likely that strong pressure to settle the strike came from the union membership. Only half of them had voted for it, and less than 90 percent of the teachers were out on any given work day during the strike. Most of the striking teachers also were feeling the pinch of the loss of paychecks. One person speculated that if the strike had gone on for another two weeks, the teachers would have begun returning to work in droves.

The greatest pressure for settlement seemed to have come from the heavy fines imposed by the courts coupled with the threat of jail for the union leaders, although these threats seem to have shaken up the state negotaitors more than it did the union negotiators. The HSTA, which was already in debt when the strike began, could not afford to have the strike drag on as fines continued to accumulate, especially since there was no assurance that the HPERB would be amenable to a request to raise the teacher service fees. Nor could the union expect any financial help from the parent National Education Association because of its standing policy of not assisting in the payment of fines.

Thus, the courts' threat, the fines, the reluctance of many teachers to continue the strike, and the governor's wish not to see the HSTA leaders jailed combined to exert sufficient pressure to bring the dispute to an end. The mediation-arbitration process was a face-saving mechanism for both parties in reaching a final settlement.

After the strike, the union sought an increase in the service fee, which it is mandated to collect from all employees in the bargaining unit, in order to be able to cover the fine, and the HPERB, which must approve the size of the fee, consented to the increase. But there was another penalty imposed, one that is rarely discussed in analyses of public sectors strikes. Each striking teacher lost one month of seniority.

Animosity between state education officials and the HSTA continued for a short period after the strike, until key individuals on both sides left or were replaced, but relations improved as each side gained a better understanding of the other. The 1973 strike also made very clear to the union the many problems it would face in the unlikely event that it would conduct an illegal strike again. It should be noted that the union did not engage in an illegal strike over the next seven years, and as early as 1974, the ill feelings left over from the strike dissipated, the union and the Board of Education were having "good and healthy" bargaining sessions.

The Firefighter Sickout and Strike Threats, 1974-79

Although the Hawaii law provides procedures for resolving union-employer disputes when the parties reach an impasse, the firefighters

have been uniformly successful in their negotiations by resorting to maneuvers beyond the law's procedures. In 1977 they used the strike threat to gain a settlement that was tied to reconsideration and the ultimate enactment of a firefighter arbitration bill that the governnor had vetoed. In 1979 they again used the threat of a strike to obtain an agreement following legislative inaction in funding the first arbitration award under the firefighter arbitration act. Although they have not completely ignored the statutory procedures, no mediator so far has succeeded in resolving a contract dispute in which the firefighters were involved. Although in their first negotiation the factfinding recommendations did help to form the basis for a settlement, in later negotiations when factfinding was used, the union rejected the reports.

The strategy of the Hawaii Fire Fighters Association (HFFA) to carry out "quickie" job actions and also to stay out of the courts is revealed in its five-day sickout of July 1974. Negotiations for the 1974-75 contract, first requested in August 1973, began in late October. Within eight months the HPERB declared the parties at an impasse. Wages and holiday pay were the major issues.

Prior to the impasse, the HFFA and the employers had agreed to waive the 15-day limit on mediation, specified in the Hawaii law. Suddenly, on July 18, 1974--the 15th working day after mediation began--21 of the 22 firefighters who were scheduled to report for duty on Kauai called in sick, 32 of 34 scheduled on Hawaii did the same, and 25 stayed home on Maui. The Honolulu firefighters did not join in the first day

of the sickout, but a group from the HFFA was reported to have met with Honolulu Mayor Fasi at City Hall on the afternoon of July 18. That same afternoon the federal mediator appointed by the HPERB cancelled a meeting with the negotiators, and his only public comment was that the next meeting would be "subject to call"--presumably by the union.

On July 19, 205 Oahu firefighters who were scheduled to go on duty called in sick, requiring on-duty personnel to remain on the job. The union denied that there was a "strike or refusal to work by firefighting personnel" and insisted that "all fire stations have been and are being fully manned." The counties complained to the HPERB that the firefighters were violating the no-strike clause in their collective bargaining agreement and asked the HPERB to seek a circuit court injunction against firefighters who were involved. The sickout ended five days after it began.

Mediation and factfinding failed, and on September 3, 1974, the union began taking a strike authorization vote. Out of 853 votes cast statewide, 807 (95 percent) endorsed a strike on or after November 3. On Oahu, 606 of 624 ballot cast (97 percent) were votes for the strike.

In an effort to head off the threatened strike, the employers asked the union to agree to final and binding arbitration; the union refused. This refusal apparently prompted the counties to petition the HPERB to initiate an investigation into the threat of a firefighter strike. The petition was filed on October 15, the same day that the counties began their strike preparation meetings.

The union continued its preparations for a strike, blaming the failure to agree on the employer's "unanimity rule." This rule required the state and all of the counties to be in agreement on all the terms of a contract before final acceptance, thus preventing any individual county from making separate agreements with the firefighters. Newspaper reports hinted that Hawaii and Kauai counties were unwilling to meet the union's wage demand.

On October 18, the Maui county council passed a resolution supporting acceptance of the 8.5 percent pay increase the firefighters were demanding and asking Maui Mayor Cravalho to "utilize his considerable experience" in resolving the dispute. The mayor succeeded in getting a "summit" meeting of the governor and the county mayors at which it was agreed that bargaining between the employers and the firefighters should be resumed. At this meeting the acting governor informed the mayors that he did not intend to call out the national guard to take over firefighting duties in the event of a strike.

The parties reached a settlement without a strike. It included the 8.5 percent across-the-board wage increase that the firefighters had demanded and also an agreement by the union to reimburse the counties for the additional costs for meals and overtime that the employers had incurred during the July sickout. This was accomplished by adjusting the effect date of the wage reopener in each county.

At the time of coinciding with the settlement on the reopener, the union asked the employers to begin negotiations on a new contract, since one just negotiated was due to expire in seven months (June 30).

Negotiations began on December 3, 1974. At the union's urging, the employers agreed to use a procedure that involved only two steps: mediation and final-offer arbitration.[20] In exchange, the union agreed to reduce the number of its contract demands from 20 to nine.

Within a short time the parties reached the predicted impasse, and on February 13, 1975, both sides asked the HPERB to declare an impasse. The impasse was not resolved in the mediation stage, and on February 26, they exchanged their final offers. On March 4, when both parties presented their final offers to the arbitrator, the union also submitted an alternative offer which would attach any firefighter pay raise to the national consumer price index. The employers immediately went to court, claiming that the arbitrator was prohibited from considering the alternative offer. The court ruled in favor of the employers. The arbitrator selected the firefighters' final offer on raises and holiday benefits on March 25, 1975. After the county councils and the 1975 state legislature approved the cost items in the award, the contract was signed on April 16.

In the legislature that year, several bills were introduced to amend the state's collective bargaining law, including one which would have made arbitration a mandatory step in contract disputes involving police and firefighters. It was not adopted, but another amendment was enacted that set a common expiration date for all bargaining unit contracts so that they would coincide with the state's two-year budget. The same piece of legislation also revised the "unanimity rule" by requiring only a simple majority vote of the employers for ratification of a negotiated settlement; the governor was assigned four votes and the county mayors one vote each. The state was now in a position to command a majority

when it was aligned with only one of the counties.

For the firefighters, the exceptional negotiations was the one for the 1976-77 contract; it is the only one that was settled at the bargaining table without incident. It was also during the 1976 legislative session that the lawmakers ordered a study of the merits of compulsory binding arbitration as a procedure for resolving police and firefighter disputes.

The substance of the model bill proposed by the HFFA was introduced in both the senate and house in February 1977, approved by both houses, and vetoed by the governor on the grounds that it would favor the selection of an out-of-state arbitrator. The legislature made no serious attempt to override the veto, reportedly because the bill set an effective date of July 1, 1978.

Negotiations over the fourth contract, to cover the period July 1, 1977 to June 30, 1979, had been in progress during the 1977 legislative deliberations over the firefighters' arbitration bill. By May 9, the parties were declared to be at an impasse, and on May 27 the HPERB appointed a factfinding panel. Unresolved issues were hours of work, overtime, night-shift differential, emergency and special assignments and physical examinations; this time wages were not at issue. Two days after the governor's veto of the arbitration bill, the factfinding panel issued its report, which the union promptly rejected. The union then reversed itself, withdrew its previous proposals, and instead demanded a 7 percent wage increase and, in addition, suggested that the procedure prescribed in the vetoed bill be used in the event the parties failed

to reach an agreement. All the other public employee units had settled for a 4.5 percent wage increase. The employers rejected the union's demand, stating also that any possible strike probably would be declared illegal since no impasse had been declared on the new 7 percent wage demand. Following a 97.5 vote of the membership in favor of a strike, the union filed notice with the HPERB of its intent to strike on September 1. The employers soon filed a petition with the HPERB, calling upon it to declare that the strike would endanger public safety and health. On July 28 it was announced that the parties had reached an agreement. However, by fewer than 200 votes, the firefighters rejected the proposed contract, and further negotiations soon collapsed over the issues of wages and overtime pay.

On August 26 the HPERB ruled in a 2-1 decision that a firefighters' strike would endanger the public health and safety and ordered that fire station operations continue to be carried out with present manning schedules.

The union continued its strike preparations and, as part of its strategy, the union officials staged a meeting with the mayor of Honolulu several days before the strike deadline. Overtures were also made to the mayor of Maui county. Within three days, on August 29, the governor announced that a settlement had been reached. Under its terms, the union obtained a wage increase of 4.3 percent, effective both July 1, 1977 and July 1, 1978, in addition to a holiday pay premium estimated at 2.2 percent retroactive to July 1, 1977.

In the 1978 legislative session, a modified version of the vetoed

mandatory arbitration bill was introduced and passed by both houses. It differed from the original one in that it specified arbitration by a tripartite panel rather than by a single arbitrator. No mention was made of any residence requirements for the arbitrators. The tripartite arrangement was aimed at meeting the governor's objection to the earlier bill and his complaint that only mainland arbitrators would end up settling disputes in Hawaii. The bill was signed into law on May 23, 1978.

Negotiations over the terms of the 1979-81 contract began on August 4, 1978, against the background of the new law. The union was anxious to try out the new procedure and, in fact, filed several petitions before it finally secured a declaration of impasse from the HPERB. Mediation failed, and the HPERB moved to invoke arbitration. The employer representative on the tripartite arbitration panel resisted adoption of the union's final offer that tied pay raises to increases in the cost-of-living index because it would set a precedent for all other public employee units, but the other members overruled him on the grounds that the panel had no legal power to bind other units and no responsibility "for transferability negotiation problems that the employers may experience." The governor, however, let it be known that no one should assume that legislative approval would be automatic. In fact, the legislature adjourned without taking action on the arbitration award. The HFFA flatly refused to go back to bargaining and threatened a strike. First, however, it filed a prohibited practice ~~charge~~ charge against the employers, but the HPERB rejected the union's claim, with the chairman noting that

"final and binding arbitration" was something of a misnomer for the legislation which should more properly be called "advisory arbitration" since any award was subject to legislative confirmation. The union announced its intention to go ahead with a strike, and other public employee unions supported it. Three days before the walkout deadline, union leaders had breakfast with the governor and emerged with an agreement that included an understanding that some necessary changes would be made in the compulsory arbitration law.

Despite the difficulty with the law, no amendments have been adopted and negotiations for the 1981-83 period are proceeding within its original terms.

The Police Sickouts, 1976 and 1979

The pattern followed by Hawaii's police officers parallels the firefighters' union's strategy in their use of the sickout to pressure management negotiators, but they have experienced significantly less success. There was about 90 percent participation in the two police sickouts, in 1976 and in 1979. However, the State of Hawaii Organization of Police Officers (SHOPO) leadership publicly disavowed both job actions, despite news reports to the contrary. The 1976 sickout lasted 22 hours and the ultimate settlement required the efforts of a special mediator appointed by the HPERB. The 1979 sickout lasted for three and a half days, during which the HPERB declared the action an illegal strike, the union leadership was served with return-to-work orders, and negotiators for three counties walked out of the mediation sessions and vowed not to return until the police officers returned to their jobs.

The reasons for the sickouts were not sharply defined. The 1976 sickout ended after it was decided that the officers had "made their point" in a meeting with the Honolulu mayor. The mayor had also promised the officers total amnesty if they returned to their jobs within a specified time. There were news reports that the union had provoked the action to protest the lack of "good faith" bargaining on the part of the government negotiators, although SHOPO denied any involvement. The reasons attributed for the 1979 sickout included "public apathy," the slowness of the negotiations, and police job frustration.

In terms of penalties for participating in the sickouts, the union was apparently more successful in its efforts to gain amnesty for officers in the 1976 sickout than in 1979, although the issues of penalties arising from the latter job action are still somewhat unclear.

As previously noted, Honolulu police officers were promised total amnesty in 1976. Similarly, Hawaii county officials had agreed not to pursue any disciplinary actions against its officers. But Maui county cut the pay of any officer who could not prove that he had a legitimate ailment, and it asked for confirmation beyond the doctor's certificate that many officers had submitted.[21] Kauai officers did not participate in the 1976 sickout.[22]

In contrast, the employers did not concede on the amnesty issue to get the police to return to work in 1979. According to the union, amnesty had been promised at one point in the negotiations, but it had not been put in writing. Initially, the various police administrations had announced publicly that most of the officers would be liable for disciplinary

penalties ranging from pay cuts and verbal reprimands to discharge and possible criminal prosecution of any found guilty of harassing and intimidating fellow officers who remained on duty. The severity of the penalties was due in part to the fact that a number of the police on duty had walked off their jobs.

Amnesty for the police was not widely supported in the community, and the majority of the employers indicated that they would not consider it negotiable. However, the issue was resurrected after the parties agreed on a tentative settlement a week after the sickout ended. The union was assured that no officer would be dismissed or demoted for taking part in the sickout; however, the counties retained the right to issue suspensions and or reprimands for dereliction of duty on a case-by-case basis. The officers who had been assigned to duty when the walkout occurred on July 14 were considered particularly vulnerable to suspension without pay.

Rumors began to circulate about a contract rejection if the officers remained under the threat of retribution. The Honolulu police administration finally announced that it would not issue suspensions because of the sickout. Instead, officers who had left their posts would be penalized with written reprimands and a cut in pay for the remaining period of the July 14 shift. Other officers who had called in sick and had no doctor's slip to verify an illness were to be penalized by having to charge the sickout days to their compensatory time off or their vacations. A few days later Hawaii county also said that it would issue no suspensions as penalties. The police officers finally ratified the contract on October 12, 1979, almost three months after they had reached the tentative agreement.

The ratification did not mean that the issue of penalties resulting from the sickout had been laid to rest. Although the Honolulu police administration had initially indicated that the officers would have to provide medical proof in order to claim sick leave, all applications that fell within the sickout period were later denied. Officers who had called in sick for that period were given the option of converting the absence to vacation leave. In all, about 10 of the approximately 1400 Honolulu officers who had walked out failed to take the option. Some officers who were denied sick leave even though they presented a doctor's certification have filed grievances, but the employer has refused to process them. In refusing, the employer has relied on the language in the police contract which denies the union access to the grievance procedure when employees are disciplined for engaging in prohibited activities.[23] The union has filed a number of prohibited practice complaints with HPERB on behalf of the officers. So far only two have been heard and both petitions were dismissed.[24]

It is alleged that other penalties have been imposed on police officers as an aftermath of the sickout. According to one source, participation in the job action has meant a loss of promotion for many young officers, and there have been rumors that these officers would never go out again because of their vulnerability to administrative retaliation.

The 1979 "Essential" Blue-Collar Workers' Strike

The first and only so-called "legal" strike under the Hawaii law began on October 22, 1979, nearly 10 years after the law was enacted, and involved the unit of 7,700 blue-collar workers throughout the state who were

represented by the United Public Workers (UPW). This walkout served as the first major test of the provisions in the Hawaii law prohibiting strikes by "essential" workers. The problems the public employers faced in effecting compliance with these provisions brought about the first significant changes in the law as it defined limitations on the right to strike.

This strike also provides another illustration of the influence of penalties, including individual and union fines, on a strike. Although the union came close to paying $2.5 million in fines, in the end the amount was only $62,000, not counting the outcome of pending appeals to the state supreme court. On the island of Maui, under an agreement between the Maui court and the union, ~~files~~ fines imposed against individual strikers in that county were dropped on the condition that the union would not appeal the fine against the union. Disciplinary letters sent to individual striking "essential" employees were also withdrawn as part of the strike settlement.

The strike began 14 months after the start of negotiations, and after the UPW had gone through all of the procedures required for the calling of a legal strike, including filing with the HPERB a 10-day notice of intent to strike on October 22. After several weeks of hearings, the HPERB issued Decision No. 119 on October 19, specifying what positions Unit 1 employees would have to man during a strike in order to protect the public health and safety.

The 1979 UPW strike, commonly attributed to lingering membership dissatisfaction with the outcome of the previous negotiations, was termed "destined in two years if not now." The factfinding panel's recommendation for Unit 1, $120 plus $70, was not all that bad, but other issues were in dispute. The employers were reluctant to break the economic settlement pattern that had been established by the firefighters' arbitration award and followed by all other units. The union, on its part, had been promised incremental wage adjustments in the 11th-hour settlement in 1977, an agreement that had involved all public sector unions but one which had been engineered by the UPW's sister union, the Hawaii Government Employees Association (HGEA). As it turned out, these increments amounted to only $27 for some UPW workers in 1978, and the feelings among the members at the time the 1979 negotiations began was, "You can't trust the other guys; we're going it alone this time."

The strike began on October 22, 1979. Closed for the duration of the strike were numerous public recreation facilities. City dump sites also were closed because of the health hazard, but neighborhood landfill dump sites were kept open. At the government-run hospitals, volunteers and administrators provided care and carried out housekeeping duties, but within several days the hospitals began to discharge nonemergency cases. The strike caused a one-morning tie-up of bus service and interruptions in dock operations when bus drivers and dockworkers represented by private sector unions refused to cross UPW picket lines set up at the bus depot and the state-owned piers. At the state airports, runways were being

cleaned by the Air Force in order to meet the Federal Aviation Administration safety standards, but there were reports of dirty restrooms and mounting trash in terminal areas. The Hawaii National Guard was standing by at the Halawa Correctional Facility and the Oahu Prison, as the governor had ordered as soon as the negotiations had broken off.

The schools, which had been kept open at the start of the strike, quite unexpectedly became the real battleground between the two sides. They had been ordered closed on the fourth day of the strike because, without the maintenance staff, they could not be kept clean enough to meet sanitary standards. Then, nearly two weeks later, School Superintendent Clark announced the administration's plan to get volunteer help to clean the schools. The plan drew the support of the governor who, in an unprecedented action, requested statewide broadcast time during the evening to state his position. In his speech, the governor explained that the terms for 12 other contracts with Hawaii's public employees had been established in the firefighter negotiations and that the firefighter contract provided guidelines that the other unions had accepted as being equitable. He emphasized that, in fairness to those units that had ratified their agreements as well as to those that had settled but had not yet ratified, the state could not depart from the established standards without incurring the prospect of reopening the other contracts. The governor also announced the cleanup plan which ultimately produced the only penalties imposed upon individuals as a result of the strike.

The plan for cleaning the schools drew immediate and heavy criticism from public employee unions and from some public officials. The UPW said

that parents should not be pressured into becoming "strikebreakers and scabs." The HSTA called the plan "provocative and potentially dangerous to all concerned." The president of the Hawaii Parents, Teachers and Students Association criticized the plan and warned of potential violence. Some members of the State Board of Education labeled the plan "strikebreaking."

The most serious challenge came from the school principals. The HGEA (the exclusive representative of educational officers, including principals and vice principals) indicated that the principals, particularly in the Hawaii, Maui, Kauai, and Leeward Oahu districts, would not show up for the cleanup meetings. The superintendent reemphasized his warning that principals who did not conduct the meetings would be subject to disciplinary action. Cleanup meetings were held without incident at 228 schools throughout the state and a total of 5,226 volunteers were signed up. However, more than 200 principals and vice principals failed to attend and were subsequently suspended for 10 days, thus becoming the only employees to suffer any penalties imposed during the course of the strike.

The state, meanwhile, carried out its threat and sent 10-day suspension notices to the recalcitrant among the employees who had been designated as essential, and the HPERB warned all Oahu workers in this category that they should show up for work in two days or else be subject to fines and possible HPERB resistance to any subsequent reduction in the penalties.

Many of the schools finally reopened on November 15. This reopening, combined with the possibility of 10-day suspensions the strikers faced for refusing to return to work and the paychecks they were missing, were

seen as the forces placing pressures on the parties to resume negotiations. During a news conference, the governor commented that he felt the parties were "ripe and ready" for movement. At almost the same time preparations for the jury trial of 11 Oahu UPW strikers were abruptly interrupted by a stipulation presented by attorneys for the union and the state: all 11 strikers had agreed to return to work. The chairman announced that the HPERB would work as fast as possible to bring larger groups of strikers to court to face contempt charges. The number of schools reopening increased daily, and by November 26 all were open.

The number of contempt findings continued to mount. On November 16, Kauai court Judge Hirano held that the union was in contempt of his back-to-work order and fined it $55,000; on Maui Judge Fukuoka found 14 more UPW strikers in contempt of his order and fined them $200 a day retroactive to November 3. Both judges told the union attorneys that they would consider motions to reduce the fines.

More essential workers were reported to be returning to work on Maui. On Kauai the union met with county officials to work out the staffing of the essential positions. There seemed to be progress in the bargaining, as the union was reported to have lowered its demand to $240 and the employers to have raised their offer to $190, the figure the factfinders had suggested in August but which had been rejected by both sides.

A settlement appeared imminent by November 20. Judge Shintaku set a contempt hearing date for November 23 regarding the union's noncompliance with his back-to-work order.[25] The circuit court on the island of Hawaii was also proceeding against the union in a contempt action and Judge

Kubota set a November 23 deadline for 21 strikers to comply with his two-week-old order to return to work or face a contempt hearing.[26] In federal court, the Small Business Association presented its case against the state's payment of unemployment compensation claimed by 5,500 of the 7,700 UPW strikers, but Federal Judge Martin Pence announced that he would withhold his decision until the state actually started to pay unemployment benefits to the strikers.[27] With the approval of the negotiating committee, Roger Fraser, a representative of the parent American Federation of State, County and Municipal Employees who had been sent to Hawaii by International President Jerry Wurf, had been meeting informally with the FMCS mediator and the employers to assist in developing a settlement package.

Early in the evening of November 21, the governor announced that a settlement had been reached. The final package included a $200 increase over two years, overtime pay to clean up the debris that had accumulated during the strike, a $15 differential for skilled workers, and the withdrawal of the suspension notices already sent out by the employers.

On November 30 Judge Shintaku dismissed the HPERB's petition asking that the union be charged with contempt, on the basis of a defect in the HPERB order. The judge said that the order did not specify which UPW workers were "essential" and, therefore, that the HPERB would have to hold another hearing if it wanted to make its back-to-work order applicable to the union. Chairman Hamada indicated that if the contract were ratified, the HPERB would not pursue contempt charges against the union or individual

members. The membership overwhelmingly approved the contract by a vote of 3,040 to 1,147, thus ending the longest public employee strike in the state's history.

The Effect of Fines and Penalties

Almost from its outset, the strike raised unexpected issues about which employees provided "essential" services and thus should remain on the job in the event of a strike. In its decision, the HPERB determined that more than 500 positions would have to be filled by about 900 full-time and part-time workers in order to provide the services it deemed essential to the public health and safety,[28] and it issued 18 "special orders" to the employers and the union. The employers were ordered to furnish a list of employees qualified to perform the essential services from which the union was ordered to select the numbers of workers required under the terms of the HPERB order. The union also had to supply the employers with the names of the designated workers. Furthermore, in the event employees were absent or excused, the union was required to provide qualified replacements. Finally, the union was ordered to take "all necessary steps to insure that essential services required by the order" were performed "without interruption, slow-down, sick-out or other forms of interference."

In determining which employees were "essential," the HPERB relied on evidence produced by the employers. In the case of schools, for example, the HPERB found that failure to provide "full restroom cleaning does not

create an immediate, imminent or present danger to all school children," but for "elementary level children and special education students due to their young age or capabilities," there was a "more substantial likelihood that a lack of restroom sanitation will result in danger to their health." Thus, Unit 1 workers should maintain normal restroom cleaning of elementary and special schools, but half the restrooms at intermediate and high schools would be closed and the remaining ones provided with toilet paper, paper towels, soap, and a daily cleaning and trash pickup.

The HPERB Order No. 119 quickly became the subject of controversy and led to a series of legal challenges that continued not only during the strike, but well into the period after the parties had reached their settlement. The union charged that the HPERB "special orders," issued to supplement the decision, required it to take actions that exceeded the scope of Section 89-12(c) of the law, and that the "special orders" had not been litigated as required by the Hawaii Administrative Procedures Act. Furthermore, by requiring the union to perform duties protected under the law as management rights, the "special orders" were in conflict with Section 89-9(d). These issues proved to be especially difficult for Judge Shintaku of the First Circuit Court of Honolulu where the case was first brought.

The union's appeal of Judge Shintaku's temporary restraining order issued to enforce Decision No. 119 began the series of legal maneuvers and delays which served to prolong the strike. Although the judge had stated that possible fines could be as high as $200 a day for each worker and $50,000 a day for the union, he postponed contempt proceedings on the

grounds that his order was on appeal to the state supreme court and he would have to wait until the higher court decided the matter.

This turn of events caused the HPERB to change its strategy: it petitioned for enforcement of its decision in each of the state courts on the islands of Kauai, Maui, and Hawaii. Although there was less judicial resistance in these other circuit courts, technical errors in the filing of the complaints did cause some delays, and action was further delayed when it was ruled that only HPERB attorneys, not the county attorneys were found to be qualified to represent the HPERB in proceedings to enforce compliance with its order. Even the union's motion for a jury trial produced conflicting rulings from Honolulu Circuit Court Judge Shintaku and Kauai Circuit Court Judge Hirano.

On November 5 the HPERB was able to secure a preliminary injunction from the Oahu court against the union and seven jail and prison employees, with the judge also ruling that each worker named in the contempt action could demand a jury trial. UPW Director Epstein said that the union would inform its Oahu members of the court's back-to-work order, but he added that the decision to return to work would be a matter of "individual conscience" for each member. This statement was followed by the release of a "strike bulletin," with instructions to pickets to (1) stay on the picket line, (2) attend a UPW rally at the State Capitol on November 2, and (3) call union headquarters if they received copies of the court's back-to-work order. Spokespersons at the UPW headquarters denied that Epstein had issued the bulletin, adding that it was not official except for the notice of the union rally.

The Kauai circuit court was the first to issue a temporary restraining order against the union and 116 members who had been designated as essential employees. The order came on November 1, after two previous orders had to be withdrawn because of improper preparation, and on November 7 the court denied the union's request for a jury trial and ordered striking employees to comply with the court's order to return to work in three working days or face penalties for contempt.[30] Hawaii observers agree in general that the delays in issuing injunctions served to prolong the strike rather than to promote a settlement.

The amounts of the fines the courts imposed (as much as $2.5 million for the union) shocked some union members. According to one of the union attorneys, the reaction of the more militant members to the first fines was adamant resistance to any return to work. The opinions of some people whom we interviewed was slightly different -- that as long as the injunction proceedings were held in abeyance the strikers felt that they were winning and their positions hardened. But as the size of the fines grew and as the number of individuals fined increased, the pressure for a return to work increased among the less militant members.

The fact that the individual worker fines were rescinded as part of the return-to-work agreement indicates a general reluctance of public employers actually to impose, as compared to threaten to impose, fines on individual employees. Aside from their political costs, fining individual employees was viewed has having a negative effect on employer-employee relations. For these reasons, some employer representatives interviewed expressed a

preference for fining the union over fining individuals because the former strategy inflicts a substantial economic cost on the organization and its leadership without touching individual employees. However, fines against the union may be ineffective in the short run if a union's financial resources are sizable or if the legal machinery required to implement the penalties is not in place.[31]

The union leadership is of the opinion that the 10-day suspension notices and subpoenas delivered by police officers put immediate and severe pressures on the individual workers. Many a striker began to worry when it appeared "the job was on the line," and a number of rank-and-file members signaled the union that it was time to settle. For the employers, administrative penalties of the type used in this dispute are convenient and easy to keep under control. For the workers, when combined with the pay they are losing, they have a demoralizing effect.

To summarize, the experience of the HPERB and the employers in using the court procedures to get essential workers back on their jobs during the strike proved to be one of "utter frustration." Judge Shintaku found the procedure, as set forth in the law, difficult, if not impossible, to implement. In his view the HPERB had erred in its decision and in the case it brought against the essential workers and the union. Thus he ruled that the HPERB had failed to hold hearings on the "special orders" as the Administrative Procedures Act required, and that the HPERB had exceeded its authority by giving the union responsibility for selecting, notifying, and ensuring that the essential employees reported for work—areas reserved

as management rights under Section 89-9(d). That part of the order was considered defective and unenforceable, and therefore he could not impose threatened penalties upon the union for failure to comply with the "special orders." More importantly, in the judge's view, the HPERB was pursuing its case for contempt findings under the wrong section of the law. Rather than resting its case on Section 89-12(e), it should have sought action to have the strike declared illegal under Section 89-12(d) because the union had failed to comply with Section 89-12(c) in fulfilling the HPERB's requirements.[32] As the employers failed to petition the HPERB to declare the strike illegal under Section 89-12(d), he was unable to charge the union and the workers with contempt for engaging in an illegal strike.

After this experience, a number of administration-sponsored bills were introduced in the 1980 legislative session to remedy the deficiencies in the law. The bill the legislature eventually passed and the governor signed amended the law in the following ways: first, it clarified the respective roles of the employer and the HPERB in the designation of essential employees by defining both "essential employee" and "essential position." The former was to mean an employee designated by the public employer to fill an essential position, and "essential position" was to mean any position designated by the HPERB that had to be staffed in order to avoid or remove any imminent or present danger to the public health or safety. This change was intended to avoid the controversy generated by

the HPERB's "special orders" requiring the union to perform functions protected under the law and the employer's management right to assign work to its employees. Second, in order to provide the public employer with speedy judicial relief, the law was changed to require the "affected public employer" rather than the HPERB to petition the court to enjoin violations or to bring about compliance with the law's strike provisions. Third, the uncertainty about the right to a jury trial in proceedings arising from a public sector strike was resolved by prohibiting it in injunctive proceedings under the law. Finally, strikes by essential employees were made unlawful. These amendments address the issues that were in the forefront of the UPW strike and seek to correct faults encountered by the state in effecting compliance with the HPERB order. The law now prohibits strikes by essential employees, but it specifies no penalties. Perhaps a more critical omission is that it does not provide an alternative procedure for the resolution of disputes involving "essential" employees.

Summary and Conclusions

During the 10-year period that the Hawaii law has been in effect, there has been only one legal strike and only one other strike that has lasted for more than a few days, and those that have occurred have been in employee units where there was a high level of rank-and-file discontent over perceived inequities in pay or other working conditions (as in the Unit 1 UPW case). The teachers' strike can be distinguished from the others in

that it was a test of relative power in a new bargaining relationship. The shorter work stoppages have been for the purpose of protesting legislative delays or inaction, or (as in the case of the firefighter and police sickouts) to speed up negotiations that had bogged down. The firefighters' union has used strike threats not only to affect the progress of negotiations, but also to pressure the governor to approve the arbitration law they were supporting as well as to get his approval of the first settlement under the new procedure, after the legislature had failed to fund the arbitration award.

The various strikes described in the previous sections have had various effects on various unions. In the case of the teachers' strike, the union sees it as having had a beneficial effect on the bargaining relationship, although the seniority penalty that came out of the arbitration decision may have a detrimental residual effect on the relationships among the teachers. While it is still too early to determine what impact the recent UPW strike will have on that bargaining relationship, both parties learned that the implementation of the law's provisions when they involved "essential" employees in a strike situation was very, very difficult. It is still to be seen if the recent amendments to the law, enacted after the strike and as a result of it, resolved the problems without generating new and unexpected issues.

As the UPW case demonstrated, a strike can be embarrassing for both the public employer and the administering agency when they become the object of public criticism from the court and from such special interest groups as an association of private sector employers. But the brunt of

the blame for the strike was placed on the union and on the inadequacies of the law. The promptness with which the legislature adopted the 1980 amendments in an attempt to remedy these inadequacies is a reflection of the public's displeasure at being inconvenienced by the disruption of school activities and refuse collection over the long period that it took to settle that dispute. However, apparently there was no popular interest in seeking to have all public employee strikes prohibited.

The strike had mixed effects for the UPW. Institutionally, it revealed the union's organizational weaknesses in a strike situtation. Its organization along division lines caused problems in coordinating strike activities, and the union lost any leverage it might have had if direction of the strike had been more centralized. Being the last unit to settle did not help matters either. The employers were not about to budge from the pattern set in previous negotiations with other public employee groups for fear of being whipsawed in subsequent negotiations.

The union also learned that it was on weak ground when the strike involved hospitals and the care of the sick and the aged; the public--even friends of the union--tend to be unsympathetic when services involving human life are withdrawn. But a union can lose both public and union labor support in other instances, as when there was wildcat picketing of the docks and bus depots. In addition to legal problems (secondary boycott charges), union brothers and sisters who would respect the picket line might also ask, "Why are you costing me my wages when your sister union--the HGEA--is still working?"

Under the Hawaii law, once a strike begins, the employer has several recourses. One is to seek court relief, with fines to be imposed if the union does not obey a court order. These penalties have had various effects. In the UPW strike, when individuals were first fined, the reaction of the strikers was adamant resistance to a return-to-work order, which was reinforced by peer pressure. Nevertheless, the fines assessed on individuals eventually resulted in the erosion of worker morale and solidarity and thus had the effect of bringing the strike to an end.

Fines that jeopardize a union's fixed assets, such as its building, can raise serious problems for the organization and its leadership, the impact depending in part on the size of the union's treasury. The teachers' union had neither a reserve fund nor support from the national organization when it struck for 17 days. Thus the heavy fines imposed on it had a restraining influence. The UPW, on the other hand, had accumulated a quarter-million-dollar strike fund which enabled it to tolerate and afford a much longer, six-week strike. The fine levied on the teachers' union necessitated an increase in its service fee. It is still too early to tell whether the UPW strike fine will have any effect on its service fee.

It comes as no surprise that spokespersons for both the teachers' union and the UPW emphasize that their members' participation in one strike reduced their expectations of what might be gained in future strikes, and thus may be a strike deterrent. The teachers have had no work stoppage since 1973, and there is some speculation that UPW

members will not strike again for at least 10 years.

There is something to be said, finally, about the strike and how it works in the public sector. The UPW strike is an example of how the union and the workers are subject to the economic costs of fines and penalties, in addition to losing wages and dues income, whereas the public sector employer saved the money that would have been paid in wages and also enjoyed the continued flow of tax revenues even though public services are disrupted. It is open to question whether this difference in the costs and benefits of disagreement result in an appropriate balance of power between the parties.

Chapter VII

Footnotes

1. Two of the unions were subsequently decertified as exclusive representatives of bargaining units. In 1974, the Hawaii Federation of College Teachers (HFCT) was decertified as the Unit 7 representative. In 1979, the Hawaii Nurses Association was decertified as the Unit 9 representative.

2. The third contract of the Unit 11 firefighters was rejected in 1977 and subsequently renegotiated by the Hawaii Fire Fighters Association. The renegotiated contract was then ratified. The other was a first contract covering University of Hawaii faculty which was rejected in 1973 and nor renegotiated, because the unit decertified its bargaining agent.

3. The loss of pay was counted as a penalty because the employer chose to disallow police claims for sick leave, unless the officer could show proof of illness for the period.

4. In 1968, the state legislature passed a law setting up a wage schedule of four increment steps at 5 percent intervals. The UPW criticized the schedule, noting that although it gave a boost to the newer, lower paid employee, it failed to provide for increases to the worker already nearing or at his/her maximum longevity step.

5. Final disposition of the suit came two years later when Circuit Judge Masato Doi ruled On October 31, 1972, that the state had erred in paying the workers and that their pay should have been cut for the time absent. In response to the court ruling, the Honolulu Advertiser editorialized that since the walkout had taken place in an election year, it appeared that the state had taken "the easy way out" in allowing the employees to charge the absences against an authorized leave. Hawaii Taxpayers Protective Association spokesman Robert Hall said that his organization had spent about $10,000 in court costs and attorney fees.

6. Session Laws of Hawaii, 1970, now embodied in Chapter 89, Hawaii Revised Statutes.

7. Teachers in Hawaii are employees of the state rather than the counties. Consequently they are organized into one bargaining unit which negotiates with representatives of the Board of Education (BOE), the Department of Education (DOE), and the state administration.

8. There are differing accounts as to whether the activity that morning constituted a "strike" since the teachers were given an authorized leave. However, one union source noted that it was technically a strike because the picket lines had already been set up when the settlement notice came.

9. In the Matter of Petition for Declaratory Ruling by the Department of Education, 1 HPERB No. 26, January 12, 1973.

10. In the Matter of HSTA and BOE, HPERB Case No. CE-05-3, May 16, 1973.

11. In the Matter of BOE and HSTA, 1 HPERB No. 24, December 21, 1972.

12. Ibid.

13. Kawakami ruled: "Our statute gives the HSTA the right to strike. The statute does not give the employer the reciprocal right to lock out. In this situation, the burden to good faith must lie heavier on the party given the right of affirmative action. That party must arrive at the strike stage of the negotiations with clean hands." (Circuit Court, First Circuit, BOE, State of Hawaii v. HPERB and HSTA, Civil No. 38416, March 29, 1973.)

14. The ILWU had been in touch with Kagel since the beginning of the strike and had initially suggested that his services be used. The ILWU was said to have become involved in the teacher strike because of its concern over the strike's effect on the collective bargaining law and because of its close ties with Governor Burns.

15. In the Matter of HSTA and BOE, State of Hawaii, 1 HPERB No. 48.

16. HSTA v. HPERB and BOE, Hawaii Supreme Court No. 6193, February 8, 1979. The high court's ruling that the HSTA should have spelled out specifically in the agreement what type of discrimination it was concerned about was said to have "absolutely panicked" a number of Hawaii attorneys specialized in contract law.

17. The HPERB chairman, in his concurring opinion, said he joined "reluctantly" in the majority opinion, because he would not be a party to "the self-destruction of the HSTA." (In the Matter of HSTA, 1 HPERB No. 36.)

18. HPERB, State of Hawaii v. HSTA, et al., Hawaii Supreme Court, No. 5376, June 28, 1973.

19. HPERB, State of Hawaii v. HSTA, et al., Hawaii Supreme Court, No. 5460, March 25, 1974.

20. Section 89-11, HRS, provides for an impasse resolution procedure consisting of the following: mediation, factfinding, and the option of final and binding arbitration. The proposed final-offer procedure, on the other hand, compressed the mediation period and took a different direction should the mediation fail to resolve the dispute. Instead of going to factfinding, each party agreed to submit a final offer to an arbitrator. The parties also had the option of including an alternative offer. The arbitrator would then choose without modification the most reasonable of the the final offers. Among the various criteria that the arbitrator was directed to consider in his decision was the Honolulu cost-of-living index.

21. In 1978 the county agreed to count the officers' absence as sick leave without pay. The sickout on Maui had another side effect: the county police department decided to rescind a minimum manpower policy which it had adopted. One of the reasons given by the department (according to the union) was that the sickout had "proved Maui could work with less men."

22. The Kauai Chapter of SHOPO was considered to be the "weak sister" unit without strong chapter leadership. Kauai county officials had also given prior warning to their police officers that they would be facing severe disciplinary action should they engage in a sickout.

23. That section of the contract—Article 38. No Strike; No Lockout—reads as follows: "The Union agrees that during the life of this Agreement, neither the Union, its agents, nor its members will authorize, aid or assist, instigate, or engage in any work stoppage, slowdown, sick out, picketing, refusal to work, or strike against the Employer.

"Upon any notification confirmed in writing by the Employer to the Union that certain of its members are engaged in an action prohibited by this Article 38, entitled No Strike; No Lockout, the Union shall immediately order, in writing, such members to return to work immediately, provide the Employer with a copy of such an order, and a responsible official of the Union shall publicly order them to return to work. Such orders shall be given immediately by the Union and shall be based on the representations, in writing, of the Employer regarding the aforesaid prohibited activity. In the event that a wildcat strike occurs, the Union agrees to take all reasonable and affirmative action to secure the members' return to work as promptly as possible. Failure of the Union to issue such orders and/or take such action shall be considered in determining whether or not the Union was instrumental, directly or indirectly, in the prohibited activity. After the Union disavows the prohibited activity, if the prohibited activity continues, the Employer may impose penalties or sanctions against the participants as prescribed by law or departmental regulations.

"The parties further agree that neither party shall be bound by the provisions of Article 32 of this Agreement entitled Grievance Procedure in the event of any violation by either party of this Article 38, entitled No Strike; No Lockout. In the event of such violation the aggrieved party may immediately pursue such remedies as are prescribed."

24. The first case involved an officer who had walked off while on duty at the start of the sickout. The officer charged that although he presented a doctor's certificate with his sick leave claim, the employer violated the contract by: (1) denying him three days of sick leave, (2) deducting eight hours of compensatory time without just cause, (3) issuring a written reprimand without just cause, and (4) refusing to process his grievance. The second case involved an officer who had not been on duty, but had been ill for the period prior to and beyond the duration of the sickout. The officer presented a doctor's slip for eight days of illness, but the administration denied him four days of sick leave.

25. HPERB v. UPW, Civil No. 59456, November 20, 1979.

26. Circuit Court, Third Circuit, HPERB v. UPW, et al., Civil No. 6018, November 20, 1979.

27. As of this writing, the State has yet to pay any unemployment compensation benefits to the Unit 1 strikers.

28. Exact figures on the required number of positions and employees are difficult to obtain because the employers used different ways to report their staffing needs. According to an informal HPERB tally, 911 was set as the maximum number of full-time and part-time job positions which were to be filled. Of the total, 872 were full-time and 39 were part-time. An additional 260 stand by and 53 on-call employees were ordered to be available as necessary to fill some of the positions.

29. In the Matter of George R. Ariyoshi, Governor of the State of Hawaii, et al. and United Public Workers, 2 HPERB No. 119, issued October 19, 1979.

30. Circuit Court, Fifth Circuit, HPERB v. UPW, Civil No. 2177.

31. Section 89-12 provides as follows:

"Strikes, rights and prohibitions. (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the Board, or (2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration. (b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resoltuion of disputes have been complied with in good faith, (2) the proceedings for

the prevention of any prohibited practices have been exhausted, (3) sixty days have elapsed since the fact-finding Board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the Board and to the employer. (c) Where the strike occurring, or is about to occur, endangers the public health or safety, the public employer concerned may petition the Board to make an investigation. If the Board finds that there is a imminent or present danger to the health and safety of the public, the Board shall set requirements that must be complied with to avoid or remove any such imminent or present danger. (d) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the employer than an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the employer may apply to the Board for a declaration that the strike is or would be unlawful and the Board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration. (3) If any employee organization or any employee is found to be violating or failing to comply with the requirements of this section or if there is reasonable cause to believe that an employee organization or an employee is violating or failing to comply with such requirements, the Board shall institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions

under this section is conferred upon each Circuit Court and each court may issue, in compliance with chapter 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section."

32. The union's statewide strike fund totaled $250,000 at the start of the strike. In addition, each division had its own strike fund. While there are no complete figures, it is estimated that the strike cost the union a total $450,000 to $500,000.

Chapter VIII

Public Sector Strikes in Wisconsin and Indiana

Wisconsin and Indiana have had very different experiences in public sector labor relations. Wisconsin was one of the first states to pass a comprehensive bargaining law and since 1967, almost all public employees have had the right to bargain collectively. These rights have been accompanied by a variety of strike substitutes to peacefully resolve impasses during negotiations.

In Indiana, teachers are the only employees with the explicit right to bargain. A law was passed in 1975 to cover other municipal employees, but it was declared unconstitutional on a technical issue in 1977, and since then no revised bill has had sufficient political support to secured passage.

Despite their differences the two states are similiar in several respects. First, each has explicitly dealt with the impact of collective bargaining on state education requirements. Second, despite the different procedures for resolving disputes, the courts in both states have played an important role in some strikes by assessing penalties. To illustrate the potential benefits and problems of court involvement in strikes, the events of the most recent and largest strike in each state have been analyzed. In Wisconsin, it was the state employees strike in the summer of 1977, and in Indiana, the Indianapolis teachers' strike in the fall of 1979.

Public Sector Strikes in Wisconsin

Wisconsin experience with a comprehensive bargaining statute exceeds that experience of any other state. In 1961, the state amended

the nation's first bargaining law for municipal employees originally enacted in 1959.[1] The 1961 amendment provided for mediation and factfinding, and specified election procedures to resolve questions of union representation. Because of these election procedures and the absence of strong employer opposition to employees wishing to organize, there were very few union recognition strikes in the state.

The ability of public sector unions to obtain legislation early has led to a high degree of unionization in the state. Table VIII-1 summarizes the extent of unionization and contract coverage in 1977. At the local government level, two-thirds of all employees belonged to unions or employee associations, and over half were represented in a bargaining unit in 1977. These percentages have not changed substantially during the 1970's, because, with the exception of state government employees, most organization efforts were successful in the 1960's. In October, 1972, the Census of Governments reported that 64.3 percent of all municipal employees belonged to unions or employee associations.[2]

From the passage of the municipal employee bargaining law in 1959 through its amendments effective in 1978, Wisconsin municipal employees and employers have bargained under the various types of strike substitutes that have been proposed by academics or practitioners. The parties have used mediation, factfinding, final-offer arbitration, mediation-arbitration and a very limited right to strike. A detailed review of these procedures is beyond the scope of this study, but the evolution in policy was influenced by the strike experience under each.

Table VIII-1

Public Sector Unionization in Wisconsin, 1977

	Fulltime Employment	Organized Employees As A % of Fulltime Employment
State Government	49,222	56.9
Highways	1,733	75.0
Public welfare	968	46.5
Hospitals	5,956	41.1
Police	768	71.6
Local Government	149,988	66.8
Education	79,739	72.0
Highways	9,548	71.0
Police	9,578	76.0
Fire	4,006	85.7
Public Welfare	6,214	47.8

Table VIII-1
(Continued)

Contract Coverage by Government Type in Wisconsin, 1977

Government	% of All Employees in Bargaining Units	% of Employers with at least One Bargaining Unit
State	38.7	100
County	52.4	77.8
Municipalities and townships	57.3	7.5
School districts	54.7	85.9

Source: U.S. Bureau of the Census 1977 Census of Governments, Labor-Management Relations in State and Local Governments, 1977, Vol. 3, No. 3, 1979, Various Tables.

Before 1971, mediation and factfinding were the legislatively-mandated procedures available to peacefully resolve impasses between unions and municipal governments. In the late sixties and early seventies, police and firefighter unions pressed for compulsory interest arbitration because they were dissatisfied with the non-binding character of factfinding. Their dissatisfaction and public concern over potential strikes by police and firefighters led to the passage of a final-offer arbitration statute in 1971 for these two employee groups.[3] In 1977, unions representing teachers and other local government employees were able to persuade the legislature to pass a mediation-arbitration bill for all other municipal employees. As enacted, the law provided the parties with at least three years to operate under the new procedure.[4]

The Strike Experience in Wisconsin

The yearly strike totals since 1958 (see Table 1 in Chapter II) show that strikes in Wisconsin peaked in the mid-sixties and early seventies. Several major factors explain the decline in strikes since these years. First, around 1970, the unions, especially teacher organizations, had become dissatisfied with factfinding and turned to strikes. An AFT challenge which increased militancy among local NEA affilitates also made strikes more likely.

These factors became less important in the 1970's, particularly after the unsuccessful strike by Hortonville teachers in 1973. In the fall of 1973, the Hortonville Education Association which represented teachers in the district struck over negotiations for a new contract. The school district responded by notifying teachers that they would be

fired if they did not return to work, holding due process hearings for each striking teacher, and permanently replacing teachers who did not return to work.

The U.S. Supreme Court upheld the Board's actions and ruled that the individual hearings before the Board did not violate the due process requirements of the U.S. Constitution.[5] Legal challenges were not resolved for several years, but the Court's decision had an immediate and significant impact on teacher bargaining throughout the state. The strike's disruption of the school and community made some school boards moderate their bargaining positions to avoid a strike and the possibility of having to take action similar to that of the Hortonville School Board. The possibility of losing their job had at least as much impact on teachers and their unions. Even though the possibility of being permanently replaced was not a significant threat in larger districts, most districts in the state are small enough that this threat was very real. In 1977, the Bureau of the Census reported a total of 524 school district bargaining units (instructional and non-instructional). Fifty percent of these units contained fewer than 50 employees and 78 percent contained fewer than 100.[6] Although many of these smaller units represent non-instructional personnel, employees in most of them could be easily replaced during a strike.

The final factor in the decline in strike activity after the early 1970's was the passage of the interest arbitration statute for police and firefighters and the anticipation of a similar statute for other municipal employees. The cross-sectional statistical evidence in Chapter X suggests that the arbitration statute had the effect of preventing police and firefighter strikes that would have otherwise occurred. The anticipation of an arbitration statute for other municipal

employees had a more complicated and less certain impact on the decline in strikes. Most local unions, especially small teacher locals, were seeking passage of an arbitration statute by the mid-1970's and were reluctant to strike because they thought that a strike would jeopardize passage of the law. Significant strike activity at the local level could also have meant that harsher strike penalties would have been included in the pending arbitration statute.

These union fears appear to be corroborated by the legislative impact of the state employee strike in the summer of 1977. The strike, analyzed in detail later in this chapter, occurred when the state legislature was considering the arbitration statute for municipal employees. Even though striking state employees were not covered by the statute, the Acting Governor was able to increase the strike penalties in the legislation because of the state employee strike. Had there also been significant local strike activity, the impact on the bill might have been even more unfavorable from the union's point of view.

Table VIII-2 shows raw strike probabilities in Wisconsin for the five year period beginning in October, 1973. These figures support our discussion on strike trends. With the exception of 1974-1975, all three strike probabilities declined over the five-year period. During the five-year period, only about 1 percent of the negotiations for contracts led to a strike. This figure was about one-third the probability for the rest of the nation. As the last row in the table shows, all of the Wisconsin probabilities are less than 40 percent of comparable probabilities for the other 49 states.

Table VIII-2

Strike Propensities in Wisconsin and the Rest of the U.S., 1973-1978

Wisconsin

	Number of Strikes	Strike/ Gov't w/LR Policy	Strikes/ Contractual Agreements that Became Effective	Strikes/ Bargaining Units
10/73 - 9/74	14	.02583	.01463	.01533
10/74 - 9/75	5	.00938	.00649	.00511
10/75 - 9/76	11	.02030	.01438	.01049
10/76 - 9/77	8	.01447	.01042	.00604
10/77 - 9/78	2	.00348	.00249	.00149
5 year weighted average		.01458	.00984	.00713

Table VIII-2
(Continued)

Rest of the U.S.

10/73 - 9/74	457	.04119	.02760	.02291
10/74 - 9/75	485	.04269	.03993	.02140
10/75 - 9/76	366	.03095	.02784	.01513
10/76 - 9/77	477	.03804	.03704	.01656
10/77 - 9/78	486	.03822	.03665	.01636
5 year weighted average		.03785	.03152	.01812
Wisc. 5 year average/ rest of U.S. 5 year average		.03852	.3122	.3935

Source: Constructed from data in the U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years.

Strike Policies in Wisconsin

The strike penalties and substitutes in Wisconsin vary across public employers and occupations. Wisconsin state employees are governed by the State Employment Labor Relations Act which defines a "strike" as follows:

> "Strike" includes any strike or other concerted stoppage of work by employees, and any concerted slowdown or other concerted interruption of operations or services by employees, or any concerted refusal to work or perform their usual duties as employees of the state. The occurrence of a strike and the participation therein by an employee do not affect the right of the employer, in law or equity, to deal with such strike.[7]

State employee strikes are expressly prohibited and it is an unfair labor practice for state employees to "engage in, induce or encourage any employees to engage in a strike, or a concerted refusal to work or perform their usual duties as employees." Once the state employer establishes that a strike is in progress, the Department of Employment Relations has the responsibility of deciding whether to seek an injunction or file an unfair labor practice.[8]

To deal with a state employee strike, the employer has the following express rights:

> (a) The right to impose discipline, including discharge, or suspension without pay, of any employee participating therein; (b) the right to cancel the reinstatement eligibility of any employee engaging therein; and (c) the right to request the imposition of fines, either against the labor organization or the employee engaging

therein; and (c) the right to request the imposition of fines, either against the labor organization or the employee engaging therein, or to sue for damages because of such strike activity.[9]

Wisconsin municipal employees are governed by the Municipal Employment Relations Act (MERA). Section 111.70 (1) (nm) defines a "strike" in the following manner:

> (nm) "Strike" includes any strike or other concerted stoppage of work by municipal employees and any concerted slowdown or other concerted interruption of operations or services by municipal employees, or any concerted refusal to work or perform their usual duties as municipal employees, for the purpose of enforcing demands upon a municipal employer. Such conduct by municipal employees which is not authorized or condoned by a labor organization constitutes a "strike" but does not subject such labor organization to the penalties under this sub-chapter. This paragraph does not apply to collective bargaining units composed of law enforcement or fire fighting personnel.[10]

Penalties for violating this prohibition included court injunctions and replacement of striking employees. The 1977 amendments to the Municipal Employment Relations Act changed the status of the strike and the penalties for striking illegally for all municipal employees except police and firefighters. Factfinding was replaced with mediation-arbitration or, for nonprotective service employees, the very limited legal right to strike.

Employees now have the right to strike if both sides withdraw their final offers, a court does not determine that the strike or potential strike is a threat to public health and safety, and the union gives ten days written advance notice to the employer and the WERC.[11] Except under these limited circumstances, strikes remain illegal and very specific penalties are required if the prohibition is violated, including:

1) A $10 fine per day against each person who violates the prohibition following an injunction.
2) A $15 fine per day against each person who strikes following an arbitration decision.
3) Loss of its dues check-off for a year for any labor organization that participates in a strike. If the strike continues after an injunction, the union will be subject to a $2 per member fine, up to a $10,000 maximum for each day following the injunction.
4) The penalties specified in (1)-(3) may be in addition to court-imposed penalties for contempt.
5) A labor organization that strikes in violation of a final and binding arbitration award is liable for attorney fees and other costs incurred to enforce the arbitration award.

As to law enforcement and fire fighting employees, until October 31, 1981, the courts are to issue a ten dollar fine to anyone who participates in a strike after it has been enjoined. Each day of continued violation is a separate offense. After October 31, 1981, all the penalties described above apply to all municipal employees.[12]

Because factfinding was replaced by arbitration and more specific penalties, it is impossible to scientifically determine what separate impact each of these changes has had on strikes. Through the summer of 1980, however, their combined impact eliminated almost all work stoppages in the state. Since the amendments became effective, there have been two reported partial day stoppages by non education employees in two small school districts. The only major strike was by sewage waste treatment workers in Milwaukee over a grievance and not over new contract demands.

School Aid and Strikes in Wisconsin

Before 1977, school districts that were closed by a strike and unable to meet the 180-day school year requirement could lose all of their state aid. In some teacher strikes, this threat created tremendous pressures on both sides to settle, particularly when the strike occurred in the winter or spring when the opportunities to reschedule lost days were fewer than if the strike had occurred in September. Although no district ever lost any aid because of a strike, the law was changed in 1977 to prorate the loss of state aid if a district did not meet the 180-day requirement because of a strike. Under the change, the state aid an employer lost was intended to equal the state aid saved because 180 days of instruction were not provided.[13] The statute now instructs the state superintendent to reduce state aid by an amount equal to the state-local shared expenses not incurred because of the strike. The other major change in the aid provision was to make the 180-day school year an optional requirement when a district is closed because of a strike.[14]

The application of these provisions has not been tested since there have been no teacher strikes since passage of the mediation-arbitration law. Although there has not been any significant experience with the school aid changes, they do attempt to address the unique problem created by teacher strikes. In Wisconsin, striking teachers can no longer assume they will receive 180 days of pay because the local district does not have to meet the 180-day requirement when a strike occurs. This raises the expected strike costs for teachers and encourages additional concessions. On the employer side, a local school board need no longer fear that pursuing a reasonable bargaining objective could endanger all of a district's aid. If a district decides not to reschedule the lost school days, however, it cannot profit by keeping the state aid that was saved by the strike.

Public Sector Strikes in Indiana

Collective bargaining and unionization in the public sector in Indiana varies a great deal across different types of governments. Table VIII-3 summarizes the extent of union membership and contract coverage in the state for 1977. Except for police in the state government and education and firefighters in local governments, fewer than half of the public employees in the state belong to unions or employee associations. As was discussed in Chapter II, the average membership percentage in the state and local governments in Indiana is considerably lower than that of the other six states in the study, but not lower than the averages across the 50 states. Thus, public sector unionization in Indiana is fairly typical for for the nation.

Table VIII-3

Public Sector Unionization in Indiana, 1977

	Fulltime Employment	Organized Employees As A % of Fulltime Emply.
State Government	50,124	22.3
Highways	5,105	29.3
Public welfare	1,174	16.1
Hospitals	6,709	65.8
Police	1,563	—
Local Government	163,891	38.4
Education	88,390	55.1
Highways	6,619	21.4
Police	9,014	38.1
Fire	4,947	72.3
Public welfare	5,357	2.4

Employee Representation by Government Type in Indiana, 1977

Government	% of All Employees in Bargaining Units	% of Employers with at least One Bargaining Unit
State	6.7	100.
County	.9	7.7
Municipalities and townships	21.3	2.2
School district	54.2	85.9

Source: U.S. Bureau of the Census, 1977 Census of Governments, Labor-Management Relations in State and Local Governments, 1977, Vol. 3, No. 3, 1979, various Tables.

At all government levels and functions the percentage of workers covered by a collective agreement is significantly lower than the union membership percentages. There are, also important differences in contract coverage across types of local governments. Bargaining between teachers and school boards is almost universal. In 1978, the Indiana Education Employment Relations Board reported that contract negotiations occurred in 292 of the 298 school districts in the state.[15] The prevalence of bargaining in school districts contrasts sharply with the absence of bargaining at the state level and in many municipalities (see Table 3). Only 1 percent of county employees were covered by a collective agreement in October of 1977, according to 1977 Census of Governments data. In municipalities, the percent of employees covered by agreements was 18.5, but this figure overstates the percentage of municipal governments which actually bargain since bargaining is concentrated in a few larger cities. Of the 1,580 municipalities and townships in the state reported by the Census in 1977, only 110 or about 7 percent actually bargained with one or more groups of employees.

The strike experience in Indiana over the past 20 years parallels the experience in the rest of the nation. From 1958-1968 the state experienced from 0 to 9 strikes per year with an average of 3 per year. From 1969-1978, strikes increased to an average of 10 per year. Strikes were most frequent in the 1978 calendar year when there were 23. Although the general upward trend follows national trends, strike propensities in Indiana differ from those in the rest of the nation. Propensities for five years, 1973-1978, are shown in Table VIII-4. Strikes in Indiana have become more common in the past two or three years compared to the rest of the nation. For the

Table VIII-4

Strike Propensities in Indiana and the Rest of the U.S.

	Number of Strikes	Strikes/Gov't w/LR policies	Strikes/Contractual Agreement that became effective	Strikes/Bargaining units
		Indiana		
10/73 - 9/74	5	.0166	.0210	.0132
10/74 - 9/75	5	.0164	.0195	.0114
10/75 - 9/76	6	.0192	.0233	.0131
10/76 - 9/77	18	.0554	.0682	.0335
10/77 - 9/78	30	.0906	.1107	.0555
5 Year Average		.0407	.0497	.0272

Table VIII-4
(Continued)

The U.S. Outside of Indiana

	Number of Strikes	Strikes/Gov't w/LR Policies	Strikes/Contractual Agreement that Became Effective	Strikes/Bargaining Units
10/73 - 9/74	466	.0411	.0270	.0228
10/74 - 9/75	485	.0418	.0383	.0209
10/75 - 9/76	371	.0308	.0272	.0150
10/76 - 9/77	467	.0366	.0349	.0158
10/77 - 9/78	458	.0353	.0332	.0150
5 Year average		.0367	.0318	.0175
Indiana Average / rest of the U.S. average		1.109	1.563	1.554

Source: Constructed from data in the U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years.

first two years in the table, propensities in Indiana are lower, however, than those in the rest of the nation. The relative increase in the most recent years explains why the average propensity in Indiana over the whole period exceeds the propensity in the rest of the nation by 10 to 56 percent.

Teacher strikes are the most common strikes in the state. This is a reflection of a national trend and of the fact that bargaining is more frequent in school districts than in other governmental units. While teacher strikes exceeds strikes by other public employees, they are less frequent on a probability basis than strikes against other governments which bargain in the state. Table VIII-5 shows the strikes per year by type of local government as a percent of governments reporting they have labor relations policies, governments with bargaining units and the number of negotiated agreements. Because of the small and varying number of strikes from year to year, the propensities fluctuated over the four years for each type of government. As an average percentage, strikes against municipalities, townships and counties were far greater than strikes in school districts. About 1 percent of negotiated agreements in school districts lead to a strike, compared to almost 8 percent in other local governments. This difference is particularly significant since the national strike probabilities show a much smaller difference in the three strike probabilities for the different types of governments.[16]

One reason the strike probabilities are high for local governments other than school districts is that very few of them bargain with their employees. The result is a potential for a large number of recognition strikes. Five of the 19 strikes in municipalities, townships and counties over the four years were reported as recognition strikes or strikes over the negotiation of a first contract.

Table VIII-5

Strike Propensities in Indiana for
School Districts and Other Local Governments
that Bargain, 1974-77

	School Districts			
	Number of Strikes	Strikes / Gov't with LR Policy	Strikes / Gov't with Barg. Units	Strikes / Contractual Agreement Negotiated
10/73 - 9/74	0	.000	.000	.000
10/74 - 9/75	5	.0201	.0211	.0248
10/75 - 9/76	2	.0080	.0082	.0095
10/76 - 9/77	6	.0227	.0245	.0287
10/77 - 9/78	20	.0738	.0741	.0873
5 Year Average		.0257	.0270	.03116

Table VIII-5
(Continued)

Municipalities, Townships, and Counties

	Number of Strikes	Strikes / Gov't with LR Policy	Strikes / Gov't with Barg. Units	Strikes / Contractual Agreement Negotiated
10/73 - 9/74	4	.0909	.1143	.1333
10/74 - 9/75	0	.00	.00	0
10/75 - 9/76	3	.0732	.0833	.0638
10/76 - 9/77	12	.2553	.2847	.2222
10/77 - 9/78	10	.1695	.1923	.2439
5 Year average		.1245	.1429	.1278

Source: Constructed from data in the U.S. Bureau of the Census, Labor-Management Relations in State and Local Governments, various years.

These recognition or new contract strikes should not be calculated as a percent of governments with labor relations policies or bargaining units. Removing the five recognition/first negotiation strikes from Table 5 reduces the strike probabilities for municipalities, townships and counties by about 25 percent. The reduction still leaves strike propensities in these local governmental units significantly higher than the probabilities for school districts. Thus, one finds that the law covering teachers has reduced strikes even if school districts are compared to just those local governments which have established bargaining relationships.

For public employees not covered by the teacher bargaining law, there are more recognition and nonrecognition strikes. Between 1974 and 1978, over 290 teacher bargaining relationships were formally established under the law.[17] This represents almost all the possible bargaining units in the state covered by the law. These representation issues were resolved and initial contracts were negotiated for the 1974-75 school year without a single strike. According to Census of Government figures, between October, 1974, and October, 1977, there were approximately 35 new local government bargaining units established outside of school districts and there were three strikes for recognition or a first contract. The experience is similar to that in Illinois and Ohio discussed in the next chapter: without any legal procedures for recognition, there was more than an 8 percent chance of a strike when a new bargaining relationship was established.

Strike Substitutes and Penalties in Indiana

The differences in the extent of bargaining and strikes among governmental units may frequently be attributed to the state's legal

framework for collective bargaining. Teachers in school districts are covered by the 1973 Education Employment Relations Act.[18] The law was passed during the 1973 legislative session and took effect on January 1, 1974.

To resolve disputes between teachers and school boards and prevent strikes, the legislation has established recognition procedures, practices prohibited to unions and employers, mediation, factfinding and a strike prohibition. Mediation and factfinding are designed to correspond to the budget period of the public employer. Mediators are typically employees of Indiana Education Employment Relations Board while factfinders may be either board employees or ad hoc neutrals.

The procedures are intended to be used sequentially; factfinding follows mediation, if the latter is unsuccessful. In a large number of cases, however, mediation has been resumed after factfinding report; in a substantial minority of cases, particularly right after the law was passed, the Board ordered factfinding before mediation was used.

The statute prohibits strikes and specifies several penalties that may be imposed. First, the law states that a strike is an unfair labor practice and affirms the right of the school district to seek court action against striking employees and unions. There are also two specific policies that affect the strike costs of employees and their unions. First, with respect to a minimum school year, the law does not require that a district reschedule days lost from a strike and a district from paying teachers for the days they have struck. Second, the union loses its dues check-off for one year.[19]

The school aid provision is different in Indiana from five of the other six states. In all the states except Wisconsin, the bargaining and

education laws have been interpreted to require a minimum teaching year regardless of the strike. Therefore, if a district is closed by a strike, lost days must be rescheduled. As was argued in our discussion of the Pennsylvania experience, this significantly reduces the costs of a strike to teachers since they are paid for the make-up days. In Indiana a district may, but is not required, to reschedule school days lost because of a strike.[20] When strikes were examined to determine whether strike days were rescheduled, it was found that the school year did not have to be because districts typically hired substitutes and kept school open during a strike.

No other legislation exists for employees of other governments in the State. In April, 1975, the legislature extended bargaining to most other public employees in the state,[21] but bargaining under this law has never occurred because it was declared unconstitutional by the Indiana Supreme Court in 1977.[22] The Court upheld a lower court decision and found that because the law did not allow for judicial review of the IEERB's unit determination and unit certification decisions, it violated Indiana's constitutional due process guarantee which requires that state administrative agency decisions be subject to court review. The 1975 law did not include a severability clause so that when this one provision was found to be unconstitutional, the entire Act was ruled void. While the state Supreme Court decision was not issued until 1977, all activity under the Act had been enjoined shortly after its passage pending the decision.

The 1975 Act which prohibited strikes was declared unconstitutional, but strikes by all public employees are illegal in any case under Indiana

common law and may be enjoined. In Anderson Federation of Teachers v. School City, a restraining order was issued against the striking teachers and their local union.[23] A judgment of contempt was rendered against them and a fine of five hundred dollars was levied for each school day missed as a result of the strike. In denying a petition for rehearing, the Supreme Court held that Indiana's Anti-Injunction Act does not apply to public employee conduct; thus, public employees may be enjoined from picketing and striking against the public employer. In Elder v. City of Jeffersonville, city firemen appealed a permanent injunction prohibiting them from engaging in any further strikes against their employer.[24] The court reaffirmed its decision in the Anderson case and found that public employee strikes were illegal and could be enjoined. A temporary injunction could be issued to halt ongoing strikes, and a permanent injunction could be issued to prevent future strikes.

The 1977 Wisconsin State Employee Strike[25]

The 1977 strike by Wisconsin state employees illustrates the problems encountered when court-imposed penalties are used in an attempt to resolve a strike in a complex bargaining relationship. In February, 1977, negotiations began between the Wisconsin State Employee Union (WSEU) and Department of Administration's Bureau of Collective Bargaining to replace the contract that would end June 30th. The WSEU, an AFSCME affiliate, represents approximately 24,000 state employees in 6 bargaining units and 52 locals. Although other unions also represent some employee groups, the WSEU is the largest. Since 1973, the Bureau of Collective Bargaining has been responsible for negotiating and administering contracts between the WSEU and the six other unions that represent another 3,300 state employees. Before that time each state department bargained separately

with the bargaining unit of its employees.

The bargaining process is rather complex and allows for many sources of impasse on the employer side of the table. In theory, the union bargaining committee and the Bureau of Collective Bargaining negotiate a tentative contract which is then sent to the Legislature's Joint Committee on Employee Relations (JOCER) for approval. After JOCER's approval, it is sent to the governor for signing, a largely perfunctory step since the Bureau of Collective Bargaining is an executive department of the Governor. This formal system was informally modified during contract bargaining in 1975, however, when Tom King, union executive director, and a representative of the governor's office bargained directly. This "end run" around the formal management negotiators hindered bargaining in 1977. With the 1975 precedent in mind, the union charged that the state management negotiators had no authority to make an agreement.

The union's major demands in 1977 included a sizable wage increase and protection from inflation through a COLA clause, automatic progression to the top of a member's job classification, increases in health care insurance, education and training benefits. Other demands included increased meal and mileage allowances, no layoffs, and a joint labor-management committee to make recommendations concerning affirmative action. The state's major demands were the elimination of the five full-time stewards handling grievances and a new compensation plan which, according to union spokesman, would reduce the maximum pay within a job classification.

In March, 1977, both sides met to discuss ground rules for formal negotiations. It was agreed that bargaining would be done publicly. Given the anticipated difficulty in negotiations, the union felt public bargaining would be the best way to inform the public of its positions and arguments. This highly visible bargaining environment created a more hostile climate than otherwise might have existed. The situation was further complicated by a change in the governorship as Patrick Lucey resigned to accept a position as the Ambassador to Mexico. The interim governor, Martin Schreiber, was not scheduled to take over officially until right after the contract had expired and therefore, had no formal role in the negotiations prior to the contract expiration date.

At the end of April, the parties met for the sixth time. The management team made its first pay offer of a four percent wage increase for each of the 2 years. The four percent each year was divided into a two percent across-the-board increase and another two percent set aside each year for "merit" increases. The union broke off negotiation in order to publicize the "unfavorable" management offer of two percent and to emphasize its lack of faith in the Bureau of Collective Bargaining.

In mid-May, the state negotiators filed an unfair labor practice against the WSEU charging the union with failure to bargain in good faith. Newspaper reports also indicated that both Lucey, Schreiber and their top aides had met to plan a bargaining and strike strategy. There were also reports that Lucey had been in touch with Jerry Wurf, national president of AFSCME, in an effort to get the union back to the table. The reported Lucey-Wurf meeting was reminiscent of the "end run" negotiations of 1975 when the management negotiators were

bypassed by the governor and the union. These rumors offered the union further evidence that officials from the Bureau of Collective Bargaining were "technical bureaucrats" whose efforts did not reflect the objectives of Wisconsin's elected officials.

The month of May also brought the first indications of union militancy and the possibility of a strike. At a meeting in Milwaukee, Tom King stated that the union had set July 5 as a tentative strike date if a contract agreement had not been reached. The union argued that the conduct of early negotiations proved that the state was interested in "a complete gutting of the old contract". The union held informational meetings around the state where they stated that it would return to the bargaining table only if the state would bargain in good faith and withdrew demands that weakened the current contract. The militancy evident in May continued through June; talks resumed in early June again came to a standstill. On June 13, 1977, off-duty Wisconsin state troopers set up an informational picket line at the State Patrol District 1 Headquarters in Madison. At a hearing before JOCER, WSEU president, Larry Grenier, said that unionized state employees would have to resort to an illegal strike because of the low wage offers of the Department of Administration.

State negotiators argued that the cost of union wage demands exceeded the $163.5 million set aside by the Lucey administration for salary increases, new state programs and a reserve to cover unexpected expenditures. Department of Administration bargainers also insisted that their wage offer to the WSEU was in line with raises the other unions were negotiating and a proposed increase for unrepresented

workers. The state had reached a 7 percent settlement with the other unions and had also proposed 7 percent for unrepresented workers. The WSEU was the only union left to bargain its contract with the state and the state was trying to impose the settlements reached with smaller, less powerful unions than the WSEU.

On June 24, the state raised its offer to a 5 percent average wage increase and also agreed to raise it to 7 percent if other union issues, notably the COLA issue, were dropped. The head of the State Employee Relations Division elaborated on the wage proposal by saying that the lowest paid state employees would receive a 9 percent increase. WSEU spokesmen implied that a 7-7.5 percent wage increase would be inadequate for union members. A state request to submit the dispute to mediation was seen as a delaying tactic by the union. As positions at the bargaining table grew rigid, contingency plans were being made in case of a strike. Lieutenant Governor Schreiber, who would become governor July 1, was busy drawing up plans to ensure that critical services would be maintained. Working with the National Guard and other agencies, Schreiber identified the prisons, facilities for the developmentally disabled, University Hospitals and the state patrol as critical services and facilities.

Negotiators bargained throughout the night of June 28-29. Major union demands included an across-the-board dollar increase rather than a percentage increase and a cost-of-living allowance. Reports varied as to the number of issues resolved; a union spokesman reported 31 union demands were dropped. State bargainers stated that there were about 150 unresolved union demands which prevented the state from "really knowing what the union wants." After the state's "final offer" on the night of

the 29th, the union called the negotiation "hopelessly deadlocked" and requested mediation and a contract extension. At this point, two WERC Commissioners entered the negotiations as mediators and immediately closed the bargaining sessions to the press and public. The old contract was extended on a day-to-day basis, while they met with union and state bargainers to acquaint themselves with the bargaining positions.

Matters were further complicated when in a speech to the UAW, Schreiber came out in support of the state's final offer as a "fair and progressive wage proposal." This further alienated union negotiators and reduced the hope for a speedy settlement. Since the WSEU could not count on the governor's office to apply pressure on the state bargaining team as was done in the past, the possibility of preventing a strike was markedly reduced. Union leaders announced that more than 50 percent of the membership had participated in the strike authorization vote and that 90 percent had voted in favor of a strike. Tom King, executive director of the WSEU, stated that the walkout would be total and not selective. When the state rejected a union request for binding arbitration the union broke off negotiations and went out on strike at 12:01 a.m. July 2, 1977.

The state declared a state of emergency following the strike. National Guardsmen were sent to the state correctional facilities, and volunteers and supervisors replaced striking workers at facilities for the developmentally disabled. State Patrolmen remained on the job, calming fears of havoc on the July fourth weekend. By the end of the first day, 1674 National Guardsmen were called up to replace approximately 5,000 striking state workers. There were no plans for new negotiations and state officials reportedly did not plan to immediately seek an

injunction against the strike. Despite state efforts to keep things running smoothly, the strike affected a number of state offices and institutions. Union members threw up pickets around most state buildings and patients in some state facilities were moved because of staff shortages.

On July 5, the first work day following the holidays for most state workers, state officials began to take legal action to end the three-day-old strike. State officials filed an unfair labor practice charge against the WSEU, accusing the union of conducting an illegal strike and refusing to bargain in good faith. They also began to consider seeking injunctions against strikers at the state hospitals. Attorney General Bronson La Follette got Dane County Circuit Court Judge William Sachtjen to issue a temporary restraining order against the strikers and sent his assistant to seek additional court orders in Chippewa Falls and Racine for two other facilities. Before leaving the state to become ambassador to Mexico, Governor Lucey called up more National Guard Troops bringing the total number to roughly 2,000.

Each side claimed victory on the first day of the strike. The union claimed 80 percent of all state workers honored the picket lines and did not report to work on the first day. The state reported that 65.3 percent of those scheduled to work actually reported to work. It also admitted, however, that some of the larger state institutions had been hard hit. Throughout the strike, both sides presented conflicting reports. Despite confusion over the actual number of employees on strike, some services were markedly reduced due to the strike. United Parcel Services reported that it would be unable to deliver 1,000 packages to the various state office buildings. Nine hundred hospital patients were transferred to nursing homes since personnel was at 20 percent of full staff. Waiting

time at various state agencies was lengthened by the disruption of normal operations.

With the threat of state disciplinary action, strikers faced a number of problems. Radio advertisements advised employees that they were expected to report to work as usual and steps would be taken to ensure their safety through the picket lines. Employees were also reminded that the state had not issued a non-discrimination statement. A number of incidents on the picket lines led to arrests. The Department of Natural Resources dismissed any limited term employees who refused to cross the picket lines and report to work.

By the fourth day of the strike, both sides began to take action to get back to the bargaining table. Acting Governor Martin Schreiber contacted Tom King urging him to return to the bargaining table. The union announced a drop in its wage demand to include the COLA, the greater amount of 56 cents or 9 percent the first year, and 64 cents or 9 percent the second year. Both sides met on July 6, but talks broke off when the state rejected the union's latest wage proposal. The state proposed its final offer, again stating that it was receptive to any wage proposal that was no more costly than the state's last offer.

By Friday July 8, the fifth day of the strike, judges in Chippewa Falls, Madison, and Racine had issued temporary restraining orders prohibiting all strike activity at three state hospitals. The hospital strikers ignored these orders and continued to picket them. Attorney General La Follette warned strikers of fines and other actions if picketing continued. Union officials said they would not obey the temporary restraining orders and planned to argue in court that the state did not prove that the strike was doing irreparable harm. WERC hearings on the

state unfair labor practice charge were postponed from July 8 to July 13 to give WSEU time to prepare a case. Estimates on the number of state employees on strike varied from 73% to 35% by the end of the first week.

Over the weekend, attempts were again made to bring the two parties back to bargaining. On Saturday, July 9, Acting Governor Schreiber met with Tom King and WERC mediators. Both sides met in a closed session Sunday for 20 minutes and then, at the union's insistence, for a half hour public session. The union offered a new wage proposal of 53 cents, or 8.5 percent the first year, 61 cents or 9 percent the second year, guaranteed progression to the top of the salary scale within 4 years with one advancement per year and a quarterly COLA clause. State negotiators were not optimistic about the new proposal and offered no new wage package.

WERC mediators were able to get both sides back to the table, but union negotiators expressed little confidence in the WERC's neutrality since as a state agency it was dependent on the Department of Administration for its budget. King accused the WERC of stalling the bargaining process and requested that the Federal Mediation and Conciliation Service be contacted to find a new mediator.

On Wednesday, July 13, the WERC began its hearing into the state charge that the WSEU was conducting an illegal strike, an unfair labor practice. King and WSEU President Larry Grenier refused to answer questions from the Department of Administration attorney and walked out of the hearing. The union later filed its own unfair labor practice charge against the state, accusing it of regressive bargaining, delaying and refusing to give its negotiating team power to bargain. The union's charge

was essentially a defensive one. The hearing officer continued to take testimony, but later held the case in abeyance pending the results of mediation announced later in the day.

AFSCME president Jerry Wurf arrived in Madison to deliver a $50,000 check to the WSEU for strike benefits. Wurf also met with Governor Schreiber to discuss strike issues and the possibility of appointing a new mediator. Wurf later made a public announcement supporting the strikers and calling for arbitration or a return to the bargaining table with an impartial mediator. Schreiber was said to have postponed his decision to seek a federal mediator until he could meet with both the WERC and Department of Administration.

While state and union officials were meeting, the legal battles continued. In Superior, three grain companies and the Farmer's Union Grain Terminal Association asked for a temporary restraining order against 58 striking members of the State Grain Commission. Forty-eight striking dock workers were ordered to resume grain loading following a temporary restraining order. The Racine County Circuit Judge granted a temporary injunction against strikers at another state hospital. A civil suit was filed in Dane County against the WSEU, the governor, and other State officials by the Wisconsin Association for Retarded Citizens, alleging that the strike constituted a denial of a statutory right to treatment. It asked for an immediate resumption of bargaining, actual damages of $50 per day and punitive damages of $100 a day for each resident of the state hospitals.

On July 13, Governor Schreiber announced the appointment of Robert G. Howlett, a former chairman of the Michigan Employment Relations Commission, as mediator to settle the strike. Howlett's name was chosen from a list

drawn up by the American Arbitration Association. Schreiber was quick to point out that the mediator would be working closely with the WERC. With the appointment of Howlett, all unfair labor practice cases were held in abeyance until the results of mediation, but strike activity continued.

Both sides met separately with the mediator to discuss ground rules. Working through the weekend, Howlett presented a compromise contract proposal to both sides early Sunday evening. Howlett admitted at that point that the package contained both economic and non-economic elements, including an amnesty clause for the striking employees. A tentative agreement was reached on Sunday and state employees began to return to work Monday. All unfair labor practice charges were dropped and both sides claimed victory. The union also claimed that the compromise settlement could have been reached if its proposal for arbitration had been accepted before the strike.

The compromise settlement would take effect August 14 if ratified by union members and the legislature. The wage settlement included a 7 percent or 38 cent per hour increase in the first year and a 7.5 percent or 42 cent increase the second year for non-professional employees. A cost of living adjustment would be effective in the last six months of the contract, with a limit of 5 cents in each of the first two quarters of 1979, or a maximum of ten cents for the entire six months. The COLA would be paid only to those employees earning $12,000 or less. Eighty percent of the non-professionals and professionals would be moved up a half a step within their pay range. Professionals would receive a 6.5 percent increase in the first year and a 7 percent increase in the second year with no COLA.

On August 9, union officials announced ratification of the tentative agreement by 83 percent of the voting membership. On August 18, the Joint Committee on Employee Relations met and rejected the tentative agreement by a 5-3 vote. JOCER members were angry with Department of Administration officials for ignoring them in the last stages of bargaining and cited the failure of DOA to tell them about the COLA clause especially since DOA had told them it would not be included in the settlement. JOCER members also disliked the non-discrimination clauses, $200 advances paid to strikers and the continued accumulation of vacation and health care benefits. The rejection stunned both the union and the executive branch. It was rumored that the strike would be resumed.

The union and the Secretary of DOA immediately began to determine ways to win JOCER approval. Union officials met with JOCER and were offered a compromise that would keep COLA in the wage settlement but eliminate COLA increments from the basic wage scale. Negotiations continued until six days later when a compromise was finally reached and the contract was passed by the legislature and signed by the governor August 26. The compromise contained a change in the COLA clause so that only changes in certain components of the CPI would be used and the adjustments would become effective on the last day of the contract.

The eventual ratification of the contract settled the three unfair labor practice charges. Despite the contract's amnesty clause, some public officials and private groups sought to impose penalties on the strikers. In a July 18th news conference announcing the end of the strike, Acting Governor Martin Schreiber said he would seek legislation to establish penalties for strikers. He instructed the Attorney General

to begin contempt proceedings against the hospital workers who ignored the court orders to return to work. On August 8, the Wisconsin Taxpayers Legal Defense Fund filed a $27 million suit against the WSEU for striking and withholding services. This suit and one other civil suit against the union were both eventually dropped. If any strike penalties were to be imposed, they would have to be through the court injunctions issued during the strike.

On July 20, two days after the tentative settlement, the Attorney General petitioned for an order requiring 760 striking employees at the Madison area state hospital to show cause why they should not be held in contempt. The order was issued but despite La Follette's urging, Schreiber asked the Attorney General to discontinue the proceedings after consultation with mediator Howlett and both union and management lawyers. La Follette reluctantly agreed citing a Wisconsin statute requiring him to discontinue proceedings at the direction of the officer who initiated the legal action.

On July 27, both Judge Bardwell of Dane County and Judge Pfliffner of Chippewa Falls refused to dismiss proceedings against the strikers from two hospitals. On the 29th, the Attorney General announced that the state would not appeal the judges' orders and would begin to seek contempt charges against the strikers and union officials. On August 3rd, the Dane County sheriff began issuing contempt of court citations to 775 WSEU members. Bardwell appointed La Follette as special prosecutor and refused to hear a motion to delay the contempt proceedings. The union was able to halt proceedings, pending an appeal to the State Supreme Court. In October, the Court agreed to hear the case in January.

On January 5, 1978, the Wisconsin State Supreme Court heard arguments in the case of State v. King. The Attorney General attempted to have the

contempt citations changed from civil to criminal contempt which would have allowed the Court to impose penalties after the enjoined action had been discontinued. In a unanimous decision, the Court rejected the Attorney General's argument and found that the pursuit of contempt of court penalties by the judges was improper. The contempt citations were dismissed so the union incurred no penalties as a result of the 16-day strike.

According to the Bureau of Labor Statistics, the Wisconsin state employees strike accounted for 23 percent of all time lost due to work stoppages in Wisconsin for the year. In a fall, 1977 DOA report to Senator Dorman, the state estimated that 10,182 WSEU members participated in the strike and lost roughly 68 hours of work per striking member. These figures were probably high because they were taken from the payroll list and includes absences because of vacations, sick leave, or personal leaves of absences. From this report, Schreiber estimated that state employees lost approximately $3.5 million in wages. If union estimates of 14,000 strikers were used to figure the costs, it would be $8.5 million. Given the $1.4 million costs of the new contract, Schreiber estimated that the state saved $2.1 million if state figures are used or $7.1 million if union figures are used.

The Indianapolis Teachers Strike of 1979[26]

After months of negotiations for a new contract, the Indianapolis Teachers Association (ITA) struck the largest school district in the state when school was scheduled to open in the fall of 1979. The strike began on September 4 and finally ended on October 2 when the teachers agreed to

return to work and both sides agreed to submit the remaining issues to final offer by issue arbitration. In addition to being the most significant public sector strike in Indiana in recent years, the strike illustrated strategies used by parties during an illegal strike and the role the courts may play in trying to settle a dispute. The lower court involvement was significant because the "around-the-clock" bargaining ordered by a judge to bring about a temporary settlement ended the strike. The strike resumed, however, when this judicial activity was ruled illegal by the Indiana Supreme Court. The strike was also significant because the move to impose legal sanctions against the union and striking teachers was formally initiated by a group of citizens and not by the school administration.

The Indianapolis Public School system (IPS) and the Indianapolis Education Association had a formal bargaining relationship prior to passage of the 1973 education bargaining law. In 1974, the ITA defeated an AFT affiliate in a representation election and thus became the certified representative of district teachers under the new teacher bargaining law.

The school district in Indianapolis is the largest in the state. At the time of the strike, the district operated about 120 schools, employed approximately 3,800 teachers, and had an enrollment of about 70,000 students. Consistent with national trends, the district has been faced with declining enrollments in recent years which reduced the demand for teachers and physical facilities. In 1979-80, the district was using the same number of schools as it was when it had 20,000 more students. The effect of these trends on the 1979 strike became important when IPS argued it could not afford to meet the salary demands of the

teachers. One of the judges who became involved in the strike pointed out that the system might have had more money for teacher salaries, had they closed some of the underutilized schools.

Negotiations for a 1979-81 contract began during the 1978-79 school year. During the school year and summer months, the parties used the mediation services provided under the state law, but were unable to reach an agreement. On August 26, 1979, the union membership authorized the executive board of the union to call a strike if an agreement was not reached by September 4 when teachers were scheduled to report to work. During this same time, the Indiana Education Employment Relations Board (IEERB) appointed a factfinder who scheduled a hearing for the Saturday before school was to begin. The teachers refused to participate in this hearing and asked the IEERB on Sunday to set up a mediation session. The IEERB said it lacked the authority to do so and IPS refused to resume negotiations unless the union was willing to modify its position.

As the strike deadline approached, each side prepared announcements: first, that schools would remain open during the strike if possible and that the district would pay substitute teachers $45 per day instead of the usual rate of $24-30 a day; second, that any teacher who struck on September 4 would not be allowed back to work until after the union called off the strike; finally, that it would seek a back-to-work order only if it looked as if the strike would last indefinitely. The teachers criticized the higher pay for substitutes, repeated its position of "no contract, no work," and accused the employer of threatening to illegally lock out teachers.

No negotiations were held over the weekend or on the Monday before the strike deadline. On Tuesday, September 4th the teachers struck. There were a variety of unresolved issues when the strike began and even at the conclusion of the strike over a dozen different issues were submitted to the arbitrator. Despite the large number of disputed issues, one key issue was in dispute throughout the strike—salaries. When the strike began, the IEA was demanding an immediate average increase of 11.5 percent, plus the previously agreed to increment of 3 percent. IPS's offer was 1 percent on January 1, 1980, plus increments.

Throughout the strike, the parties disagreed on how many teachers participated in it. The teachers hailed the start of the strike as a huge success, claiming that IPS action before the strike contributed to teacher support. IPS claimed that 51 percent of the teachers were missing, while the IEA said the figure was 76 percent. Regardless of the percentages, all the schools were open on September 4th although classes were dismissed early at several schools. IPS reported that attendance by teachers was 50.5 percent or less at seven of the ten high schools.

On September 5th, the first scheduled full day of classes, negotiations were resumed after the IEERB had arranged for a special ad hoc mediator. IPS also filed an unfair labor practice complaint with the IEERB against IEA. It alleged that the union strike was an unfair labor practice and asked the board to hold an emergency hearing on the charge and order the teachers immediately back to work. Student and teacher attendance changed only slightly on the second day of the strike.

Negotiations continued in the remaining days of the first week of the strike. The teachers reiterated their position that they would not return to work without a contract and would not obey a back-to-work order.

IEERB refused to act immediately on the IPS unfair labor practice charge. Its chairman suggested that IPS petition a court to obtain an injunction. The school superintendent held a news conference to show that the 1 percent board offer was in addition to the 3.7-8.5 percent increase over the previous year's salary.

At the end of the first week of the strike, public pressure on both parties increased when two local state legislators that worked on the formula for Indiana's school aid stated that the 1979 law was designed to provide teachers with an increase of around 7 percent, including increments. This was significantly less than the 11.5 percent plus increments demanded by teachers, but more than the 1 percent plus increments offered by IPS.

On Monday, the fifth day of the strike, a group of parents asked state Circuit Court Judge Frank P. Huse to declare the strike illegal, enjoin the strike and forbid further negotiations until it ended. The IEA argued that this suit was impermissible because the state bargaining law for teachers allows only employers to seek a court order to enjoin an illegal strike. On Wednesday, Judge Huse held a short court session, prohibited oral arguments by both sides and, according to newspaper accounts, ordered that:

(1) Teachers were to return to work on Thursday. Schools were to be closed to students on Thursday and Friday so that teachers could spend the two remaining days of the week preparing for classes.

(2) IPS was to grant a 7 percent increase to teachers.

(3) The parties were ordered to bargain and return with a contract on Monday morning.

(4) Each side was to replace their bargaining team.

(5) The board must drop its proposal to add an extra 55 minutes to the school day.

(6) IPS must stop requiring that returning teachers sign a statement saying they will not strike again and IEA must stop asking nonstriking teachers to waive benefits provided by a new contract.

While the court order was very broad, it was an unwritten order and the parties tended to interpret it to fit their own interests. The president of the IEA was quoted as saying that "there was not a written order. It was all verbal recommendations (emphasis added)." Since the IEA felt the judge was only making recommendations, it agreed to hold a two-day educational workshop at a local hotel instead of returning to the schools on Thursday. The wage "settlement" ordered was rejected since it amounted to only a 4 percent increase plus agreed upon increments. On Wednesday, the school board disclosed that it had increased its offer to 2 percent and it would do everything possible to find the additional two percent necessary to comply with the judge's order.

Despite long sessions of bargaining through the weekend, no agreement was reached and the IEA told its membership not to comply with the court order to return to work. On Monday, September 17, the judge fined the union $1500 for continuing the strike the previous Thursday after his Wednesday order. Beginning on Tuesday, he said he would fine each striking teacher $25 a day and the union $25 per day for each striking teacher. He ordered the sheriff's office to arrest all picketing teachers and bring them to court to have their fine assessed. The judge further ordered each

side to remain in his chambers and bargain until an agreement was reached. Money remained the main issue, with the teachers rejecting the judge's "settlement" and the board stating it was unable to find the additional 2 percent to comply with it.

On Tuesday, the parties continued to bargain and made substantial progress. Twenty-nine picketing teachers were arrested for picketing. By Wednesday, all picketing had ended and Judge Huse ordered that the payment of fines were to be postponed indefinitely. The court also stated that union fines could be a negotiable part of the strike settlement.

On Thursday, several key courtroom events occurred that were to affect the rest of the strike. In exchange for a commitment to return to work on Friday, the judge dismissed all fines against teachers and the union, ordered continued negotiations in his jury room, ordered school administrators not to take reprisals against returning teachers and appointed the IEERB chairman as a mediator. In exchange for these concessions, IEA said they would end the strike but left open the possibility that the strike would resume if negotiations did not progress. The judge also appointed three "outside" analysts to find a method of financing the pay increase he ordered and chided IPS negotiators for refusing to negotiate in good faith. It was clear that the judge's sympathies were clearly shifting toward the teacher's position. To limit the court's role, therefore, IPS attorneys argued that the sequestoring of the negotiators was illegal and that the judge also lacked the authority to order specific provisions into the new contract. These requests by IPS were denied by Judge Huse.

On Friday, IPS appealed Judge Huse's Thursday ruling to the Indiana Supreme Court. A three-judge panel granted a temporary emergency order ending the sequestered negotiations until a hearing before the full court the next week. IPS also requested a change of venue from Judge Huse which he granted. IEA leadership was appalled by the Board's appeal of the decision and the Court's order. The action by the Board was viewed as an attempt to avoid bargaining with the teachers. IPS, however, was firmly convinced that the court had exceeded its authority.

On Friday, all but thirty teachers returned to work after Judge Huse's decision. When the state Supreme Court ordered an end to the forced bargaining, however, the teachers voted overwhelmingly on Sunday to resume the strike. Teacher support of the strike hit a peak at this point. On the previous Thursday, 69 percent of the teachers reported to work. On Monday, however, the figure dropped to 40 percent and student attendance reached a new low of 62 percent. On Monday, a unanimous Supreme Court ruled that Judge Huse had exceeded his authority by sequestering the negotiators and ordering IPS to make certain offers to the teachers. The only portion of Judge Huse's original order that remained in force was the order that teachers return to work and refrain from picketing.

Emotions were very high when the strike began again on Monday. Members of the school board agreed to sit in on negotiations for the first time. There was an increase in vandalism against teachers, school administrators, board members and school property, and each side accused the other of failing to bargain in good faith. IPS Superintendent Kalp publicly released details of IEA contract proposals which showed that IEA was requesting 10 percent immediately and another 4 percent in January, instead of the previously reported figure of 11.5 percent. Kalp also

stated that IPS had increased its offer from two to four percent, effective in January. When this was added to the 3 percent increment the offer equalled the 7 percent specified in Judge Huse's illegal order. IEA refused to comment specifically on the IPS proposals, but accused the school system of "trying to negotiate through the news media" and failing to agree to bargaining conditions set by a state mediator. Through the fourth week of the strike, student enrollment dropped and teacher participation in the strike did not drop below 48 percent.

As a result of the change in venue, on Wednesday, September 26, a preliminary hearing was held before a judge in a different county on the parents' request for an injunction. The hearing was scheduled for the following Monday by Judge Sedwick. Over the weekend, the possibility of an end to the strike improved after a state mediator proposed that the parties submit the unresolved disputes to arbitration. On Sunday night, the teachers had rejected the initial IPS conditions for an agreement to arbitrate, but the parties continued to discuss arbitration. On Monday, IEA said it would try to work out an arbitration agreement and asked Judge Sedwick to postpone the back-to-work order. The judge repeated that the strike was illegal, but allowed the parties two days to agree to use arbitration. On Tuesday the parties agreed to use arbitration and teachers returned to work on Wednesday, October 3. All fines were dropped against the union and striking employees. An arbitration award was made later in the year. Each side prevailed on some issues, but on the key issue of wages, the arbitrator picked the employer's final offer.

Observations About the Wisconsin State and Indianapolis Teacher Strikes

There are a number of similarities in the two strikes discussed here. Employers in both strikes either supported or actively sought court involvement at one point to end the strike provided it did not jeopardize their bargaining position. In Wisconsin, the state sought back-to-work orders only for employees at state hospitals where support for the strike was strong and the state was having difficulty replacing striking employees. The state did not seek court orders against other "essential" employees, such as prison guards, because the National Guard proved an adequate temporary workforce. Once a tentative settlement was reached, however, the court injunctions had served their role in bargaining and their enforcement was no longer pursued. In Indianapolis, it was a parent group which sought the injunction, but IPS did not initially oppose the action. One member of the parent group had been a long-time school board member and the parents used a legal firm used by the Board. Once the court involvement became onerous, however, with its sequestered bargaining and court-ordered settlement, IPS successfully sought to end these activities through legal action. By the time the case was heard before a new judge, the parties were close to an agreement to arbitrate. Again at the point where the pursuit of court sanctions no longer had strategic importance, they were abandoned.

These two strikes illustrate the fundamental weakness of relying on the courts to prevent strikes. If penalties are to prevent strikes, employees and unions must expect that they will be incurred by illegally striking. Where the penalties depend on employer-initiated court action, unions and

employees are correct in assuming penalties will usually not be collected. The employer's only interest in court action is as a bargaining weapon. Politically it helps minimize public criticism and it may also encourage some striking workers to return to work. Once a favorable settlement has been reached, however, employer interest shifts to the problems of living with the union and employees over the life of the new contract. Dropping court action is a constructive start toward this end. The threat of court action can hardly be very effective in <u>preventing</u> strikes when unions and employees know it is unlikely employers will ultimately want to enforce the penalties.

These cases also show that court action has the potential for moving beyond the employer's influence and interests. After a settlement was reached in Wisconsin, the Acting Governor wanted the state to drop the contempt proceedings, but two of the judges resisted the move because they did not like to have the judicial system used as a bargaining tool.

In Indianapolis, it seems likely the IPS may have privately opposed the parents' suit, if they had realized that the judge was going to sequester the parties and order a settlement. It was probably the teacher anger over the IPS-sought Supreme Court decision that forced the parties into arbitration. In the two weeks before the Supreme Court decision, teacher morale and support for the strike was waning. The Monday after the decision, however, there were more teachers on strike than ever before. At that point it was clear to both sides that the strike could drag on indefinitely, unless a way out of the strike was found.

Chapter VIII

Footnotes

1. Municipal Employment Relations Act, Wisconsin Statutes Annotated, Section 111.70 (1959).

2. U.S. Bureau of the Census, Census of Governments, 1972, Public Employment, Management-Labor Relations in State and Local Governments, Vol. 3, No. 3, Table 7.

3. Wisconsin Statutes Annotated, 111.77 (1971).

4. Municipal Employment Relations Act, Wisconsin Statutes Annotated, Section 111.70 as amended.

5. Hortonville Education Association v. Hortonville Joint School District, 426 U.S. 482 (1976).

6. Labor-Management Relations in State and Local Governments, 1977 Census of Governments, U.S. Bureau of the Census, 1979, p. 56.

7. State Employment Labor Relations Act (SELRA), Wisconsin Statutes, Section 111.81(18) (1978).

8. SELRA, Wisconsin Statutes, Sections 111.89 and 111.84(2) (e) (1978).

9. SELRA, Wisconsin Statutes, Section 111.89 (1978).

10. Municipal Employment Relations Act (MERA), Wisconsin Statutes, Section 111.70(1) (NM) (1977).

11. MERA, Wisconsin Statutes, Section 111.70(4) (1977).

12. MERA, Wisconsin Statutes, Section 111.70(7m) (1977).

13. Wisconsin Statutes Annotated, Section 121.23.

14. Ibid.

15. Indiana Employment Relations Board, Annual Report - 1978, p. 114.

16. In 1977 the national strike propensities were .0234 to .0261 for school districts and .0436 to .0601 for municipalities, townships and counties. These figures were calculated from Tables 2, 4, and 6 in U.S. Bureau of the Census, 1977 Census of Governments, Labor-Management Relations in State and Local Governments.

17. Ibid.

18. Indiana Statutes Annotated, Title 20, Section 20-7.5-1-1 - 20-7.5-1-14 (1973), as amended.

19. Indiana Statutes Annotated, Title 20, Section 20-7.5-1-14 (c).

20. Indiana Statutes Annotated, Title 20, Section 20-7.5-1-14 (d).

21. Indiana Statutes Annotated, Title 22, Sections 22-6-4-1 - 22-6-4-13 (1975).

22. IEERB v. Benton Community School Corporation, 58 Ind. 261, 365 N.E.2d 752 (1977).

23. Anderson Federation of Teachers v. School City, 252 Indiana 558, 254 N.E.2d 329 (1970).

24. Elder v. City of Jeffersonville, 164 Indiana App. 422, 329 N.E.2d 654 (1975).

25. The materials used in preparing this case study came from newspaper reports in the Wisconsin State Journal, Capital Times and interviews conducted by members of the research team with key state and union participants in the strike. The source for specific references may be obtained from the authors.

26. The materials used in preparing this case study came from reports in the Indianapolis Star. The source for specific references may be obtained from the authors.

Chapter IX

Public Sector Strikes in Ohio and Illinois

Diversity best describes public sector labor relations in both Ohio and Illinois. There is a long history of very sophisticated bargaining in most of the major urban areas of both states, but in the other municipalities and school districts collective bargaining is either new or simply does not exist.

Table IX-1, where the extent of union membership and collective bargaining contract coverage in each of the states is summarized by level of government, shows that percentages are highest in school districts in both states. By 1977 slightly more than 50 percent of full-time school district employees in Illinois were represented by a union; in Ohio the figure was 74 percent. The percentages of full-time covered employees are lower for all other types of local governments, the least organized government level in Ohio being the counties, while in Illinois it was municipalities and townships. In all three categories, less than 16 percent of the employees were covered by a contractual agreement.

Summary statistics from the Census of Governments indicate that collective bargaining in school districts is not confined to only the large districts in either state. If it were, then the percentage of employees in bargaining units would be substantially greater than the percentage of governments having at least one bargaining unit. As we see by comparing the figures in the last two five-row panels in Table IX-1, it is not. For Illinois school districts there is essentially no difference (53.5 percent vs. 49.4 percent) and the difference in Ohio is relatively small (73.8 percent

Table IX-1

Union Organization and Collective Bargaining Coverage in Illinois, Ohio, and the Rest of the U.S., 1977

Percent of Full-time Employees Organized by Government Level

	Illinois	Ohio	U.S. Outside of Illinois and Ohio
State and local	45.6	45.2	50.0
Local	47.1	49.4	51.9
Counties	16.7	12.8	36.1
Municipalities and townships	32.7	46.1	54.8
School districts	60.1	64.4	59.6

Employees Covered by Contractual Agreement as a Percent of all Employees

State and local	29.0	32.6	29.2
Local	28.2	40.9	32.3
Counties	13.2	14.2	18.7
Municipalities and townships	7.3	28.7	36.1
School districts	41.3	55.4	36.3

Percent of Governments That Have at Least One Bargaining Unit by Government Level

State and local	10.5	19.4	15.4
Local	10.4	19.4	15.4
Counties	14.7	18.2	21.3
Municipalities and townships	4.5	7.0	9.7
School districts	49.4	67.2	46.1

Source: U.S. Bureau of The Census, Labor-Management Relations in State and Local Governments, 1977 Census of Governments, Volume 3, Number 3, October 3, 1979, Tables 2-4.

vs. 67.2 percent). However, the differences in the two percentages for municipalities and townships are substantial, an indication that bargaining is far more prevalent where a unit of government has a large number of employees. For Ohio municipalities and townships in 1977, the figures are 39.7 percent for number of full-time employees covered and only about 7 percent for number of governments that bargain. For Illinois the comparable figures are 9.7 and 4.5.

The states' policies on collective bargaining for public employees provide a partial explanation of the extent of bargaining in each state. Neither has a comprehensive public sector bargaining law that includes employee rights, prohibited practices, and procedures for recognition of an employee bargaining unit and for dispute settlement.[1] As a result, what bargaining there is has developed solely on the basis of relative power--that is, on the employees' ability to use the political process or collective action to force the employer to recognize them. As the statistics in Table 1 indicate, bargaining in both states is most common in school districts where employees have been willing to strike and in the municipalities where unions have either political or bargaining clout.[2]

Thus, the absence of bargaining laws in Ohio and Illinois make these two states different from the other five we chose for analysis, where most public employees are covered by some type of bargaining law that is administered by a labor relations agency.[3] If the legislated strike prohibitions and the procedures provided for both recognition of employee bargaining representatives and dispute settlement in these other states do have the intended effect of reducing the number of public sector

strikes, then we would expect to observe a higher level of labor-management conflict in Ohio and Illinois.

Thus, a comparison between the Ohio and Illinois experience and that of the states with public sector bargaining laws may be particularly instructive for some other states, especially those in the South and the West, that are just beginning to consider bargaining legislation. For one thing, policy makers in states where bargaining is not now widespread but is increasing will be able to compare strike experience in states with and without procedures for determining employee representation. For another, they will be able to see if there are differences in the effects of court-imposed penalties in strike situations and court involvement in the bargaining process in states with and without guidelines. It should be noted here that our information on the latter differences was limited because there were no neutral public state agencies in Illinois and Ohio that collected data on court involvement in strikes. However, our interviews suggest that some of the problems created by court involvement that were illustrated in the two case studies of strikes in Wisconsin and Indiana, described in a previous chapter, were also present in Illinois and Ohio and have led over time to the courts being less involved. For example, an Illinois Department of Education official told us that there were 40 teacher strikes in that state during the 1979-80 school year, but only three or four temporary restraining orders were issued.

The Legal Environment for Strikes in Ohio

Although Ohio has no law that provides collective bargaining rights to public sector employees, there are several public policies in the state that have an impact on strikes. Strikes are prohibited by the

Ferguson Act,[4] which was adopted shortly after World War II at a time when a number of states were banning public sector strikes and specifying stiff penalties for violation of the ban. By 1970 many states had replaced these early laws with comprehensive bargaining legislation. Ohio did not, although in 1978 the legislature did pass a bargaining law which the governor vetoed; the legislature did not override the veto.

Any public employee engages in a strike specifically prohibited by the Ferguson Act when he/she:

> without the approval of his superiors, unlawfully fails to report for duty, absents himself from his position, or abstains in whole or in part from full, faithful, and proper performance of his position for the purpose of inducing, influencing, or coercing a change in the conditions, as compensation, rights, privileges, or obligations of employment or of intimidating, coercing, or unlawfully influencing others from remaining in or from assuming such public employment is on strike, provided that notice that he is on strike shall be sent to such employee by his superior by mail addressed to his residence as set forth in his employment record.[5]

A public employee is not engaged in a strike in violation of the Ferguson Act unless and until he/she is sent the prescribed written notice that he/she is on strike. Upon receiving the written notice, the employee may file a written request, within 10 days after his/her regular compensation has ceased, for the timely commencement of a hearing to dermining whether or not he/she has violated the Ferguson Act.[6] The courts require public employers to comply strictly with the written-notice procedure in the act if the act's penalties are to be available to them.[7] The written

notices are required because of the severity of the penalties that may be imposed on employees under the act.

Any public employee who violates the Ferguson Act is considered to have abandoned and terminated his/her employment, unless he/she is reappointed under conditions prescribed by the act.[8] Any person reappointed cannot receive an increase in compensation that exceeds that received by him/her prior to his/her violation until one year has passed from the time of appointment or reappointment.[9] Thus, the Ferguson Act denies to any striking public employee the fruits of the strike effort. In addition, such employee is placed on probation without tenure for two years following the date of appointment or reappointment. In addition to these penalties imposed against striking employees, employers may and have collected damages against unions which have struck in violation of an injunction.

Although the Ferguson Act remains in effect, employers have chosen not to enforce it for three major reasons: First, it has been interpreted as giving an employer broad discretion as to whether or not to apply the penalties.[10] Under the act, the employer determines whether a strike has occurred, which employees were on strike, and which employees would be reinstated. Second, penalties of such severity would have such an adverse effect on the labor-management relationship as to be cost prohibitive for the employer. He might choose to replace his entire workforce, or he might have to replace all the employees if they chose to leave rather than to work under the conditions prescribed by the penalties. In either case, the feasibility and cost of replacing a workforce would make the imposition of penalties impractical in any but the smallest governmental unit. Third, the precedural requirements for replacing employees under Ohio law are formidable. For example, after a teacher strike began in the South Point school district, the school board moved to enforce the

Ferguson Act by discharging and replacing the strikers. This led to a lengthy court battle in which the teachers challenged the discharge procedures the board had employed. Eventually all the teachers were reinstated and the board had incurred $300,000 in legal fees. Although public employers occasionally raise enforcement of the Ferguson Act as a bargaining play, practical and legal considerations make it an ineffective policy for dealing with strikes.

As in other states included in this study, state educational policy--education standards, state aid to school districts, and the requirement of a minimum number of student-contact days--has had a significant impact on collective bargaining and strikes. In addition, since there are no state mediation services for the public sector in Ohio, on occasion the state superintendent's office has served as a neutral in disputes where both sides have agreed and has provided technical assistance to both parties.

A 26-member elected board and the state superintendent's office oversees the state's educational system. After about a year of study, the board adopted two resolutions on education bargaining in 1979. The first recognized the inadequacies of the Ferguson Act and recommended that the board's committee on legislation investigate and possibly recommend a comprehensive bargaining law.[11] The major points of the second resolution were:

1. A school district must notify the state superintendent of a threatened or an actual strike by any group of employees.
2. When a strike occurs, the superintendent must notify the district of conditions that must be met if schools remain open during a strike. Upon written notification of an alleged violation of state education policy, the superintendent

will investigate the complaint and determine compliance with the law.

3. The state Department of Public Instruction will attempt to clarify unresolved issues if requested by both parties and to provide technical information on the financial status of the district if requested by either party.[12]

Except for the requirement that school districts notify the state superintendent of an actual or impending strike, this resolution was simply a formal statement of what the superintendent's office has been doing for several years. And while it may appear that the state education department's role in strikes is more active than that in other states with fewer strikes or a neutral mediation agency, the Ohio state board continued to regard strikes as a local matter. Except for monitoring the progress of a strike, the superintendent becomes actively involved only at the request of the parties or when it is alleged that state educational standards are not being met.

This does not mean, however, that the superintendent's office has little influence on strikes. Since it administers state aid and decides whether or not a district has met educational standards, it has considerable power in strike situations. The question of what this power entailed was first addressed in 1967 when the Superintendent of Public Instruction asked the Attorney General for an opinion on the status, for school aid purposes, of days that a school system was struck but, according to local officials, remained open. This question was important since one of the qualifications for school aid in one year was that the system was "open" for instruction a specific number of days the previous year. The Attorney General ruled that a school system was "open" under the law if local school officials declared the system open and provided instruction for pupils in attendance.[13]

Subsequent to this opinion, the Department of Public Instruction has deferred to the decisions of local districts when there is some question about whether the schools are "open." However, the state has maintained that being "open" for school aid purposes also requires that the district meet all of the state's educational requirements—for example, that classroom personnel are properly qualified and that transportation for students is provided if bus drivers are on strike.

If a school system remains open during a strike but it is determined that these days are not valid school days, then school days must be rescheduled or the district will jeopardize its school aid by not meeting the 182-day school year requirement. Thus, in several long strikes where the state superintendent's office has assisted the parties in one way or another, it has needed only to remind them of the necessity of meeting this requirement to get them to move toward a settlement.

The threat failed to make any differences in the 1979-80 strike by Cleveland teachers. The strike began in March 1980 and shortly thereafter the Cleveland schools were closed for the duration—48 days in all. And although the district would have been hard pressed to schedule the required number of make-up days before June 30, neither side in the dispute was particularly concerned about the possible loss of state aid because they were quite sure that they had enough political power to get the calendar changed and to retain the district's school aid. As it turned out, they were right. The Ohio legislature met and approved an extension of the school calendar for Cleveland beyond June 30.

Through the 1979-80 school year, no district has lost state aid because of a strike, but no district except Cleveland has failed to meet the

required number of school days by June 30. The statute states that the requirements must be met if a district is to receive school aid,[14] but the parties have never had to face the question of how much they would lose if they did not. There is no provisions for prorating school aid, as there are in some states. Therefore, presumably a district would lose all school aid, and if it did, litigation over the issue would be inevitable. The fact that there have never been any cases suggests that uncertainty over how the law may be interpreted may have deterred the parties from testing it.

The impact of school aid policies on strikes in Ohio is difficult to evaluate. It appears that the state aid requirements have been critical when a system is closed down by a strike. However, most of them remained open and met the state standards; therefore, state aid was not a factor in the parties' reaching a settlement. During the 1979-80 school year, 23 of the 25 strikes involved teachers, the strikes lasted from one to 48 days, and the schools remained open in all but four instances. It is interesting to note that schools were closed in three of the four longest strikes, which suggests that the parents' pressure on school officials to reach a settlement is more than offset by the reduced willingness of teachers to reach an agreement because they are sure that make-up days will be scheduled.

In the historical data on teacher strikes in Table 2, there is a noticeable upward trend. An explanation may be that the purpose of the strikes in the late sixties and early seventies was to obtain union recognition, but by the mid-seventies most of these issues had been resolved and more of the disputes were over contract terms. While the number of strikes has remained relatively unchanged, both the mean and the median length have

Table IX-2

Ohio Teachers Work Stoppages

School Year	Number of Teacher Strikes	Mean Length Days	Median Length Days
1965-66	1	1	1
1966-67	8	3.1	2.5
1967-68	12	2.4	1.5
1968-69	17	2.64	2
1969-70	28	2.78	2
1970-71	8	1.81	1
1971-72	10	2.6	2
1972-73	12	3.08	2
1973-74	29	5.1	3
1974-75	21	4.65[a]	4.5[a]
1975-76	12	6.16	4.5
1976-77	15	8.2	8
1977-78	17	8	6
1978-79	18	14.33	10

Source: Constructed from data provided by the Ohio Department of Education.

[a]Does not include the South Point School District strike.

increased. Until the 1973-74 school year, the mean and median length was less than three days; by 1978-79 half of the strikes lasted more than two weeks and the mean length was almost three weeks.

The trend toward longer strikes may reflect the parties' greater knowledge and sophistication in that they are able to avoid the mistakes that caused the brief strikes in the early years. In the interviews it was suggested that the early strikes were wage disputes that were easily resolved, while those in more recent years have been over difficult issues--a union demand for a "just cause" dismissal clause for new teachers, for example. Finally, the longer strikes may reflect an increasing impact of the state aid provisions on the bargaining behavior of some of the parties.

There is a second school financing issue that was related to past strikes and may be a factor in the future. It first arose following a strike in the Youngstown school district in 1966-67. Subsequently the school system had to close down in December 1968 until the end of the calendar year because it was unable to finance the salary increase it had agreed to in the earlier strike settlement. Because Ohio law requires school district budgets to be in balance at the end of a calendar year, the district had no choice but to close because it had expended all its funds for that year. The same thing has happened in several districts in addition to Youngstown, and not necessarily because of salary settlements that resulted from strikes. In a number of cases the districts and the teachers have reached a peaceful agreement on salaries that could not be financed by its present revenues, and when they went to the voters for the additional tax dollars, the voters refused to approve. In these cases, too, the systems had no choice but to close in December, reopen in January, and extend the school calendar into June in order to meet the state requirements for school aid.

In 1978 the Ohio legislature made two major changes in the regulations governing school district spending in an attempt to eliminate the December closings.[15] First, a new law was enacted stipulating that if an audit reveals that a local school district is financially unable to remain open, the state can take over the financial operations of the district for at least the remainder of the calendar year and for the entire subsequent calendar year. With this new regulation, the legislature hoped that local school officials would find state control of school finances sufficiently undesirable that they would refrain from activities that would lead to insolvency.

Second, the state's Clerk's Certificate Law was amended. Prior to 1978 this law required the clerk, the school board president, and the school superintendent to sign a certificate before agreeing to any contract obligating the expenditure of funds. The certificate attested that the district had sufficient funds to meet the obligations for the rest of the school year and the first six months of the following school year and to maintain an adequate educational program for this period. The 1978 amendment made any individual who knowingly signed a certificate containing a false statement liable up to $20,000 for the unauthorized expenditures.

Although these new fiduciary requirements were only partially the result of collective bargaining in the state, they may have an important effect on future bargaining. More strikes may occur because local school officials will be less willing to agree to monetary benefits to avoid a strike because of greater concern for the cost of the settlement relative to the district's available revenues.

The Legal Environment for Strikes in Illinois

As noted in the introduction to this chapter, Illinois has no statutory

law on public employee strikes and strike penalties, nor is there any public employee collective bargaining statute. Executive Order No. 6, issued by the governor in 1973, created collective bargaining rights and procedures for state employees. The order, however, is silent on the right of state employees to strike and does not specify penalties for an illegal strike.

The Illinois Anti-Injunction Act prohibits courts from enjoining peaceful strikes and picketing,[16] but its language does not indicate specifically whether it was meant to apply to private or public sector labor disputes, or to both. The first significant case involving an injunction against a strike by public employees was Board of Education v. Redding.[17] There the court held that public employees had no right to strike since public policy was to "provide a thorough and efficient system of state schools," expressly declared in Article VIII, Section 1 of the Illinois constitution, transcended the right of employees to strike or picket a public school. In support of the "essentiality of functions" doctrine, the court reasoned that governmental functions may not be impeded or obstructed by a strike. Thus, Redding provided Illinois with a constitutional rationale for a judicially interpreted no-strike policy for public employees, but the applicability of the Anti-Injunction Act, which was in effect at the time, was neither raised nor ruled upon in that case. In 1974 the Illinois supreme court did construe the Anti-Injunction Act and expressly held that municipal employees had no legal right to strike.[18] The court declared that the only purpose of the Anti-Injunction Act was to prohibit only the enjoining of lawful conduct. Therefore, it did not prohibit a court from enjoining unlawful strikes by public employees.

As in other states, the costs of teachers' strikes in Illinois have been greatly affected by state educational policy. The state requires that each school district provide 180 days of school during the year, four of

which are institutional training and preparation days and 176 are "pupil attendance days." If a district falls short of the 176 pupil-contact day requirement, state aid is reduced by 1/176 for each day less than the minimum.

The state uses two criteria in enforcing its education requirements. For a day of instruction to apply toward the state minimum, a district must offer at all grade levels all programs that are required by the minimum education standards. In addition, at least 50 percent of a district's students must be in attendance.[19] The state enforces these requirements during a strike by examining enrollment figures and monitoring the education program the district is offering. In a strike situation, the state superintendent's office or a regional or district branch office sends an individual to the school district to monitor the education programs and to check enrollment figures. If the district fails to meet either of the two requirements on any given day, that day is not counted toward the required 176.

In recent years, schools in most Illinois school districts have not remained open during a strike. While such a decision is influenced by a variety of factors, state policy undoubtedly is one of them. The cost of hiring substitutes combined with the risk of not being able to count the day toward the state-aid requirement because of program deficiencies or low attendance have been sufficient to keep districts from trying to remain open during a strike.

From an educational policy perspective, this state policy has merit. Educational quality appears to be protected because the state is able to ensure that students do not attend a school that is inadequately staffed because of an on-going strike. However, the policy also has important implications for the number of strikes and the relative power of employers and teachers. If the strike is a long one, it is fairly certain that many

pupil-contact days will be rescheduled to enable the district to come as close as possible to meeting the state requirement, and thus the costs to teachers of an additional strike day declines. On the other hand, as the number of strike days increases, the school boards are under mounting pressure from both the state and local political sources to settle the strike. As we discussed in the chapter on Pennsylvania, the impact on the balance of power created by an educational policy of this type must be carefully weighed against the protection the standard provides for the pupil population.

The Strike Experience in Ohio and Illinois

The number of public sector strikes in Ohio and Illinois over the past 20 years have followed national trends, showing increases in the late sixties. As can be seen in Table 3 where the number of strikes in the two states are classified by government level and function, strikes in school districts account for more than half of all public sector strikes in Illinois and for 42 percent in Ohio. The majority were teacher strikes.

However, these statistics do not indicate the probability that public employees will strike. Because Ohio and Illinois lack representation election procedures, the strike probabilities are important in two different contexts. One is the probability that a strike will occur during contract renegotiations or during the term of an existing contract. The second is the probability that disputes over union recognition will be resolved by a strike. These strike probabilities are summarized in Tables 4 and 5.

The probabilities are calculated from Census data which classify public sector strikes by contract status at the time of the stoppage. Thus, we used the sum of the number of strikes during contract renegotiations, the

Table IX-3

Strikes in Illinois and Ohio by Government Type and Function, 1974-77

	Illinois				Ohio			
	1974	1975	1976	1977	1974	1975	1976	1977
Government level[a]								
State and local	28	43	41	37	51	47	42	50
State	3	2	6	3	5	3	2	4
Local	25	41	35	34	46	44	40	46
Counties	2	1	1	3	3	2	4	4
Municipalities and townships	6	10	8	5	17	18	18	19
School districts	17	30	23	25	25	20	16	18
Local government function[b]								
Education	17	27	23	25	25	12	17	18
Teachers	14	27	21	21	22	11	15	17
Other	9	8	11	12	15	7	10	14
Highways	5	6	6	2	10	4	9	8
Public welfare	-	-	-	-	-	-	-	-
Hospitals	1	-	-	1	-	-	1	-
Police protection	-	2	1	3	4	2	7	5
Fire protection	1	1	2	3	1	1	8	9
Sanitation	2	3	1	1	9	2	6	7
Other	3	4	6	3	13	7	14	13

Source: U.S. Bureau of The Census, Labor-Management Relations in State and Local Governments, various years

[a]The number of strikes in local government may not sum to the number of strikes in counties, municipalities, townships, and school districts because strikes against special districts are not listed separately in the table but are included in the total number of local strikes.

[b]The strikes in each column sum to more than the total number of local government strikes reported in the table is because a strike against a local government may involve employees in more than one functional area. Therefore each strike against a government may be reported under more than one functional area.

term of the contract, and "other" to compute strike probabilities in established bargaining relationships; for the probability of a recognition strike we summed the number of recognition strikes and strikes for a first contract.

Our contract status classification was based on data from the Bureau of Labor Statistics work-stoppage reports, and the BLS classification, in turn, is based on employer responses to the question on contract status. We decided to combine recognition and new contract strikes because they often, in practical terms, are inseparable. In many new bargaining relationships in a state where there is no representation election procedures, a strike for a first contract often is also a strike to achieve recognition and, conversely, in strikes to achieve recognition the union usually hopes to achieve some additional bargaining outcomes in the first contract. We also assumed that an employer's response to the question of contract status in the BLS reports is often arbitrary and most strikes that are assigned to one category might also be appropriately included in the other.

Table 4 shows strikes in existing bargaining relationships as a percentage of three different numbers: in column (2), it is the number of governments with labor relations policies; in column (3), it is number of contracts that were renegotiated during the year; and in column (4) it is the number of bargaining units. The probabilities of strikes in Ohio and Illinois turn out to be above the national averages. In the other 48 states strikes occurred in approximately 3 percent of all contract renegotiations, whereas in Illinois the probability was .052 and in Ohio .069. While the differences between the two states and the rest of the country for the other two calculations are not as great as those in column (3), in all cases we found strike probabilities to be higher in Illinois and Ohio than elsewhere.

Table IX-4

Strike Probabilities in Established Bargaining Relationships in Illinois, Ohio and the Rest of the U.S., 1974-77

	Number of Strikes[a]	Strikes / Number of Gov't w. LR Policies	Strikes / Number of Contract Renegotiations	Strikes / Number of Bargaining Units
		Illinois		
1974	18	.0230	.0297	.0183
1975	38	.0470	.0662	.0339
1976	34	.0404	.0563	.0287
1977	27	.0340	.0571	.0214
1974-1977	117	.0363	.0518	.0257
		Ohio		
1974	40	.0610	.0766	.0342
1975	37	.0578	.0681	.0283
1976	33	.0490	.0516	.0251
1977	48	.0700	.0797	.0334
1974-1977	158	.0595	.0685	.0303
		U.S. Outside of Illinois and Ohio		
1974	330	.0324	.0292	.0176
1975	362	.0347	.0352	.0171
1976	260	.0240	.0239	.0114
1977	352	.0303	.0341	.0128
1974-1977	1304	.0302	.0304	.0145

Source: Same as Table IX-3.

a. These figures equal the sum of the number of strikes that occurred where the contract status at the time of the strike was either renegotiation of an existing agreement, during the term of the agreement or "other."

While these probability calculations do not control for any other strike determinants and, therefore, should be interpreted cautiously, they certainly do not offer support for the hypothesis that the absence of a law provides an environment for labor peace that is superior to one where there are laws with strike penalties and/or substitutes. The national strike averages are based on data from states without legislation as well as states with legislation ranging from repressive to permissive in their treatment of strikes. If no legislation on public sector bargaining ensured labor peace, then the probabilities of strikes in Ohio and Illinois should be less than the average in the remaining states.

While there are other states, especially in the South, without state legislation where there are fewer strikes than we found in Ohio and Illincis, most of them also have significantly less collective bargaining. The implication we draw from the figures in the table is that if bargaining occurs in a state, public sector strikes will not be discouraged by simply ignoring them and failing to provide a framework for resolving disputes.

Recognition and New Contract Strikes

In Illinois the 32 recognition/new contract strikes accounted for more than 21 percent of all public sector strikes in the state over the four-year period 1974-77; in Ohio the figure was 17 percent. Both proportions are significantly larger than the national average of 13.4 percent for the same time period. However, the percentage for the entire nation excluding Illinois and Ohio is only 12.1. In other words, as a proportion of total strikes, recognition/new contract strikes were 40 to 74 percent more frequent in Ohio and Illinois than in the rest of the nation.

In the Table 5 summary, recognition and new contract strikes are expressed both as a fraction of the number of newly unionized governments and as a percent of the number of newly created bargaining units. Each of these percentages may overstate the true strike probability because only recognition drives that were successful are included in the denominator; those that failed were not observed.

The results show that over the four-year period in the 48 states, excluding Ohio and Illinois, about 2.9 percent of the new bargaining relationships were established following a strike, while in Ohio the comparable figure was more than 12 percent and in Illinois it was over 14 percent. Assuming all recognition/new contract disputes occurred in newly established bargaining relationships, these figures indicate that strikes of this kind were three to four times more likely to occur in Ohio or Illinois than in the rest of the U.S. A similar pattern of difference is found by comparing columns (2) and (4). Strike probabilities as a percentage of both new contracts and new bargaining units are several times greater in these two states than in other jurisdictions. Although the data in the table consistently support the preceding conclusions, there are several inconsistencies in them that require explanation.

The calculated probabilities in the second column are based on the number of new contracts signed during the year,[20] and should be almost identical with those in column (4) because for each new contract there should be a corresponding new bargaining unit. This would not be true only if a new contract were negotiated for an existing bargaining unit—for example, if an employer and a union that had an established relationship negotiated a separate agreement covering a new area, such as pensions.

Table IX-5

Recognition and New Contract Strike Probabilities in Illinois, Ohio and the Rest of the Nation

1974-1977

	Number of Strikes[a]	Strikes/Number of New Contracts	Strikes/Number of Govts. that bargained for the first time[b]	Strikes/Number of New Bargaining Units[c]
Illinois				
1974	10	.0935	-	-
1975	5	.0909	.0909	.0365
1976	7	.1167	.2059	.1111
1977	10	.1563	.1667	.1316
1974-1977	32	.1119	.1477	.0731
Ohio				
1974	11	.0873	-	-
1975	10	.1053	.1724	.0730
1976	9	.1233	.3214	1.286
1977	2	.0260	.0212	.0159
1974-1977	32	.0863	.1235	.0778
U.S. Outside of Illinois and Ohio				
1974	62	.0362	-	-
1975	38	.0281	.0501	.0151
1976	34	.0206	.0754	.0223
1977	46	.0208	.0159	.0099
1974-1977	180	.0260	.0288	.0136

Table IX-5
(continued)

Source: U.S. Bureau of the Census Labor-Management Relations in State and Local Governments, various years, various Tables.

a. The number of strikes reported in this column is the number of strikes reported to have occurred during union recognition or negotiations of a first contract.

b. The number of governments that bargained for the first time during year t was calculated as the number of governments that reported having at least one bargaining unit in year t minus the number of governments reported to have had at least one bargaining unit in year t-1. Because 1973 data was not available it was not possible to calculate the number of governments that bargained for the first time in 1974. For this column the average figure reported in the row labelled "1974-1977" is the average for 1975-1977.

c. The number of new bargaining units for year t was calculated as the difference between bargaining units reported in year t and year t-1. For the same reason described above (See fn. 3) only three years of data are available and the last row for each state is only a three year average (1975-77).

Unfortunately, a year-by-year comparison of the figures in these two columns shows they vary substantially from one another in almost every year.

Similarly, in the third column where recognition/first contract strikes are calculated as a percent of the number of newly unorganized governments at the start of each period that recognized a union during the year, these strike probabilities should be significantly larger than those in column (2) since some new contracts were probably signed by governments that had bargained previously with at least some of their employees.[21] Although our predictions hold for all but two of our comparisons, the figures in column (3) show sizable variations from year to year.

Most of these problems can be explained if we examine the denominators we used. In each case they were U.S. Bureau of the Census estimates of population figures from their Survey of Governments. The variations from year to year in the last two columns for Illinois and Ohio were caused by yearly changes in the estimated number of new governments that bargained or in the number of new bargaining units. For example, in Ohio the Census estimated that there were 137 new bargaining units in 1975, 126 in 1977, but only seven in 1976. In addition to this significant variation, which was contrary to our expectations, the number of new contracts signed in 1975 to 1977 in the entire nation was considerably less than the number of new bargaining units recorded for those years. An estimated 5,639 new contracts were negotiated and an estimated 9,271 new bargaining units were established in the U.S. in 1975-77. If each new bargaining unit negotiated a contract, the number of new contracts should at least equal the number of new bargaining units. Although there may be some newly recognized bargaining units that had not succeeded in negotiating a contract during this period, the size of the discrepancy between the new units and first

contracts suggests that there are major reporting errors in one or both measures.

The explanation for the unusual results in the last two columns is that we calculated the number of governments bargaining for the first time and the number of new bargaining units by taking the difference between the reported number of organized governments or units in year t and year t - 1. These numbers for each year were the published population estimates based on Survey of Governments data, and since they are estimates, they are subject to nonresponse errors from the survey sample as well as to errors that occur when population estimates are obtained from a sample. If the errors are independent across years, then the variance of the difference between the population estimates from the two years equals the sum of the variances in each year's estimate and the result will be estimates of year-to-year change in bargaining units and new contracts that are of questionable reliability. We were able to avoid this measurement error problem in the results reported in column (2) since they are based on the estimated number of new contracts reported each year rather than on the difference between the estimates for two different years. Thus this denominator is subject to less measurement error than the other two. Despite possible measurement error, we do not change our conclusion based on our results that strike probabilities are significantly higher in Ohio and Illinois than in the rest of the nation.

The possible explanations are numerous. Some of the difference may be due to differences across states in the willingness of the parties to compromise or, more likely, in the degree of employer opposition to collective bargaining. However, neither Illinois nor Ohio would be characterized as

anti-labor, since the BLS reported that in 1974 Illinois was the seventh most organized state in the nation and Ohio was the ninth.[22] Thus it seems unlikely that public employers in these states would be any more opposed to public sector bargaining than employers in the rest of the U.S.

We would argue that a more plausible explanation for the high recognition/first contract strike propensity is that neither state has any collective bargaining legislation. Yet both states are heavily organized in the private sector and this employee desire to unionize and bargain probably carries over to the public sector. However, without any election procedures to resolve representation questions and without a legal obligation on the employer to bargain in good faith if a union wins a representation election, a strike may be the employees' only option if they hope to win recognition for their union and to negotiate a contract with a public employer.

This interpretation is supported by comparing the experience in Ohio and Illinois with that in the neighboring state of Indiana. Indiana passed a bargaining law for teachers in 1973; between 1972 and 1977 more than 200 new bargaining relationships were established with no reported recognition/first contract strikes. In Illinois teachers signed 111 new contracts with school districts during the same five-year period and there were recognition strikes in 17 school districts (15.3 percent). In Ohio there were 207 new contracts and eight recognition/new contract strikes (4 percent). Although the number of strikes as a percent of new contracts was substantially higher in Illinois than in Ohio, both figures are greater than the zero in Indiana.

The data presented in this section also do not support the hypothesis that strikes by public employees can be minimized if states adopt the policy of simply removing themselves from the bargaining process. Collective bargaining is occurring in the public sector in these two states and the

parties are more likely to use strikes to resolve recognition disputes in Illinois and Ohio than in the rest of the country. The evidence strongly supports the conclusion that had there been bargaining rights legislation, some of the recognition/first contract strikes could have been avoided.

This conclusion does not necessarily mean that the net effect of legislation in either state would be to reduce the total number of strikes. Bargaining legislation would facilitate an expansion of bargaining to governments and employee groups where it presently does not exist. As Table 1 shows, a substantial number of public employees are presently unrepresented. An increase in the number of bargaining units creates the potential for more strikes over contract renegotiations. Therefore, the net effect of legislation on the total number of strikes depends on the penalties and substitutes for illegal strikes that are in the law. Of course, even if there were no net change in the total number of strikes but simply fewer recognition/new contract disputes and more renegotiation strikes, the legislation would be desirable if the spread of bargaining to employees who wanted it is viewed as sound public policy.

Chapter IX

Footnotes

1. In Ohio the Ferguson Act outlaws strikes and imposes stiff penalties on employees that violate the prohibition. However, as we explain later in this chapter, it has not been enforced.

2. The greater number and propensity of teachers to strike in these states is documented and discussed later in the chapter. A comparison by government level of the two parts of Table 1 supports the statement that bargaining occurs primarily in only large municipalities. The percentage of employees covered by a collective bargaining agreement is much greater than the number of governments with at least one bargaining unit which indicates bargaining is concentrated among large employers.

3. The only major exception to this is in Indiana where non-education employees in the public sector also lack coverage under a bargaining law.

4. Ohio Rev. Code Ann., Section 4117.01-4117.05 (1978).

5. Ohio Rev. Code Ann., Section 4117.04 (1978).

6. Ohio Rev. Code Ann., Section 4117.04 (1978).

7. Goldberg v. Cincinnati, 26 Ohio St. 2d 228 271 N.E.2d 284 (1971).

8. Ohio Rev. Code Ann., Section 4117.05 (1978).

9. Ohio Rev. Code Ann., Section 4117.03 (1978).

10. Markowski v. Backstrom, 10 Ohio Misc. 139, 226 N.E.2d 825 (1967).

11. State Board of Education of Ohio, Resolution on Need for Legislation on Labor Relations and Work Stoppages, September 10, 1979.

12. State Board of Education of Ohio, Resolution Regarding Procedure for Department of Education Dealing with Strikes, September 10, 1979.

13. Letter from William E. Saxbe, Attorney General, to Martin W. Essex, Superintendent of Public Instruction, dated November 24, 1967.

14. For a description of the school aid formula and requirements to receive aid see The Ohio Law for State Support of Public Schools, Ohio Department of Education, Division of School Finance, Columbus, Ohio, 1980.

15. A summary of these two changes can be found in Summary of 1978 Enactments, November-June, 112 General Assembly, Ohio Legislative Service Commission, July, 1978, pp. 95-102.

16. Illinois Rev. Stat., Ch. 48, Section 2a (1975).

17. Board of Education v. Redding, 32 Ill.2d 567, 207 N.E.2d 427 (1965).

18. City of Pana v. Crowe, 57 Ill.2d 547, 316 N.E.2d 513 (1974).

19. These requirements are spelled out in a letter to regional and district state superintendents from Joseph M. Cronin, State Superintendent of Education, August, 1978.

Chapter X

A Statistical Analysis of Strike Propensities

The model developed in Chapter IV provides the theoretical framework for our evaluation of the effect of strike penalties and substitutes on the frequency of public sector strikes. In this chapter we specify and estimate a set of equations that test the predictions about strike frequency which follow from our model and the institutional analyses of the states in Chapters V-IX. In the first of the following sections we present the empirical specification of the model, the data used to test it, and the statistical procedures used to estimate the equation.

Specification of the Model

The model in Chapter IV predicts that strikes may occur if the parties have differing expectations about strike outcomes. The wage each party is willing to concede in order to prevent a strike depends on that party's strike costs and strike expectations. A positive contract zone will exist at the strike deadline if each party expects the same wage settlement and if a strike is costly to both. When their expectations diverge, strike costs may be insufficient to yield a positive contract zone and a strike will result.

In this section we specify the empirical counterparts of the variables that affect the size of the contract zone. Each variable influences either the costs of a strike to one of the parties or the strike expectations of both which, in turn, affect the size of the contract zone. We divide these variables into measures of employee

compensation, government finances, bargaining unit characteristics, community characteristics, and legal constraints.

Two wage variables were included in the model. The first was the average earnings of the employees for the month of October preceding the time period when strikes were predicted. One might expect from our model that strikes will be more likely among high-wage employees: as wages increase, the money the employer saves by taking a strike increases which will have the effect of decreasing his last offer and, thus, the size of the contract zone. However, this positive relationship may be offset by the political costs of the strike to the employer. Citizens in high-wage communities may place a higher value than other taxpayers on the services provided by striking government employees so that the political costs of interrupted services are also higher. These conflicting impacts of wage levels on employer bargaining behavior mean that we are unable to specify theoretically the net impact of wages on strikes. Despite this theoretical ambiguity, wage level was included in the strike model.

We also expect that changes in wage levels (ΔW_{t-N}) in the years preceding the year in which strikes were predicted will be negatively related to strikes because of the impact of these changes on the strike expectations of both parties. More specifically, in equation (12) of Chapter IV we demonstrated that the contract zone shrinks as the difference between what the union expects from a strike (W_u) and what the employer expects (W_m) increases in size. With several simple and reasonable hypotheses about how past changes in the wages of government employees and of the citizens affect union and employer strike expectations,

it is possible to show that $W_u - W_m$ increases as W declines. For union members, W_u is assumed to be negatively related to changes in their real wages and positively related to changes in the real wages of taxpayers:
(1) $W_u = a_0 + a_1 \Delta W_{Real,\ Union} + a_2 \Delta W_{Real,\ Citizens} + e_u$, where
$a_1<0, a_2>0$ and $|a_1|>|a_2|$.

This equation simply states that when the real wages of employees decline during the term of a contract, union members expect to receive more from a strike — that is, restoration of their lost income. But they also lower their expectations as taxpayer real income declines. The constraint that $|a_1|>|a_2|$ means that union member expectations are more responsive to changes in their own economic welfare than to changes in taxpayer welfare.

The wage the employer expects from a strike is negatively related to changes in the real wages of its employees and positively related to the real wages changes of taxpaying citizens in the community:
(2) $W_m = b_0 + b_1 \Delta W_{Real,\ Union} + b_2 \Delta W_{Real,\ Citizens} + e_m$, where
$b_1 < 0,\ b_2 > 0$ and $|b_1|<|b_2|$.

Two additional restrictions are imposed on equations (1) and (2). First, changes in the real wages of citizens are expected to have a greater impact on the employer's expectations than on the union's expectations. Second, union wage expectations are expected to be more responsive than employer expectations to changes in the real wages of government employees. These two restrictions imply that $|b_2|>|a_2|$ and $|a_1|>|b_1|$. Intuitively, these restrictions and those specified in (1) and (2) imply that when forming expectations about outcomes from a strike, each side is more responsive to the real wage changes of its own constituency than to the real wage changes of its bargaining opponent's constituency.

Subtracting (2) from (1) and rearranging terms yields:

$$(3)\ W_u - W_m = a_0 + b_0 + (a_1 - b_1)\ \Delta W_{\text{Real, Union}} + (a_2 - b_2)\ \Delta W_{\text{Real, Citizen}} + e_u + e_m.$$

It is clear from the restrictions described above that $(a_1 - b_1) < 0$ and $(a_2 - b_2) < 0$. Therefore, the difference in the parties' strike expectations and the size of the contract zone is negatively related to changes in the real wages of private sector employee-taxpayers and of government employees.

In the empirical analysis that follows, we were unable to observe directly $\Delta W_{\text{Real, Union}}$ or $\Delta W_{\text{Real, Citizen}}$ as data were available only on the change in the money wages of government employees, ΔW. If it is assumed that in a given year all employees (public and private) in a community face similar price changes, then changes in money wages will equal changes in real wages.

If we further assume that the money wage changes of taxpayers are positively related to changes in the money wages of government employees, then there will be a negative relationship between ΔW and $W_u - W_m$, and we may expect to observe a negative relationship between ΔW_{t-n} and the probability of a strike in year t.

Within the limits of the data, we experimented with several specifications of the wage change variable. Because we had wage information only for each year from 1973 to 1976, we were limited in the number of years over which this variable could be constructed. When strikes during 1976 are predicted, we include two separate wage change variables (1973-74 and 1974-75) that allow the effect of wage changes on strikes in

period t to vary depending upon the length of the lag. It is expected that wage changes over the year immediately preceding year t (t - 1) will have a greater impact on strikes than will wage changes in the earlier periods. When strikes in 1975 were predicted, only the change in wages between 1973 and 1974 was included in the model.

Except for a few private sector strike studies that used the aggregate unemployment rate as a variable, the impact of changing employment opportunities on the willingness of workers to strike has been largely ignored.[1] This omission may not be too serious in private sector analyses because most workers there accept the job insecurity created by business cycle variations, provided the parties have agreed on equitable rules for handling layoffs and recalls. However, in the public sector layoffs or threatened layoffs may contribute to strikes because public employees traditionally have enjoyed a high degree of job security and may have come to expect it as a job right. In addition, the parties may have no agreed-upon procedures for determining how a reduction in employment is to be administered when budget constraints force employment cutbacks. Thus, even if public sector unions and employees accept the principle of employment reductions, there may be conflict over how such reductions are to be carried out. To measure the impact of workforce reductions on strikes, the percentage change in employment prior to year t was included in the model. A lagged coefficient similar to the lagged wage variables was estimated for each of the years prior to year t.

As government finances also affect a public employer's strike costs, we included two finance variables in our model. We hypothesized that public pressure to resist union demands will be greatest where governments recently have instituted the largest tax increases. This pressure, in turn, will reduce the size of the contract zone and result in higher strike probabilities. Therefore, our model included lagged property tax changes for each year preceding year t. A second finance variable was local tax revenues as a percentage of total government revenue. The cost of a settlement that is absorbed by local taxpayers will decline as the percentage of total revenues from state and federal sources increase. Elected officials in governments that receive a significant amount of outside revenue may be able to prevent strikes by making concessions they would be unwilling to make if they had to finance them with only local revenues and face taxpayer opposition to the concessions. The result should be fewer strikes in governments heavily subsidized by revenues from outside sources.

The bargaining unit variable in our equation was the percentage of employees in the government who belonged to the union in year t - 1. Unions are more likely to undertake a strike that is supported by the rank and file. In the public sector where the union shop is uncommon, the union membership is a reasonable proxy for rank-and-file support.

The effect of community size and bargaining unit size was measured using a set of dummy variables corresponding to different student enrollment or community population ranges. It is hypothesized that strikes will be more frequent in larger communities because it is more difficult for the employer to replace a large workforce. Given the

stratification of the analysis by occupational groups, student enrollment or community size also reflects the impact of bargaining unit size on strikes. The following population figures were used in constructing this variable for the municipal government sample: population < 10,000—small; population 10,000-25,000—medium; population > 25,000—large. The only information available for school districts was average enrollment figures. Therefore, in our analysis of teacher strikes a dummy variable was created to denote districts with 5,000 or more students.

In our theoretical discussion of the impact of penalties and substitutes in Chapter IV, we assumed that they could be measured easily along a single dimension. Unfortunately, such is not the case. As Tables I-1 and I-2 show, the different states have a variety of penalties and substitutes, differing according to the legality of strikes, the standards and procedures for the authorization of injunctions, the type of penalties against employees and/or unions, the party responsible for enforcing the penalty, the amount of discretion available when enforcing penalties, the availability of mediation, factfinding, or arbitration as a strike substitute, and the impact on bargaining of other policies such as state educational requirements.

We avoided trying to measure these diverse policies across all 50 states by confining our statistical analysis to either five or six of the states discussed in Chapters V-IX. Hawaii was excluded from the analysis because the central role of the state government in all negotiations eliminated the possibility of any independent observations. Wisconsin was excluded from the analysis of teacher strikes because fewer than 20 school districts met the sample selection criteria explained later in this chapter.

Confining the statistical analysis to five or six states made it easier to identify the key policy characteristics in each of them. However, because the number of options along each policy dimension frequently exceeded the number of states in the sample, with one exception we did not attempt to measure each key policy. Instead for each state we included a dummy variable which would reflect the combined effect on strikes of all policies within that state. We then relied on our institutional analysis and evaluation of each state's policy to make a judgment about its relative effects.

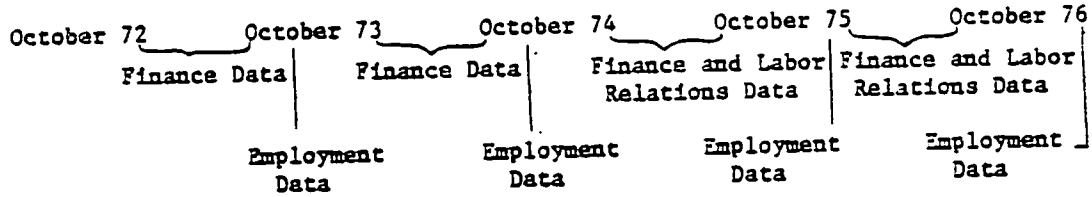
A strike substitute for police and firefighters was the only case where we measured directly the presence or absence of a policy. Half the states in our sample (New York, Pennsylvania, Wisconsin) required that these disputes be arbitrated and half (Illinois, Indiana, Ohio) lacked any law that provided an alternative to an illegal strike. For these two groups, a dummy variable indicating whether or not the observation was covered by an arbitration law was included.

Data Sources

The data used to estimate the equations specified above came from Census of Governments surveys for the years 1973 through 1976. Each year the U.S. Bureau of the Census gathers employment and finance data from a stratified random sample of approximately 16,000 governmental units. As the survey sample remains essentially unchanged from year to year, we were able to combine the data for each of the four years to create a panel of cities in our six states for which we had employment and finance data for each of the years. Separate analyses were then performed on different subsets of this panel data set.

However, since we did not have any information on labor relations or strikes for 1973 and 1974, we were not able to use the finance and employment data to predict strikes, but we did use them to construct some of the independent variables described earlier in this chapter and to predict strikes in 1975 and 1976. However, we had data for 1975 and 1976 on government finances, labor relations, and employment, and thus were able to use strike activity in each of these years as a dependent variable.

The Bureau of the Census surveys its sample of governments in October of each year. The data on government finances and most of the labor relations information are for the entire 12-month period preceding October of the survey year. The employment and wage data, however, are the employment levels and wages paid by that government only during the month of October of the survey year. For the four-year period we studied, the data periods can be summarized as:



The financial data for a four-year period, employment and earnings data for October of four different years, and labor relations information for the last two years constitute the data base for our analysis. The two years of labor relations data, 1975 and 1976, permitted an analysis of strikes for each of these years.

The values for many of the independent variables in the model were based on data from the years preceding the year for which strikes were

being predicted, to avoid the biasing effect of possible simultaneity between strikes in one period and the value of the independent variable in the same period.

The Census data on strike activity in the public sector in 1975 and 1976 came from two principal sources. One was the self-report of each government in response to a work-stoppage question in the Census of Governments survey. The other was information that the Census Bureau receives from the Bureau of Labor Statistics (BLS)—its Work Stoppage Reports for the public sector—which the Census then compiles and codes so that they can be matched with its own finance and employment data from the Survey of Governments. The Bureau of the Census attributes greater reliability to the BLS data than to the questionnaire self-reports because some governments may report work stoppages that are due to factors other than a labor dispute.

Also available was a separate strike file of teacher strikes in New York and Pennsylvania,[2] constructed to include strikes during three consecutive school years, 1975-76, 1976-77, and 1977-78. Not only did this file supply an additional year of data, but it had the added advantage of having teacher strikes coded by each school year rather than by an October 1-September 30 fiscal year. This permitted an interpretation of the results in the context of a typical school calendar rather than the U.S. government's data collection schedule. For teachers, this difference is significant because most teacher strikes occur in September.

Each of the 16,000 governments surveyed by the Census Bureau is classified as a county, municipality, township, school districts, or

special district. Definitions of these categories except for the "special district" are obvious. A special district is an independent unit of government that specializes in providing a particular service; transit authorities, housing authorities, and sewage and waste-treatment districts are examples. Our statistical analysis of strikes in six states was confined to municipalities, townships, and school districts that responded to the surveys for all four years (1973 to 1976) and consistently reported employment and finance data each year. The sample for analysis of teacher strikes in school districts was limited to those districts that reported engaging in collective negotiations with at least one group of employees. Since bargaining by nonteacher groups in school districts is unlikely if the teachers do not also bargain, application of this selection criterion probably results in including all districts that did bargain with teachers and excluding most districts that did not.

The municipal government sample included all governments that consistently reported the data each year. Because bargaining is generally less common among municipal governments than among school districts, there were more opportunities for strikes over union recognition in our municipal governments sample; for this reason we included recognition strikes in the analysis. Thus, the results for municipal employees reflect the effects of state policy on both first-contract or recognition strikes and strikes in established relationships, while the teacher strike results are for strikes in only established bargaining relationships.

In determining what our units of observation would be, we had two choices: to treat each government as a single observation, or to treat a particular functional area or bargaining unit within a government as

an observation. In the former case, the dependent variable would be whether or not a strike occurred in a government in year t. In the latter, an equation would be estimated for each functional area across a set of governments of a particular type, and the dependent variable would be whether or not employees in that area or bargaining unit struck those governments. This approach has the advantage of allowing us to examine conflict on an occupational level and identify the impact of differences across occupations or bargaining units. From the standpoint of policy evaluation, this advantage is important because within a particular state different laws that presumably have an impact on strikes may cover different groups of public employees. Because of this advantage, we chose to analyze particular governmental functions or occupations separately. For school districts, only teacher strikes were predicted. For municipalities, we divided the sample into three groups and conducted separate strike analyses for firefighters, police, and all other municipal employees. While this last category includes a number of different occupations, in the three states that require arbitration of police and firefighter disputes, all employees in the "other" category were covered by a single legislative or common law policy. This breakdown permitted us to do a separate analysis of each law in each state. We also established separate categories for police and firefighters because not all municipalities had full-time employees in each category. Thus, the sample sizes for these two groups varied because municipalities without employees performing these functions were excluded from the analysis.

The sample sizes that resulted after we applied our selection criteria are summarized in Table X-1. Note that we have no teacher sample for

Table X-1

Sample Size Breakdown by Occupation and State

Occupation	State						
	Illinois	Indiana	New York	Ohio	Pennsylvania	Wisconsin	Total
Teachers	108	128	264	172	293	0	965
Nonuniform Municipal Employees	102	80	176	133	135	53	679
Police	92	75	122	125	122	53	589
Firefighters	72	56	60	89	48	43	368

Wisconsin. Although teacher bargaining is almost universal in the state, only ten districts met the constraints described above because of inconsistent reporting of information from year to year by Wisconsin school districts. If local property taxes varied by more than 75 percent from one year to the next, or if teacher employment varied by more than 50 percent from one year to the next, the observation was excluded from the analysis. For reasons we have yet to identify, this eliminated most districts from the sample. So few remained that we decided to drop Wisconsin from the analysis of teacher strikes, thus reducing the school district sample to a total of 965 observations.

Statistical Procedures

The dependent variable of interest in this study is the occurrence of strikes by public sector employees. Our measure was a zero-one dummy variable indicating whether or not a strike occurred in period t. Two estimation problems are encountered if the traditional ordinary least squares (OLS) procedure is used to predict strikes. First, because the lower bound of the dependent variable is 0 and the upper bound is 1, the estimation technique must not yield predicted values outside the 0-1 range. If OLS is used in this analysis, it is quite possible that predicted strike probabilities might be less than 0 for many observations because for the vast majority of them there were no strikes. The second problem with using OLS when the dependent variable is bounded is that the error term is heteroskedastic, leading to biased standard errors and making it impossible to determine the statistical significance of individual coefficients.

We overcame the shortcomings of OLS by estimating each strike equation using a logistic function. The logit model provides estimates of the probability of a strike given values on a set of independent variables. This relationship is expressed as:

$$STRIKE_i = 1/(1 + e^{BX_i + U_i})$$

Where STRIKE is the probability of a strike in government i: X is the vector of independent variables described earlier for the i observation; and B is a vector of parameter values that correspond to the independent variables.

This logit equation was assumed to describe the relationship between strike probabilities and the independent variables. The coefficients (B) in the equation were estimated using a maximum likelihood technique which, by definition, maximizes the probability of correctly classifying strike and no-strike observations conditional on the values of Xs. The coefficient estimates were then used to calculate the probability of a work stoppage given certain X values by simply solving the estimated logit equation for STRIKE.

Statistical Results of the Impact of Penalties and Substitutes in Six States

The theoretical discussion and the institutional analyses of strikes in the six states suggest that strike penalties and substitutes do have an impact on strike probabilities. The statistical evidence that confirms these hypotheses and any qualifications on the statistical results are presented in this section.

We concentrate on how the logit estimates translate into strike probabilities under different policies in different states by using these

estimates to calculate the predicted strike probabilities for a typical observation under each policy in each state. For each sample a typical observation is defined as a government whose values for the independent variables equal the sample means or medians. To facilitate our emphasis on the differences in strike probabilities across states and under different policies, we have minimized our discussion of the results for the other variables in the model. We have also put some of the estimated logit equations in Appendix tables rather than in the body of the chapter.

Our results are presented in three sections, the first of which is the five-state analysis of teacher strikes. In the second section are the results for strikes by municipal employees outside of protective-service occupations. These two sections provide an evaluation of the effects on strikes of different kinds of strike penalties and the availability of factfinding. In the third section we present our analysis of firefighter and police strikes. Although strikes by these employees were illegal in all six states and in some cases there were statutory penalties for striking, the alternative of compulsory arbitration was available to them only in New York, Pennsylvania, and Wisconsin during the period under study. The other three states had no collective bargaining legislation designed to prevent police and firefighter strikes. The comparison of the strike experience in the two groups of states permits an evaluation of the impact of interest arbitration on strikes when compared to a no-law environment.

Teacher Strikes

As described earlier, the basic model used to analyze teacher strikes included measures of school district size, changes in property taxes, wages, and employment in the previous period, unionization, and state aid as well as a set of state dummies. These variables were included in logit equations to explain strikes over a two- or three-year time period.

In the analysis of strikes in Illinois, Indiana, New York, Ohio, and Pennsylvania, the dependent variable was the occurrence of a strike during the 24-month period from October 1, 1974, to September 30, 1976.[3] For part of the analysis, this 24-month period was divided into two 12-month periods—hereafter referred to as 1975 and 1976.

In addition to the strike data from the Census tapes, we also had a file of state-agency data for New York and Pennsylvania for the 1974-75, 1975-76, and 1976-77 school years. Since these two states are at opposite ends of a continuum of policies for dealing with public sector strikes, the construction of a strike file that allowed a comparison of strikes in these two states for several consecutive school years is important.

Tables X-2 and X-3 show the logit results for teacher strikes in 1975 and 1976. Even though the equations were similarly specified, the coefficients changed dramatically from one year to the next. Nevertheless, most of the signs are in the expected direction. The variables with unexpected signs were employment changes in the 1975 equation and property tax changes, state aid, and employment changes from 1974 to 1975 in the 1976 equation. Even with these unexpected results, the analysis is generally consistent with the hypothesis that strikes occur in large

TABLE X-2

Logit Estimates of Teacher Strikes

In Five States, 1975

Variable		Variable	
CONSTANT	-5.63654 (3.8955)	ILLINOIS	1.18810 (2.1180)
SIZE (Students $\geq$ 5000)	.79918 (2.7596)	INDIANA	.20189 (.2817)
Δ PROPTAX$_{73-74}$	.59793 (.9193)	OHIO	.70825 (1.0909)
STATE AID %	-1.38281 (.9331)	PENNSYLVANIA	1.35613 (2.7205)
UNIONIZATION	2.40571 (.9445)		
Δ EMPLOY$_{73-74}$	.03290 (.0207)		
Δ WAGES$_{73-74}$	-4.72802 (2.8551)		
WAGES$_{74}$	.00088 (.7817)		

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 965

Chi Square = 45.228

TABLE X-3

Logit Estimates of Teacher Strikes

In Five States, 1976

Variable		Variable	
CONSTANT	-5.70472 (3.0798)	ILLINOIS	2.11490 (2.1828)
SIZE (Students ≥ 5000)	1.30484 (3.5858)	INDIANA	1.20922 (1.0316)
Δ PROPTAX$_{73-74}$	-.40467 (.3115)	OHIO	2.08969 (1.9999)
Δ PROPTAX$_{74-75}$	-2.71853 (1.8368)	PENNSYLVANIA	3.08027 (3.5270)
STATE AID %	3.13766 (2.5739)		
UNIONIZATION	.93965 (.9339)		
Δ EMPLY$_{73-74}$	-4.31717 (1.7827)		
Δ EMPLY$_{74-75}$	2.06254 (.9094)		
Δ WAGES$_{73-74}$	-.41654 (.2762)		
Δ WAGES$_{74-75}$	-3.18564 (1.5586)		
WAGES$_{75}$	.00094		

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 965

Chi Square = 79.637

unionized school districts that have experienced relatively little recent wage growth.

The coefficients on the state dummies are consistent with the model in Chapter IV and the institutional analysis of each state. The positive coefficients on four of the state dummies imply that strikes are more frequent in Illinois, Indiana, Ohio, and Pennsylvania relative to New York which has the most punitive strike penalties. At conventional levels of significance (.05), each of the state dummies except Indiana is statistically different from New York. Note also that strikes are most frequent in Pennsylvania where teachers have a limited ~~legal~~ legal right to strike.

Because of the functional form of the logit model, the coefficients in Tables X-2 and X-3 are not directly interpreted as strike probabilities. In order to interpret the coefficients on the state dummies, the logit model was evaluated at the overall sample means for all variables except the state dummies. The impact of each state policy was then measured by setting one of the state dummies equal to 1 and all other dummies equal to 0. The results of this exercise are shown in the first two columns of Table X-4. Each figure corresponds to the probability of a strike for an "average" school district in a particular state during either 1975 or 1976.[4]

The descending rank order of the five states for both years by probability of a strike is: Pennsylvania, Illinois, Ohio, Indiana, and New York. This ordering supports the hypothesis that state policy toward teacher strikes has a major impact on strike probabilities. New York and Pennsylvania, which clearly reflect the two extremes of a public policy

TABLE X-4

Teacher Strike Probabilities

Evaluated At Sample Means

	1975[a]	1976[a]	1975-76[b] Districts < 5000 students	1975-76[b] Districts ≥ 5000 students
Illinois	.0576391	.0166485	.05561769	.318601
Indiana	.0223045	.0067979	.02573624	.0605345
New York	.0183017	.0020384	.0295672	.0377642
Ohio	.0364726	.0162408	.04503428	.0947352
Pennsylvania	.0674738	.042563	.11756104	.3220076

a. These estimates were based on the logit estimates from the pooled five state sample. These estimates are shown in Table X-2 and X-3.

b. These estimates were based on the logit estimates where a separate logit equation was estimated for each state. These estimates are shown in Tables AX-1 through AX-5.

continuum, have, respectively, the lowest and highest strike probabilities. Under Indiana's law that includes factfinding and prohibits payment for strike days that are rescheduled, the predicted strike probability is greater than New York's but less than the probabilities in the other three states. However, the difference between New York and Indiana is not statistically significant. In Ohio and Illinois where strikes are illegal but penalties are infrequently imposed, strikes are more likely than in New York or Indiana where penalties are imposed, but less likely than in Pennsylvania where there is a legal right to strike.

While the rank order of states by strike probabilities was identical in 1975 and 1976, there were fewer strikes in 1976 than in 1975. Strike probabilities in 1976 declined from the 1975 level by amounts ranging from .01545 in Indiana to .0408 in Illinois. However, because the strike probability in all of the states was small, these decreases frequently correspond to very large percentage changes in strike probabilities. For example, in New York the strike probability declined by a factor of almost 10 between 1975 and 1976. Such sizable shifts within states across years makes a comparison of the quantitative differences in strike probabilities between states very difficult. The extreme example of this problem occurs when comparing New York and Pennsylvania: in 1975 strikes were about 3.7 times more likely in Pennsylvania, but in 1976 the difference corresponds to a factor of almost 21. These results suggest the the impact of a state policy varies significantly from year to year. Despite the within-state variation, the results are consistent with the hypothesis that state policies toward strikes do have an impact on strike probabilities.

The strike probabilities shown in the first two columns of Table X-4 assume that the impact of the other independent variables are the same across each of the states. This assumption may be invalid because state policies toward strikes may be interacting with some of the other variables to determine the probability of a strike. For example, the impact of previous wage changes on strikes may depend on the costs of a strike to teachers, and they may strike where the costs are less even though they had recently received relatively high wage increases. On the other hand, a significant erosion of real income may have to occur before teachers are willing to strike in a state where penalties are substantial. To allow for this possibility, a separate logit equation was estimated for each state in which the dependent variable was whether or not at least one strike occurred over the two-year period. Strike probabilities from these estimates (shown in Appendix Tables AX-1 to AX-5) and the mean values for the independent variables from the entire five-state sample were used to compute strike probabilities for each state. These estimates appear in the third column of Table X-4.

Because two years of strike data were combined, these figures refer to the probability of at least one strike in 1975-76. The major substantive difference between these estimates and those shown in the first two columns of the table is that Indiana has a slightly lower strike probability than New York for small districts (student < 5000). About 65 percent of the districts in the sample were in the "small" category.

The predicted strike probabilities increased in all five states for the large districts (student $\geq$ 5000); these probabilities are shown in the last column of Table X-4. In Pennsylvania, large districts were

three times more likely than the small districts to experience a strike, and in Illinois and Ohio the increases were by a factor of two and five, respectively. Although only Indiana and New York shift positions in the rank order of the probability of strikes in large districts, the differences in the probabilities between the states changed significantly.

The results summarized in Table X-4 are based on strike data from the Census of Governments data tapes. The year-by-year estimates using the data file constructed from the New York and Pennsylvania state strike data are similar to those reported earlier and are shown in Tables X-5 through X-7. The coefficients change significantly from year to year, but across all three years the probability of a strike was significantly lower in New York than in Pennsylvania. The estimated probability of a strike in the two states, using the mean values of the independent variables for both states, are shown in Table X-8. In 1975--76 strikes were 25 percent less likely in New York, and in 1975-77 and 1977-78 the difference increased to a factor of about 61 and 25, respectively.

When the strike experiences for the three-year period were combined and a separate logit equation was estimated for each state, we obtained the results displayed in Table AX-6 and AX-7. These estimates translate into the probabilities shown in the last two columns of Table X-8 for small and large districts. In Pennsylvania there was an almost 19 percent chance that a small school district would experience at least one strike, whereas in New York there was less than a 3 percent chance. Among large districts the probability of at least one strike more than doubled in Pennsylvania and almost doubled in New York.

TABLE X-5

Logit Estimates of Teacher Strikes
In New York and Pennsylvania,
1975-76 School Year

Variable	Estimates
CONSTANT	-5.96466 (3.6383)
SIZE(Students $\geq$ 5000)	.57906 (1.5436)
Δ PROPTX$_{73-74}$	1.39313 (.9394)
STATE AID %	-1.07460 (.9218)
UNIONIZATION	3.65159 (2.5801)
Δ EMPLY$_{73-74}$	.13629 (.0622)
Δ WAGES$_{73-74}$	-1.44568 (.7756)
WAGES$_{74}$	.00116 (.8272)
NEW YORK	-1.48292 (2.4342)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 557

Chi Square = 21.181

TABLE X-6

Logit Estimates of Teacher Strikes
In New York and Pennsylvania,
1976-77 School Year

Variables	Estimates
CONSTANT	2.99936 (1.6639)
SIZE (Students $\geq$ 5000)	1.57928 (3.3075)
Δ PROPTX$_{73-74}$	-1.14384 (.5549)
Δ PROPTX$_{74-75}$	.2924 (.1335)
STATE AID %	-5.82424 (3.1133)
UNIONIZATION	-.45537 (.4278)
Δ EMPLY$_{73-74}$	-1.74270 (.5485)
Δ EMPLY$_{74-75}$	-4.27039 (1.0547)
Δ WAGES$_{73-74}$	-4.16420 (1.3893)
Δ WAGES$_{74-75}$	-4.98068 (1.5748)
WAGES$_{75}$	.00312 (1.5637)
NEW YORK	-4.20157 (3.1807)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 557

Chi Square = 56.458

TABLE X-7

Logit Estimates of Teacher Strikes
In New York and Pennsylvania,
1977-78 School Year

Variable	Estimates
CONSTANT	5.26811 (2.0733)
SIZE(Students $\geq$ 5000)	.29096 (.4842)
Δ PROPTX$_{74-75}$	-.59448 (.1966)
Δ PROPTX$_{75-76}$	-.01817 (.0062)
STATE AID %	-.05436 (.0299)
UNIONIZATION	1.16357 (.63369)
Δ EMPLY$_{74-75}$	2.39897 (.6026)
Δ EMPLY$_{75-76}$	-5.33094 (1.3037)
Δ WAGES$_{74-75}$	-2.45714 (.8369)
Δ WAGES$_{75-76}$	-.28620 (.1024)
WAGES$_{76}$	.00123 (.51148)
NEW YORK	-3.25242 (2.3302)

Numbers in parentheses are equal to the absolute value of the coefficients divided by the standard error.

N = 557

Chi Square = 18.298

TABLE X-8

Teacher Strike Probabilities in New York And Pennsylvania, 1975-77

	Pooled State Estimates				
	School Year				
	1975-76[a]	1976-77[a]	1977-78[a]	1975-78[b]	
				Districts < 5000 students	Districts ≥ 5000 students
New York	.0653373	.00139956	.0018533	.02608192	.0508588
Pennsylvania	.0826776	.08559643	.0458029	.18651585	.4132236

a. These estimates were based on the logit estimates from the two state pooled sample. These estimates are shown in Tables X-5 through X-7.

b. These estimates are based on separate logit estimates for each state. These estimates are shown in Table AX-6 and AX-7.

Strikes by Nonuniformed Municipal Employees

The statistical analysis of strikes by public employees who are neither teachers, police, nor firefighters is important not only for its own sake, but because the latter three groups are often accorded unique treatment under state law and the results of an analysis of their experience may not generalize to other public employees. For example, teacher strike costs are heavily influenced by state school aid and minimum teaching-day requirements which may allow teachers to be paid eventually for some of the days they are on strike. Except in New York, payment for rescheduled school days exceeds the penalties that are likely to be assessed for striking illegally. This means that state educational policy may dwarf the impact on strikes of the penalties in state bargaining legislation. Most other public employees, however, are not in occupations which allow them to work and receive pay for "make-up" days. Therefore, the costs of a strike are considerable greater for them and the impact of bargaining legislation is also likely to be greater.

The difference between the way "essential" public employees, such as police and firefighters, and other municipal employees are treated under state collective bargaining legislation also limits the generalizability of findings for the "essential" group to the nonuniformed workers. It is likely that the impact of penalties is diminished in states where interest arbitration is available. Thus, New York, where strike penalties are harsh, has not had fewer police and firefighter strikes than Wisconsin and Pennsylvania where the penalties are less harsh and arbitration is available. However, penalties become a potentially more important issue

in the strike decisions for nonuniformed municipal employees where interest arbitration was unavailable during the two years analyzed.

The logit results for nonuniformed employees are shown in Tables X-9 to X-10. The coefficients on each state dummy provide an estimate of strike probabilities in each state relative to New York. In 1975 only the Indiana and Illinois coefficients were significantly different from those of New York at the .05 level (one-tail test). There were no strikes in Indiana in this sample in 1975; thus the coefficient was negative. The positive coefficient for Illinois indicates that strikes were more likely there than in New York. In 1976, however, the state coefficients changed considerably. All were positive, but those for Wisconsin and Illinois were statistically insignificant. Since those state coefficients were unstable from year to year, an "average" two-year effect of each state's policy was obtained by predicting strikes in either 1975 or 1976 (see Appendix Table AX-8). When the strike experience in the states are pooled, the results show significantly higher strike probabilities in Pennsylvania, Ohio, and Illinois compared to New York. The differences between New York and Wisconsin or Indiana also imply a greater chance for strikes in those states; however, the differences are not statistically significant.

Table X-11 shows the estimated strike probabilities based on the logit estimates for nonuniformed municipal employees and the sample means. Over the two-year period, the average government in New York had about a 3 percent chance of experiencing at least one strike. Although the probabilities in 1975 in Wisconsin and Indiana were lower than the New York figure, on a two-year basis New York had the lowest strike probabiliti

TABLE X-9

Logit Estimates of Strikes By Nonuniformed City Employees, 1975

Variable		Variable	
CONSTANT	3.10213 (2.1707)	ILLINOIS	1.29251 (1.7139)
MEDIUM	-1.04871 (1.8111)	INDIANA	-28.09 (28.09)
SMALL	-2.6998 (2.5189)	OHIO	1.1115 (1.4707)
Δ TAX$_{73-74}$	-.03338 (.01628)	PENNSYLVANIA	.6621 (.8272)
AID	1.99324 (1.6324)	WISCONSIN	-.4710 (.3873)
UNIONIZATION	.25347 (.8280)		
Δ WAGES$_{73-74}$	-1.06019 (.5976)		
WAGES$_{74}$	-.00061 (.3606)		
Δ EMPLOY$_{73-74}$	-1.50475 (1.0015)		

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 679

Chi Square = 27.8109

TABLE X-10

Logit Estimates of Strikes By Nonuniform City Employees, 1976

Variable		Variable	
CONSTANT	-7.7248 (3.440)	Δ EMPLOY$_{73-74}$	.9200 (1.7193)
MEDIUM	-1.0100 (1.7560)	Δ EMPLOY$_{74-75}$	-.04303 (.2339)
SMALL	-33.319 (33.319)	ILLINOIS	1.21739 (.9829)
Δ TAX$_{73-74}$	1.40450 (.6397)	INDIANA	2.6949 (1.8137)
Δ TAX$_{74-75}$	2.4199 (1.5712)	OHIO	2.7411 (2.2999)
AID	4.7679 (3.0607)	PENNSYLVANIA	2.6930 (2.1764)
UNIONIZATION	.33722 (.9111)	WISCONSIN	.10316 (.0683)
Δ WAGES$_{73-74}$	-1.1282 (.5268)		
Δ WAGES$_{74-75}$	.91405 (.3809)		
WAGES$_{75}$	.00239 (1.1785)		

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 679

Chi Square = 40.5753

TABLE X-11

Strike Probabilities by Nonuniform City Employees[a]

	1975	1976	1975-76
Illinois	.1061184	.0086291	.1143844
Indiana	0	.0367413	.0598578
New York	.0315683	.0025698	.0326631
Ohio	.0901338	.0384094	.1981087
Pennsylvania	.0594469	.0366721	.1384292
Wisconsin	.0199464	.0028483	.0360231

a. These estimates are based on the logit estimates shown in Tables X-9, X-10, AX-8 and the sample means for each of the variables.

Another interesting finding is that strikes were not significantly more likely to occur in Pennsylvania, where these employees have a legal right to strike, than in Illinois and Ohio where there is no collective bargaining law. In fact, predicted strike probabilities were higher in Ohio than in Pennsylvania and only slightly lower in Illinois than in Pennsylvania.

These findings support the hypothesis that the New York penalties have reduced the number of strikes. However, the impact of the legal right to strike is less clear. In 1975 strikes were more likely in Ohio and Illinois than in Pennsylvania, and the Ohio probability was almost 50 percent greater than the Pennsylvania figure over the two-year period. These results confirm our field analysis which showed that even though strikes are illegal in Illinois and Ohio, penalties are infrequently imposed. Thus, as a practical matter, the costs of striking illegally in these states are not significantly different from the costs of striking legally in Pennsylvania.

There are some possible explanations for the lower strike probabilities in Indiana and Wisconsin relative to all of the states except New York. In Wisconsin the political costs of striking were very high because of the potential impact strikes would have had on the arbitration bills the unions were trying to get the legislature to pass at the time. Thus, the low strike activity in that state may reflect variables other than just factfinding and the penalties in the law. Strikes also were at a very low level in Indiana during these two years, possibly due to the legislative and court battle over the bargaining law for public employees. In addition,

as we show in Table VIII-5, strikes became far more common in Indiana after 1975-76. Thus, while the probabilities set forth in Table X-11 describe the situation during 1975 and 1976, they may not be an accurate portrayal of more recent experience in Indiana.

Police and Firefighter Strikes

In our preceding analyses of the impact of public policy on strikes by teachers and by nonuniformed municipal employees, we included a dummy variable for four of the five states because each state had a slightly different method of penalizing employees or unions for illegal strikes and a different dispute settlement procedure or school aid policy.

For police and firefighters, however, the states fall neatly into two categories. Three of them—New York, Pennsylvania, and Wisconsin—had an interest arbitration statute during the period from October 1, 1974 to September 30, 1976. The other three—Illinois, Indiana, and Ohio—did not have a law that provided a dispute settlement alternative to an illegal strike. Thus, a single dummy variable that assumed the value of 1 permitted a cross-section comparison of states that provided an arbitration procedure and states where there was no strike substitute.

The logit results from this analysis for each year and occupation are shown in Tables X-12 through X-17. The negative signs on the arbitration coefficients support the hypothesis that arbitration reduces the probability of a strike. However, the arbitration coefficient from the 1975 firefighter equation is not significant at the .05 level, and the arbitration coefficient in the 1975 police sample is almost significant at the .05 level using a one-tail test (1.632 vs. 1.645). Subject to

TABLE X-12

Logit Estimates of Firefighter Strikes

1975

Variable	Estimates
CONSTANT	-1.78052 (.6306)
SMALL	-27.09703 (.00002)
MEDIUM	-.84425 (.7359)
Δ LOCTAX$_{73-74}$	-3.57727 (1.2764)
AID	-13.16084 (1.2764)
UNIONIZATION	.96090 (.7039)
Δ WAGES$_{73-74}$	-2.08051 (.6021)
Δ EMPLY$_{73-74}$	-4.22010 (.5226)
WAGES$_{74}$	-.00041 (.17159)
ARBITRATION	-2.25096 (1.6195)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 368

Chi Square = 9.355

TABLE X-13

Logit Estimates for Firefighter Strikes
1976

Variable	Estimate
CONSTANT	-1.12038 (.3771)
SMALL	-32.22068 (.00001)
MEDIUM	-.16401 (.0858)
Δ LOCTAX$_{73-74}$	-5.21338 (1.2088)
Δ LOCTAX$_{74-75}$	-.04967 (.0160)
AID	-3.48236 (.5729)
UNIONIZATION	2.31256 (1.4107)
Δ WAGES$_{73-74}$	-13.09437 (2.3504)
Δ WAGES$_{74-75}$	-2.86436 (1.0999)
Δ EMPLY$_{73-74}$	5.39253 (1.9167)
Δ EMPLY$_{74-75}$	.41081 (.1004)
WAGES$_{75}$	-.00218 (.7663)
ARB	-2.68512 (2.1262)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 368

Chi Square = 25.909

Table X-14

Logit Estimates of Firefighter Strikes

1975-1976

Variable	
CONSTANT	-2.16649 (-2.452482)
SMALL	-.481401 (-.34247)
MEDIUM	-2.045883 (-1.779860)
Δ LOCTAX$_{73-74}$	-3.89870 (-1.38527)
AID	-5.20625 (-1.07199)
UNIONIZATION	1.372130 (1.440701)
Δ WAGES$_{73-74}$	-4.889723 (-1.67653)
Δ WAGES$_{73-74}$	2.980883 (1.614112)
WAGES$_{74}$	-.00064 (-.34907)
ARBITRATION	-2.16649 (-2.452482)

Number in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 368

Chi Square = 23.7474

TABLE X-15

Logit Estimates of Police Strikes
1975

Variable	Estimates
CONSTANT	-4.11848 (1.3486)
SMALL	-29.86253 (.00001)
MEDIUM	-.06645 (.0661)
Δ LOCTAX$_{73-74}$	-1.48862 (.3109)
AID	-23.44702 (1.5794)
UNIONIZATION	-.70514 (.53133)
Δ WAGES$_{73-74}$	-2.55615 (.5289)
Δ EMPLY$_{73-74}$	-.79001 (.1373)
WAGES$_{74}$	.00323 (1.23934)
ARBITRATION	-2.73447 (1.63180)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 589

Chi Square = 12.534

TABLE X-16

Logit Estimates of Police Strikes
1976

Variable	Estimate
CONSTANT	-.36031 (.3556)
SMALL	-33.50843 (0000)
MEDIUM	-35.54766 (0000)
Δ LOCTAX$_{73-74}$	-7.34867 (1.3337)
Δ LOCTAX$_{74-75}$	1.97348 (.5045)
AID	-2.19468 (.4262)
UNIONIZATION	-1.09576 (.7038)
Δ WAGES$_{73-74}$	.87674 (.3304)
Δ WAGES$_{74-75}$	-.90673 (.2110)
Δ EMPLY$_{73-74}$	-15.3266 (2.2716)
Δ EMPLY$_{74-75}$	.24650 (.1142)
WAGES$_{75}$	-.00016 (.0465)
ARBITRATION	-2.8320 (.8041)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 368

Chi Square = 18.613

Table X-17

Logit Estimates of Police Strikes

1975-1976

Variable	
CONSTANT	-2.61473 (-1.291842)
SMALL	-30.76171 (-.00002)
MEDIUM	-1.217164 (-1.45196)
Δ $LOCTAX_{73-74}$	-3.866470 (-1.17471)
AID	-8.56211 (-1.28098)
UNIONIZATION	-.93213 (-.976203)
Δ $WAGES_{73-74}$	-.034600 (-.01564)
Δ $EMPLOY_{73-74}$	-7.058371 (-1.680843)
$WAGES_{74}$	.00127 (.69661)
ARBITRATION	-1.247864 (-1.463844)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 589

Chi Square = 19.7169

these qualifications, the estimates translate into the strike probabilities for an arbitration and no-law environment shown in Table X-18. These point estimates suggest that strikes by police or firefighters were three to 15 times more likely in the states without laws than in the three with arbitration statutes.

The small number of police and firefighter strikes in each of the states prevented a separate state-by-state statistical analysis of strikes in the protective services. However, the record in two of the states suggests that the availability of arbitration overshadows the impact of penalties. Both New York and Pennsylvania had interest arbitration procedures during the two-year period, but the penalties for illegal strikes were significantly different. Under the New York law, the police and firefighters and their unions were subject to the "2 for 1" penalty and, usually, the loss of dues check-off. In Pennsylvania, Act 111 provides for interest arbitration but does not mandate the penalties for illegal strikes by police, firefighters, or their unions. Yet, according to the Census of Governments, from October 1974 to September 1977 there were seven protective service strikes in New York and four in Pennsylvania. When these totals are divided by the number of police and firefighter bargaining units in these states in 1977, the raw strike probabilities are .0197 for New York and .0092 for Pennsylvania. Even though these raw probabilities are based on only a few strikes, they do show that strikes were more frequent in the state with the harsher penalties.

TABLE X-18

Strike Probabilities By Firefighters And Police Under Arbitration[a]

	Arbitration	No Law
Firefighters		
1975	.001846	.017263
1976	.001037	.014985
1975-1976	.006431	.053467
Police		
1975	.000332	.005095
1976	.004730	.074663
1975-1976	.014909	.050073

a. These estimates are evaluated at the sample means use the logit estimates from Tables X-12 through X-17.

While we do not want to attach too much weight to the differences described above because we used no controls, the comparison of strike experience under arbitration in New York and Pennsylvania is in sharp contrast with the statistical results of strikes by teachers and nonuniformed municipal employees, in the two states, which showed significantly higher strike probabilities in Pennsylvania. Both states provide their employees in nonuniformed occupations with factfinding as a strike alternative, but they differ in the costs of the penalties imposed when these employees strike. Since the same procedure is available to the parties in each state, much of the difference in strike probabilities for teachers and nonuniformed employees must be attributed to differences in strike costs. The opposite result holds for police and firefighters. The similar strike probabilities for these two groups in New York and Pennsylvania suggest that strike penalties have no additional impact on strikes when arbitration is available. To summarize, the differences in strike probabilities between New York and Pennsylvania and within each state strongly suggest that the impact of arbitration on strikes overshadows the impact of penalties.

Discussion of the Results

The statistical analysis of strikes across all four sets of occupations support the hypothesis that state policy toward strikes has an impact on how often public employees will choose to strike. Although not all of the differences in strike frequencies across the states were statistically significant, the estimates do add support to the conclusion that fewer strikes occur in an environment where harsh penalties are consistently enforced than in one where there is a legal right to strike or where

strikes are outlawed but the penalties against employees or unions for illegal strikes are not consistently enforced. The results also show, however, that a policy which provides arbitration as a strike substitute also can be very effective at reducing the number of strikes by public employees. Although the estimated differences between an arbitration and a no-law environment were not always statistically significant, in all cases the predicted impact of arbitration was to reduce the possibility of a strike.

Although we believe that the evidence presented in this chapter supports our conclusions about the impact of penalties and arbitration on strikes, several qualifications are in order. The strike model as specified was designed to be most appropriate for predicting strikes during contract negotiations where the key issues in dispute were wages and employment security; thus, changes in wages and in employment during a previous period were included in the model to measure the impact of these variables on strikes. However, our strike data were not confined to strikes over solely economic issues.

The problem created by including strikes over noneconomic issues as well is that such strikes are not likely to be meaningfully predicted by our model. A theoretically more appropriate strategy would have been to specify a different model for each type of strike and then estimate the models jointly across the sample. Not only would the statistical procedures have been more complicated, but, more importantly, our data were insufficient to test an elaborate model of this type. Since we had data from only five or six states, the number of strikes we were attempting

to predict was relatively small in any state and in any occupation. In some states the number of strikes over particular issues would have declined to zero if the small numbers were further broken down by strike issues, making the estimation of a state coefficient in some states impossible.

Since most strikes are over economic issues, another alternative would have been to include in the sample only such strikes. Even though this would have been a more appropriate test of the model, it might not have produced unbiased parameters of the impact of state policies on all kinds of strikes because the different states may have had a different mix of strikes by strike issues. For example, Pennsylvania public employees may have been more willing than New York employees to strike over noneconomic issues because strikes are less costly to Pennsylvania workers. If this were true, then a sample that included only economic strikes might underestimate the total impact of the New York/Pennsylvania differences on the total number of strikes. Since we are interested in strikes of all types, confining the analysis to one particular type was rejected even though some of the parameter estimates for the nonstate variables or the arbitration variable may be less precise because noneconomic strikes were included in the sample.

A second limitation on our results is that we were unable to measure collective activity by employees that would not be considered a strike by the Bureau of Labor Statistics definition. Work stoppages lasting less than one day, work-to-rule, and picketing are all forms of protest that might serve as an alternative to a strike and, to be sure, some of these activities might be less disruptive to the employer and the public so that a case could be made for ignoring them. [However, if those forms

of protest that might serve as an alternative to a strike and, to be sure, some of these activities might be less disruptive to the employer and the public so that a case could be made for ignoring them.] However, if these forms of protest are substitutes for strikes, our conclusions that certain policies reduce strikes does not necessarily mean that there has been an increase in labor peace. The only evidence we have on these alternative forms of collective action comes from the field interviews and suggests that other forms of protext have been used infrequently and not noticeably more often in states with fewer strikes.

A third qualification of the results stems from the poor predictive power of the model in some states and time periods. Even in cases where the some of the coefficients on the state dummy variables were significant, the remaining coefficients were insignificant and may have changed dramatically from one period to the next. These problems suggest that either our model is poorly specified or there is a large purely random component to strike behavior in some public sector jurisdictions.

A fourth qualification stems from our selection of states and the limited time period for which we had data. For nonuniformed employees, the policy effects were captured by state dummies whose coefficients were then interpreted as indicating the impact of the policies described in the chapters on each state. This empirical strategy created two related problems. First, it is impossible to identify the unique impact on strikes of a specific policy within a state. For example, how much of the lower strike activity in New York should be attributed to the "2 for 1" versus the dues checkoff penalty? The conclusions reached on a question of this kind were based on the interviews and our

evaluation of the relative costs of different penalties and not on a statistical result.

The second problem created by using state dummies is that there may be an unmeasured state-specific effect that accounts for a between-state variation in the number of strikes but has nothing to do with public policy toward collective bargaining. In some states public employees and their unions may, on average, be less (more) militant than in other states. For example, strike propensities in Indiana were very similar to those in New York for some occupations and some years. One interpretation of this result might be that the harsher penalties in New York are no more effective at preventing strikes than Indiana's less harsh penalties. Alternatively, part of the low strike activity in Indiana might be explained by that state's less militant unions and employees. If the sample were expanded to include more states, these hypothesis could be tested, but they cannot be scientifically evaluated in the present study.

A ~~fourth~~ final limitation of the study is that the strike data were primarily cross-sectional. Although several years of data from each state were utilized, all of the policy inferences were based on differences across states. Because none of the sample states changed policies during the time period analyzed, we were unable to compare strike experiences before and after a policy change. This means that we are not able to say that after New York, Pennsylvania, or Wisconsin passed their arbitration statutes, the probability of a strike in those states declined from some previous level. However, we can conclude that the strike probabilities

in three states without such laws, after controlling for the effect of other variables that are likely to influence strikes. While we would prefer to be able to reach conclusions based on both cross-section and time-series results, this was not possible given the limited number of states and years included in our study.

Chapter X -

Footnotes -

1. The negative relationship between unemployment and strike frequency has been explained by the high costs of a strike to workers because of decreased employment opportunities during the strike and an increased supply of potential strike replacements that may be hired by the strike employer. As the aggregate results in Chapter III showed, this result does not seem to apply in the public sector. Unfortunately, the large sample used in the analysis of strike activity in individual governments did not permit separate measures of unemployment in each community because no data were available for some of the sample communities.

2. The New York data were compiled by the Public Employment Relations Board, Pennsylvania's by the State Department of Education.

3. Wisconsin school districts were excluded because of the small number of districts that met the sample selection criteria.

4. An "average" school district was assumed to have an enrollment of less than 5000 students, as more than half of the districts in the sample were of this size.

Chapter XI

Summary and Conclusions

The number of strikes by public employees has increased substantially over the past 30 years. As the statistical analysis in Chapter III demonstrated, this growth in the absolute level of conflict between public employers and employees reflects the impact of a number of social and economic changes beyond the control of state policymakers. The growth and bureaucratization of the public sector, the transformation of employee lobbying organizations into unions and their subsequent growth, general economic conditions over the past 10 years have combined to exacerbate the fundamental conflicts between public employees and employers.

In many jurisdictions these forces have created enormous changes in the process of determining working conditions for public employees. Prior to the introduction of collective bargaining, the only way that public employees could hope to improve their wages and working conditions was through the political process. Now, where formal bargaining relationships have been established, employee pressure to improve working conditions can be applied through both the political process and an actual or threatened strike.

Within this changing environment many states have tried to fashion a policy toward public sector bargaining and unions that tries to encourage bargaining if that is what the employees wish to do and to prevent them from striking. Conflict between these goals

is inevitable; thus for some jurisdictions states have adopted policies which further the achievement of one goal while conceding that the other is less important and cannot be fully realized.

The balance between these conflicting goals that state policymakers decide upon is often determined by a state's labor traditions and, more importantly, by the relative political power of the constituencies that favor one goal over another. As we noted in Chapter I, some states have chosen to deny bargaining rights to public employees in order to protect the public from strikes and the "excessive gains" that would be achieved by unionized public employees. Others, most notably Pennsylvania and Hawaii, have concluded that meaningful employee bargaining rights can be ensured only by providing most employees with the right to strike, the only limitation being that no strike may endanger the public health, safety, or welfare.[1]

Most states have chosen to fashion policies somewhere between the two extremes described above—ones which they hope will achieve both the goal of granting bargaining rights to employees and the goal of preventing strikes. One approach has been to prohibit strikes and impose penalties against unions and/or employees that violate this prohibition. A second has been to require the parties to use some type of strike substitute when they reach an impasse in their negotiations. Among these strike substitutes are various forms of interest arbitration. Although there has been a great deal of controversy over arbitration as a strike substitute, some states have decided to experiment with it because they felt that nonbinding dispute resolution procedures such as factfinding were ineffective. While both penalties and substitutes are designed to prevent strikes,

their approaches to strike prevention and their impact on the parties are very different.

As discussed in Chapter IV, strike penalties are intended to reduce strikes by motivating the union to make additional compromises. Because all existing penalties are directed only at the union or the employees, they do not encourage the employer to compromise; some may actually discourage employer concessions. For this reason, some states have concluded that the enforcement of harsh penalties places a limit on the employees' de facto right to strike that undermines the employer's incentives to reach an agreement. This has led to infrequent enforcement of penalties in some states. Other states seem to be less concerned about the impact of penalties on the parties' incentive to reach an agreement and more about their having a significant impact on the strike decisions of unions and employees. In these states harsh penalties are enforced.

Most states that have legislation granting bargaining rights include a strike substitute in their laws partly because of the concern that strike penalties alone impose an unfair burden on the unions and employees and partly to encourage both sides to make the additional compromises required to prevent a strike. A number of states have adopted interest arbitration as a strike substitute. An important question is whether the net benefits of using arbitration are sufficient to discourage unions from striking.

The preceding discussion provides a useful context within which the findings of this study should be viewed. Our primary purpose was to evaluate the operation and effectiveness of different policies

designed to prevent strikes. While our major focus was on the impact of strike penalties, the statistical analysis included an evaluation of interest arbitration as a strike substitute. The primary measure we used to evaluate the effectiveness of different policies was how well they prevented strikes—whether a particular policy "made a difference." As we summarize later in this chapter, the policies do appear to make a difference. However, the mere fact that some policies have a greater impact on strikes than do others does not imply that one is superior to another.

The value assigned to our conclusions depends on how important it is to prevent strikes relative to achieving other legitimate goals that may be inhibited by strike penalties or substitutes. For example, our results show that there were more strikes in Pennsylvania where some public employees have the legal right to strike than in some of the other states we analyzed. This finding will probably come as no surprise to the informed public and policymakers in Pennsylvania because the strikes indicate that employees in that state are exercising a right that few other public employees in the nation enjoy. If the parties were not exercising this right, one might legitimately question the importance of the role of the strike in the collective bargaining process. Labor, management, and policymakers in Pennsylvania have collectively decided that the exercise of the right to strike is, within limits, more important than the costs imposed on the public by strikes.

It would be improper for us in our role as researchers to conclude that policies are appropriate or inappropriate because our values either coincide or conflict with the goals of policymakers in Pennsylvania or any other state. For this reason we have refrained from making

any policy recommendations based on the results of this study. This does not mean our results do not have policy implications. Where we think it is appropriate, given our results and their limitations, our summary includes an analysis of what is likely to occur if states adopt certain of the policies we evaluated. Whether these outcomes are desirable when weighed against the costs of the policy is a judgment that can only be made on the basis of the goals of each state and the relative political power of the constituencies that determine these goals.

The Impact of Strike Prohibitions and Penalties on Strikes

Our results show substantial variation in the probability of a strike among the states that prohibit them, and it appears that this variation can be explained in part by differences in the cost of the penalties that are imposed for violating the prohibition.[2] This finding means that strike decisions of employees and unions are influenced more by the expected costs of breaking the law than by the simple fact that strikes are illegal. However, in the case of teachers this conclusion about penalties and prohibitions is complicated by the effects of state educational policy on strikes. For police and firefighters, the availability of arbitration as a strike alternative complicates the evaluation of the impact of penalties. But the different results for teachers and for uniformed public employees are not at variance with the conclusion that strike decisions are based on the expected costs of striking versus not striking. They merely show that for some occupations, policies in addition to strike penalties affect expected strike costs. Because

of the impact of these other state policies, the results for teachers, and for police and firefighters are summarized in later sections of this chapter. Here we discuss the effect of penalties on strikes by nonuniformed municipal employees.

Before beginning our evaluation, it is appropriate to summarize the penalties in each of the states. In Pennsylvania and Hawaii strikes by many nonuniformed municipal employees are legal provided the parties to the dispute exhaust the statutory settlement procedures and the community is not endangered. When they fail to use the whole series of procedureal steps specified in the law or the public health, safety, or welfare is endangered, a court injunction may be issued and any penalties imposed are those that result from the parties' refusing to obey the injunction. Neither of these states has included in its judicial or its bargaining law any specific mandatory penalties for contempt of an injunction against an illegal strike.

In Illinois and Indiana there is no bargaining legislation covering nonuniformed municipal employees, strikes are illegal, and the only penalties are for contempt of court following the issuance of an injunction. While most public employees in Wisconsin are covered by a bargaining law, prior to the 1977 amendments to the Municipal Employee Relations Act all strikes were illegal and the penalties for violating the prohibition and a subsequent injunction were those a court might assess for contempt.[3] Ohio is similar to Indiana and Illinois in that lacks a law granting bargaining rights to public employees. However, the Ferguson Act in Ohio prohibits strikes and specifies harsh penalties for violating the prohibition: immediate discharge, and, for striking

employees who may be rehired, no pay increases above prestrike levels for one year and probationary status for two years. Employers have rarely enforced these penalties.

New York is the only state in the sample that has very specific and harsh strike penalties that usually are enforced. Where the union is found to have authorized or condoned a strike, it usually has to forfeit its dues checkoff for a period of time specified by the Public Employment Relations Board (PERB). In most strikes employees lose the pay for the day they are on strike and are penalized an additional day's pay for every strike day. The employer collects the penalty money and keeps both it and, of course, the employees' forgone wages. During the two years included in our analysis (1975 and 1976), any employees who struck also were placed on probation for one year. Struck employers also are required to seek an injunction against a strike. While they typically do so, court injunctions that led eventually to penalties for contempt occurred in only a minority of strikes that we analyzed.

The penalties and their enforcement in New York have created a bargaining environment where strikes are very costly to the unions and employees. The only state studied where penalties specified in the law might have a greater effect would be Ohio. If the Ferguson Law penalties were enforced, they would be only slightly harsher than those imposed under New York's Taylor Law. However, the statutory penalties have seldom been enforced in Ohio.

More than a simple explanation of strike frequencies in each of the states is required for an assessment of the impact of each of the

policies described above on the number of strikes in a state. Because the number of strikes is also influenced by the extent of bargaining, the average size of bargaining units, union strength in each government, and past improvements in working conditions, we analyzed our strike data statistically to determine what effect the different policies would have if the influence of these other variables was controlled. This analysis was done by using the two-year strike experience of 679 local governments in six of the seven survey states. No statistical analysis of the strike experience in Hawaii was attempted because of the state government's central role in all negotiations. The State of Hawaii is a member of the management team in most negotiations, and no cities in the state bargain independently under the law.

In addition to the set of independent variables that measures the characteristics of each government, the bargaining unit, and the working conditions of the employees, the estimating equation also included a set of dummy variables measuring the combined effect of all policies within a state on the probability of a strike. From these estimates we were able to evaluate the impact of the policies in each state on the probability of a strike by employees in an "average" observation. The probabilities produced by our estimates correspond to the results of a conceptual experiment in which governments that are identical on all the independent variables except the state dummies are placed in each of the states and their strike experience is observed over a two-year time period. Using our statistical estimates, the results [~~that would be~~] produced by this experiment are shown in the first column of Table XI-1.

Table XI-1

Summary of the Estimated Strike Probabilities From the Logit Analysis Obtained From an Analysis of Strikes Over A Two-Year Period, 1975-1976

	Nonuniformed Municipal Employees	Teachers	
		Districts < 5000 Students	Districts ≥ 5000 Students
Illinois	.11438	.05562	.31860
Indiana	.05986	.02574	.06053
New York	.03266	.02957	.03776
Ohio	.19811	.04503	.09474
Pennsylvania	.13843	.11756	.32201
Wisconsin	.03602	N.A.	N.A.

Source: Tables X-4 and 11.

Each figure in the column is the estimated probability that an average government would have experienced at least one strike between October 1, 1974, and September 30, 1976.

The lowest estimated strike probability was about 3.3 percent for New York. The estimated probabilities for Wisconsin and Indiana were greater than New York's, but not statistically different from it. Illinois, which lacks a bargaining law, had a strike probability of about 11 percent, Pennsylvania followed at about 13 percent, and Ohio had the highest probability--almost 20 percent. The probabilities for Illinois, Pennsylvania, and Ohio were statistically different from the New York probability.

The results do not show a clear relationship between strike prohibitions, penalties, and the probability of a strike for nonuniformed municipal employees. While the state with the harshest penalties (New York) had the lowest predicted probability, Pennsylvania (where there was a legal right to strike) did not have the highest probabilities. It is also difficult to explain the difference between the lower probabilities for Wisconsin and Indiana and the higher ones for Illinois and Ohio, as all four of these states rely on the courts to penalize striking workers.

Many of the differences can be explained if we examine some of the other policies and issues that have had an impact on strikes in these states. As we discussed in Chapter VIII, Wisconsin and Indiana may have had an unusually small number of strikes because of new bargaining legislation that was either pending or had recently been passed. The

Wisconsin unions may have been concerned that a large number of strikes would have had an unfavorable effect on an arbitration statute that they were supporting in the state legislature. The permanent replacement of striking teachers in Hortonville may have also had a chilling influence on union and employee militancy. During this period in Indiana a municipal bargaining law was being challenged in the courts, and the unions may have felt that strike activity while the case was pending would have an adverse impact on their chances to obtain a new law if the state supreme court eventually declared the 1975 law unconstitutional.

A second factor that explains some of the variation in strike activity across states is the level of union organizing and the employees' opportunity to secure bargaining rights through representation elections. Union organizing in Ohio and Illinois has been extensive. However, because neither state has a bargaining law, the unions frequently have had to strike to achieve recognition in some municipalities. In Pennsylvania, Wisconsin, and New York recognition strikes were rare during the two years we analyzed because bargaining was already widespread and any remaining unorganized employees could achieve union recognition through an election. This could explain why strikes were less frequent in Wisconsin than in Illinois and Ohio and why strike probabilities in these latter two states were almost equal to or greater than the probability in Pennsylvania where strikes were legal.

As the preceding analysis shows, the relationship between strike penalties and strikes was moderated by a variety of other policies and events. These additional explanations warrant more careful investigation in subsequent research. Despite the differences between some of the

states, the results in Table XI-1 show that the prohibition of strikes and the imposition of harsh penalties in New York has had the effect of reducing the number of strikes when this experience is compared to that of Pennsylvania where employees have the right to strike.

A second conclusion that can be drawn from the comparison of New York, Ohio, and Illinois probabilities is that the common law prohibition of strikes by the courts is likely to be less effective in preventing them than a legislative prohibition and the enforcement of harsh penalties for violation. An important qualification on this conclusion is that Ohio and Illinois also lack union election procedures that probably would have eliminated most recognition strikes in those states. If such procedures had been available, the average probability of a strike in these states might have been reduced, but it is unlikely that all of the differences would be accounted for because only about 19 percent of the total number of strikes during the two years analyzed in these two states resulted from recognition or first-contract disputes.

Teacher Strikes and State Educational Policies

One of the major conclusions to be drawn from this study is that state educational policies have an impact on strikes that is as important as the strike penalties and prohibitions in bargaining legislation. The influence of state educational policy stems from the application of a minimum teaching-day requirement for a school year. If schools in a district are closed down by a strike and the lost teaching days are rescheduled to meet the state's requirement, then the teachers may not lose any pay because of a strike.

The rules governing the distribution of school aid to school districts that fail to meet the minimum teaching-day requirement will also affect school board bargaining decisions during a strike. If a district will lose 100 percent of its school aid because it fails to meet the state standard, the employer's incentive to concede to union demands is enormous as the parties approach the deadline beyond which strike days cannot be rescheduled to meet the state mandate. Alternatively, the district will experience a "windfall," which may discourage employer concessions, if the district will not lose any state aid if it does not meet the teaching-day standard.

Where state educational policy is to prorate state aid by the number of days the district falls short of the state requirement, the district will not receive state reimbursement for expenses that are not incurred because of a strike. But this policy also provides the district with flexibility to decide not to reschedule strike days because, if it chooses this option, it will not lose all of its state aid. However, even under a prorated scheme, the employer's incentive to bargain will vary across school districts according to the proprotion of total revenue that comes from the state. In districts where this proprotion is small, the state aid they lose by not rescheduling lost school days may be substantially less than the money they save by not having to pay teachers' salaries if the school days lost during a strike are not rescheduled. In these districts a prorated state aid policy may not encourage employer bargaining. On the other hand, the potential loss of state aid may exceed any savings from a strike in districts that are heavily subsidized by the state, and a state's policy to prorate aid would strongly motivate these districts to reschedule.

The relationship between rescheduled strike days, state aid, and the incentive to either reach an agreement peacefully or end a strike quickly is complex. A policy which encourages or requires districts to reschedule strike days may significantly lower employees' expected strike costs. Alternatively, the policy that gives employers some flexibility in rescheduling strike days may increase the incentive employees and unions have to reach an agreement, but decrease the employer incentives.

The impact of any of the school aid policies is further complicated by a district's ability to hire substitute teachers and remain open during a strike. Where a district is unable to remain open, it must decide how it is going to handle make-up days. However, if factors such as the size of the district and the strength of the union in the community permit a district to keep its schools open during a strike, then teachers lose the pay they would have received had they not struck and a school district may still save money if its expenses during a strike are less than those it normally would incur.

Even though all seven states in our sample had minimum school-year requirements, the relationship of this requirement to strikes differed. In Hawaii the decision to reschedule school days lost from a strike had an important effect on teacher strike costs. However, because all the schools are part of the single state system, this requirement does not have a serious impact on state funding because the state government makes the decisions on both funding and rescheduling of school days missed because of a strike.[4] Until 1977 when Wisconsin changed its school aid law, both Wisconsin and Ohio had similar policies

for dealing with the failure of districts to meet the minimum teaching-day requirement. If a district in either of these states failed to meet the requirement, the law implied that the district would lose all of its state aid. Because this loss would have been catastrophic for any district, most employers and unions were reluctant to test the law by missing the deadline. In these states the only strike that the parties allowed to pass the point beyond which the state requirement could not be met was in Cleveland in 1980. In this strike the parties correctly assumed that they had the political clout to convince the state legislature to extend their school year so that the requirement could be met.

Wisconsin changed its school code in 1977 to make the rescheduling of school days optional and to allow the loss of state aid to be prorated by the number of days a district fell short of reaching the 180-day requirement. The impact of this change is impossible to evaluate because it coincided with the adoption of a mediation-arbitration dispute settlement procedure that now covers teachers.

Unlike Wisconsin and Ohio, Illinois has had a lot of experience with a policy under which state aid is prorated when districts do not meet the school-year requirement. The state closely monitors each strike to ensure that state educational standards are being met if a district remains open during a strike. If these standards are not met of if a district's schools are closed by a strike, state aid is reduced by 1/180 for each day the district falls short of the 180-day requirement. Although no precise figures were available on the number of districts in Illinois that had had their aid reduced, state officials

indicated that the number was small relative to the number of districts where there had been strikes.

In Indiana the question of state aid and make-up days is dealt with in the bargaining law which exempts districts from the school calendar when they are struck. However, no districts have taken advantage of this option because they typically have remained open during strikes. For example, the Indianapolis district, which is the largest in the state, remained open for the duration of a three-week strike by teachers in 1979.

In Pennsylvania the law requires that districts provide 180 days of instructions, but, during our study, about a third of the districts that experienced strikes failed to satisfy this requirement. Despite this failure, none was directly penalized by loss of state aid. However, because state aid each year is based in part on expenses in the previous year, if a district saves money by closing down during a strike in one year, its aid the following year would be lowered. Thus, districts may lose some state aid money in the year following the one in which they have a strike.

In New York, employers have been in a position that has allowed them to avoid scheduling make-up days if they are struck and also to avoid the loss of state aid. This has been accomplished by a combination of three factors. First, most districts have been able and willing to remain open during a strike, thus avoiding the make-up-day issue. Their ability and willingness to remain open is partially explained by the "2 for 1" penalty in New York, as the penalty monies the district collects gives them the resources to hire substitutes, keep the schools open for

only a few days as strikes have typically been very short. Third, in recent years the state has passed legislation that prevents a district from receiving less state aid in one year than it received the previous year. This legislation, which was designed to protect districts facing declining student enrollment, has also prevented struck districts from losing state aid because of a strike.

The impact of the diverse school aid and make-up-day policies on strikes is difficult to evaluate theoretically because policies that lead to rescheduled school days reduce expected strike costs of employees and thus may reduce their willingness to make concessions in order to prevent a strike. However, policies which do not result in make-up days may encourage employee concessions but discourage employer concessions. Despite this theoretical problem the empirical results showed that the net impact of these policies and the strike penalties that also apply to teacher strikes was to reduce strike frequency where employee and union strike costs increased. The second and third columns of Table XI-1 summarize the estimated strike probabilities obtained from the logit results for strikes over a two-year period for five of the seven states. (Hawaii was excluded because there is only one school district in the state, and Wisconsin was excluded because very few districts consistently reported data to the Census of Governments over the four-year period.)

Although many of the differences between the states were not statistically significant, a comparison of the estimated probabilities shows a number of important points. First, strikes were least likely in New York where the "2 for 1" penalty is imposed and there are few opportunities for make-up days. Strikes were most frequent in Pennsylvania

where they are legal and most strike days are rescheduled. This finding held up across both large (5000 or more students) and small (less than 5000 students) school districts. Notice, however, that Pennsylvania's policy of a legal right to strike had a far greater impact in small districts than in large districts, whereas in New York there were only a few more strikes in large districts than in the small ones. This means that New York's penalties had only a slightly less onerous effect among the large districts. However, in Pennsylvania, teachers in the larger districts, where they could usually close a district during a strike, were far more likely to exercise their legal right to strike than were teachers in the small districts.

The finding of significant differences between the number of strikes in New York and Pennsylvania received support from the time-series analysis of the total number of strikes in each state. Although this analysis over time included both teacher and nonteacher strikes, the results are summarized here since most of the strikes did involve teachers. Our regression results show that after the "2 for 1" penalty was added to the Taylor Law in New York in 1969, the number of strikes dropped significantly from what it would have been had the amendments not been enacted. This result was obtained by using the number of public sector strikes in the rest of the nation and a simple time trend variable to estimate the number of strikes that would have occurred in New York without the amendments. A similar analysis showed that after Pennsylvania enacted its right-to-strike legislation, the number of strikes increased significantly.

A second important conclusion can be drawn by comparing the probabilities for Illinois, Ohio, and Pennsylvania in Table XI-1. In small districts the strike probabilities are similar in Illinois and Ohio and are about half the size of those in Pennsylvania. This means that even though penalties are infrequently imposed in Ohio and Illinois, the strike prohibition and aid policies in these states yielded lower strike probabilities than the probability in Pennsylvania where strikes are legal and make-up days are frequently scheduled. However, among large districts the differences between the states change remarkably. In Illinois the probability is about .32, or only slightly lower than the strike probability in Pennsylvania. In Ohio, while the probability has increased to about .10, it is still substantially less than the probability in the other two states. The similar probabilities for large districts in Pennsylvania and Illinois suggest that although the policies in these states appear to be quite different, their impact on strikes is very similar. On closer examination, however, we find that the differences between the state policies on the treatment of strikes are not that great. Although strikes are legal in Pennsylvania and illegal in Illinois, Illinois seldom imposes penalties. With regard to state aid, the policies on enrollment and educational standards in Illinois have significantly reduced a large district's ability or willingness to remain open during a strike. Thus they have had a greater effect on large districts than on the small ones because it is difficult to replace a large workforce temporarily to meet the state requirements. Thus, like most teacher-strikers in large Pennsylvania

districts, the teachers in large Illinois districts are not likely to be penalized for striking or to lose a significant amount of pay because of a strike.

Finally, notice that the strike probabilities for large districts are significantly higher in Pennsylvania and Illinois than in Ohio. This lower probability for large districts in Ohio is particularly significant because among the nonuniformed municipal employees the probability of a strike is higher in Ohio than in Pennsylvania or Illinois. This finding can be explained by the fact that in Ohio the schools in most districts have remained open during a strike so that the cost to employees of striking is significantly greater than in the other two states where schools are usually closed and make-up days are rescheduled.

The Impact of Arbitration on Strikes

While the statistical analyses of strikes by teachers and nonuniformed municipal employees provided an evaluation of policies that influence strike costs, our analysis of strikes by police and firefighters gave us an opportunity to evaluate the impact on strikes of a strike substitute. Unlike penalties and school aid policies that influence strikes by affecting the direct costs of striking, a strike substitute such as arbitration will reduce strikes if it is less costly than a strike to the employees and their unions but also has the potential for achieving similar bargaining outcomes. If, however, from the union's point of view, the costs of arbitration are greater than the costs of a strike or the likely outcomes of the procedure are significantly inferior than those it could achieve by striking, then arbitration is likely to be an ineffective tool for preventing strikes.

Three states in our sample—New York, Pennsylvania, and Wisconsin—had compulsory interest arbitration available to police and firefighters, and three—Illinois, Indiana, and Ohio—had no law specifically covering these employee groups; Hawaii is excluded from this analysis. The statistical comparison of strikes in these two sets of states provided an estimate of the impact of arbitration on strikes relative to the effect of no strike substitute. It is important to note that the estimates do not compare the impact of arbitration with the effect of any other strike alternative such as mediation and factfinding. With this qualification in mind, our results showed that strikes by police and firefighters were less likely in the three states that provided arbitration.

Over the two-year period analyzed, the estimated probability of a strike by firefighters in states with arbitration was less than 1 chance in 100 and slightly over 5 chances in 100 in the three states with no strike substitute. This difference was statistically significant at the .05 level. The probability of a strike by police in states with arbitration was 1.5 chances in 100 and about 5 chances in 100 in the states without any statutory dispute-settlement procedure. This difference was statistically significant between the .05 and .10 level using a one-tail test. While strikes by protective service employees were unlikely in all six states during this time period, these results show that from October 1974 through September 1976 the probability of a police or firefighter strike was three to five times more likely in the states without arbitration.

Our estimates show that arbitration may be just as effective as strike penalties at preventing strikes. In fact, the analysis in Chapter X of the descriptive Census of Governments data for New York and Pennsylvania showed that the impact of arbitration on strikes outweighed the effect of penalties in New York. Police and firefighters who strike in that state are subject to the harsh penalties described in earlier sections of this chapter, while in Pennsylvania these employees may be subject to unspecified contempt penalties. If penalties affect strikes beyond the impact of arbitration on strikes, New York should have fewer strikes than Pennsylvania by protective service employees. The small number of strikes by police and firefighters in cities in these two arbitration states prevented a statistical estimate of the probability of a strike in each of them. However, the descriptive evidence for the entire population of police and firefighter bargaining units in the two states did not show higher raw strike probabilities in Pennsylvania. From October 1974 to September 1977 there were seven protective service employee strikes in New York and four in Pennsylvania. When these totals are divided by the number of relevant bargaining units in each state, the probabilities are .0197 for New York and .0092 for Pennsylvania, demonstrating that arbitration was viewed as an acceptable strike alternative regardless of the presence of penalties in the law.

The preceding conclusion stands in sharp contrast to the results obtained for New York and Pennsylvania teachers and nonuniformed municipal employees who, under the law, could submit their contract disputes to factfinding. If factfinding were as effective as arbitration in preventing strikes, then we would not expect to observe significantly

different strike probabilities in these two states for these other groups of public employees. The fact that we do observe higher strike probabilities in Pennsylvania (see Table XI-1) shows that factfinding was not as effective as arbitration in preventing strikes. While factfinding may have prevented some strikes in each state, its effect, unlike that of arbitration, was not sufficient to eliminate completely the additional deterrent impact on strikes of penalties and school aid policies.

The Right to Strike Model

In the earlier summary sections of this chapter we evaluated the impact of various strike penalties and strike substitutes. In states that have adopted these approaches, the policymakers have concluded that strikes by public employees are unacceptable. This position may be based on a variety of factors including the historical view that a government is sovereign and, therefore, a strike by its employees is an illegitimate challenge to the government's authority. More recently it has been argued that strikes in the public sector are fundamentally different from public sector strikes and that the result of granting public employees the right to strike would be to give them an unfair bargaining advantage over the employer and the public because the employer would be under tremendous political pressure to make "unreasonable" concessions to avoid a strike or to end one.

While no state allows all public employees to strike, the experience in Hawaii and Pennsylvania is instructive because if the arguments against the legal right to strike are valid, the unfavorable impact of strikes should be apparent in each of these states. In addition to providing

evidence on the impact of a legal strike, their experiences also illustrate some of the practical problems that policymakers encounter in determining who may and who may not legally strike since the right to strike is not unlimited in either state.

It does not appear that legal strikes in Hawaii and Pennsylvania have produced the dramatic or lasting detrimental effects on public services that some people have predicted. In 1977 the Governor's Study Commission on Public Employee Relations in Pennsylvania held hearings around the state to obtain the views of the public and the parties on experience under Act 195, the legislation that granted the legal right to strike. More than 100 witnesses appeared before the Commission, and a summary of their testimony was prepared and published under the title Pennsylvania Public Sector Bargaining Issues. The summary showed that representatives of most of the key employer, employee public organizations expressed at least qualified support for continuation of the limited right to strike. Union spokespersons universally endorsed it, the only disagreement within the labor community being over whether or not a judge who enjoins a strike because it endangers the public's health, safety, or welfare should also be required to order the parties to submit their dispute to arbitration. The Pennsylvania State Education Association endorsed this proposal, while American Federation of Teachers affiliates in the state testified against it.

While employer support of the right to strike was less unanimous, more qualified, and less enthusiastic than the unions' position, when faced with a choice between the limited right to strike or arbitration,

most employer representatives favored the right to strike. As the Commission summary stated: "The testimony likewise reveals a consensus among school board representatives in opposition to compulsory binding arbitration of interest disputes. Although critical of the limited right of educational personnel to strike, school board representatives preferred the right to strike to arbitration."[5]

Hawaii's experience is somewhat similar to that of Pennsylvania. Yet Hawaii has had a difficult time determining who may strike legally, and it has also had problems with its firefighter interest arbitration statute. Although consideration is being given to further limitations on the right to strike and to changes in the arbitration statute, acceptance of the basic principle of the limited legal right to strike for most employees still prevails.

While the testimony before the Pennsylvania Commission and our interviews in each state did not reveal any exceptionally harmful or long lasting effects of strikes under this policy, additional evidence based on an evaluation of more concrete data would be desirable. It is possible that the parties are "too close" to the strikes to evaluate all the consequences. A dispassionate opinion about the impact of the legal strike necessarily requires an idea about what would have happened if a strike had not occurred. These judgments are likely to be difficult if the strike impact is small but significant or if it is slow and cummulative. Therefore, while we do not want to discount the opinions of the participants, corroborative evidence on this point from other sources would be invaluable.

While the strike experience in Hawaii does not appear to have endangered the public health or safety, it does illustrate a number of difficult problems that are encountered in developing a legal right to strike model. By specifying a standard that allows strikes only by employees whose absence from their jobs would not endanger the public's health and safety, Hawaii has had to confront the difficult task of designating which services should be considered essential and how individual employees or groups of employees performing these services should be grouped.

One method of dealing with this problem is to place essential-service employees in separate bargaining units and to provide these units with an alternative to the strike. This has been done for the firefighters in Hawaii and for both the police and firefighters in Pennsylvania. But this alternative may be impractical for other "essential" employees because there may be only a few who have similar jobs. Placing them in separate bargaining units would result either in a large number of very small units or in employees with dissimilar interests being assigned to the same larger bargaining unit.

Hawaii has attempted to resolve this problem by adopting a procedure under which the state determines that certain positions are essential and that employees who occupy these positions cannot strike legally. However, this procedure has not been very successfully implemented. While this lack of success can be attributed in part to technicalities in the law that were addressed in 1980 legislation, a major dilemma remains—what criteria should be used to determine who is "essential" and how should they be applied. The nature of the dilemma was apparent in the 1979

blue-collar strike. As the strike progressed, it became increasingly difficult to keep the schools clean enough for them to remain open without the health of the students being endangered. On the basis of this threated danger to public health, some of the school janitorial employees were determined to be "essential." This decision raises two related issues. First, the negotiations in earlier years with teachers seemed to indicate that they could legally strike if they followed the prescribed procedures set forth in the law. A court had rules that the 1973 teacher strike was illegal because one of the procedural steps had been omitted: an impasse had been declared without a prior determination that the parties had bargained in good faith.[6] While there has not been a subsequent strike to test the procedural requirements for a legal teachers' strike, it appears that one that was procedurally correct would not be ruled illegal because it would not endanger the public health or safety. Therefore, if sometime in the future teachers could legally strike and effectively close the schools, then why were janitorial services in the 1979 strike considered "essential" since in that case only some schools would have had to close?

The 1979 strike also illustrates the difficulty the state has had in determining what employees are essential to the public's health and safety. If the state designates "too many" positions as essential, then the impact of any strike will be so minimal that the right to strike would be meaningless. On the other hand, designating "too few" positions as essential may result in the public being endangered unnecessarily. The problem in deciding which public sector employees

are essential is similar to the one faced in the private sector in determining whether or not a labor dispute constitutes a national emergency, and it appears that we are no closer to resolving one problem than the other.

The Administration of Strike Penalties

Responsibility for the administration and enforcement of strike penalties in the seven states in our study rests with either the courts, the struck employers, or a public employee relations board (PERB). Our analysis of the enforcement experiences revealed that each arrangement had its advantages and weaknesses.

The state court system is the traditional institution responsible for at least part of the enforcement of a strike prohibition in most states in the nation and in all seven states in this study. Because the judicial system in our society is ultimately responsible for determining if laws have been broken and then imposing any sanctions that may be specified in legislation, the court system was the natural choice for states to make when delegating the responsibility for determining if an illegal strike occurred and imposing penalties for violation of a strike prohibition. In states where the legislature has no policy on public sector strikes, the common law prohibition against them prevails and its enforcement is left to the equity powers of the courts. The positive impact that this court role could have in the prevention of strikes was clearly endorsed by the 1966 Taylor Report to the Governor of New York: "The first deterrent [to a strike] is the injunctive power of the courts. This has been a potent force

throughout our history, and could be most effectively employed in preventing or terminating strikes in public employment."[7]

For a variety of reasons the experience in the seven states usually did not meet these expectations. We do not imply that courts in all cases have failed to have a significant impact on strikes, but rather that any impact seems to have been limited to influencing the bargaining after a strike begins by their power to exercise discretion over the size and eventual disposition of contempt penalties. In our opinion, past court enforcement of strike prohibitions has rarely served as an effective strike deterrent. The statistical evidence from the analysis of strikes by nonuniformed employees in Chapter X supports this conclusion. The strike experience in Ohio and Illinois where the courts are the only mechanism for enforcing the strike prohibition showed that the strike probabilities in those states were very similar to the probability in Pennsylvania where these municipal employees had a limited right to strike.

A number of factors may explain the courts' limited effectiveness. First, because private sector labor relations are largely regulated by federal law and, therefore, the cases are heard by the NLRB or in federal courts, state court judges in general have few opportunities to develop any expertise for dealing with labor relations and dispute settlement problems. Although this situation may not prevail in large urban areas where the environment and growing public sector bargaining have resulted in a significant number of strikes in recent years, the exposure of judges in the smaller communities to labor relations matters is likely to have been minimal. Thus, in many instances the courts have

not understood the dynamics of the bargaining process, which has restricted their ability to be effective in helping to settle strikes. Labor and management representatives whom we interviewed frequently expressed this view.

A second and more important criticism of the courts is that there is so much uncertainty about what the result of court action will be that court enforcement of strike prohibitions does not serve as a strike deterrent. Uncertainty exists about whether the employer will seek an injunction, how the judge will respond to the request for an injunction, whether penalties will be assessed, and what the outcome from bargaining will be during the strike. What this means is that when employees make a strike decision in a jurisdiction where the courts are charged with enforcing the statutory penalties, the expected costs of violating the law are so small as to be only a minor consideration in the strike decision.

Finally, once the strike is settled there is usually a strong possibility that any remaining strike penalties will be reduced or not enforced. The possibility that a court will either not impose or not enforce penalties at each step of the court procedure makes the probability of there being any penalties very slight. Since expected court-imposed penalties in an illegal strike situation are a function of the probability of the imposition and enforcement of a penalty times the size of the penalty, the expectation that any penalty would be minimal could be increased only if there was a possibility of a very substantial penalty. However, such a possibility usually does not exist

because of either statutory limits on the maximum penalty that can be imposed for contempt or court or constraints that require that similar types of violations carry similar penalties.

A third factor we detected that might seriously complicate court involvement in future strikes is the increasing reluctance of judges to be whipsawed by the employer. In two case studies of strikes, in Wisconsin and in Indiana, the judge was not pleased by the fact that the employer used him as a bargaining tool to gain a temporary advantage over the union during a strike. Following the strike, however, the employer was no longer interested in pursuing penalties and may have actually opposed their enforcement by the court. While this is an understandable employer response because of his interest in reaching the best possible strike settlement and then working amicably with the union under the agreement after the strike, it might not be consistent with a court's view of its role in determining violations of the law and imposing mandated penalties.

If a state wishes to have a neutral organization enforce strike penalties and prefers not to rely on the courts, perhaps for some of the reasons described above, the alternative is to delegate this responsibility to a state PERB. In two of the states we studied, New York and Hawaii, the Public Employee Relations Board was given at least partial responsibility for the enforcement of penalties. In Hawaii the PERB is the agency responsible for petitioning a court to enjoin an illegal strike. However, following the petition, the court sits in judgment on the employees and the union and determines the penalty that will be imposed, as do the courts in other states, and the fact that the PERB is the agency that

has been delegated the task of seeking the unjunction has not altered the situation.

In most New York jurisdictions, the PERB is responsible for enforcing the dues checkoff penalty, and how it administers this penalty is very instructive from the standpoint of reaching a judgment about whether eliminating any uncertainty about the enforcement of a strike penalty increases the deterrent effect of that penalty. In all cases of unauthorized strikes that fell under its jurisdiction, the PERB considered the circumstances and imposed the prescribed dues checkoff penalty, within the legislative guidelines established by the Taylor.

PERB's enforcement record was particularly impressive when it is compared with the record of enforcement of the dues checkoff penalty in New York City where the courts have the responsibility for enforcing it. For reasons summarized later, only the courts may impose the dues checkoff penalty against unions in strikes that are under the jurisdiction of the city's Office of Collective Bargaining (OCB), and this difference in the institution charged with administering the penalty has had a significant impact on the probability that it will be enforced. A court has never imposed the dues checkoff penalty in any strike by any union under OCB's jurisdiction. This record does not reflect on the performance of the OCB because that agency does not have the legal authority to impose strike penalties.

The New York experience suggests that the principal advantage of board enforcement of penalties is that it will be consistent and predictable from one strike to the next. The Taylor Law contains explicit criteria that are to be used in determining whether or not the dues checkoff

penalty will be imposed, and the strike records of unions and employees show that the PERB has applied these criteria consistently. Specifically, the PERB has imposed checkoff penalty over a longer period for longer strikes, for a second strike by the same union, and for a strike by employees performing "essential" services. The penalties have been shorter when extreme provocation by the employer was established, and they have not been imposed at all when the strike was not authorized or sanctioned by the union.

Although board enforcement of penalties has its advantages, our results show that it also may create some potentially serious problems. A PERB frequently assumes the role of a neutral in attempting to help the parties to a labor-management relationship resolve their differences. If it is called upon to enforce penalties if the dispute results in a strike, its effectiveness in mediation may be impaired if either party believes that its actions in the negotiations will have an effect later in proceedings that determine the size of the penalty. In similar cases of potential role conflict, PERBs that are involved in mediation during a strike are almost universally reluctant to process an employer charge that the strike is a prohibited practice. Invariably, the agency postpones the processing of the charge until after the strike is settled so as not to jeopardize its mediation efforts.

Note, however, that a potential conflict between a PERB's enforcement activities and its neutral role is not confined to the administration of strike penalties. Whenever a PERB sits in judgment of one of the parties' alleged violations of the bargaining law and makes a decision concerning the alleged activities, the consequences of the decision are

not "neutral." An agency's evaluation of a bad-faith bargaining charge, for example, could be colored by its mediation activities in the dispute unless precautions are taken to prevent overlap between these separate functions.

There are a number of ways the agency conflicts could be avoided. One is to follow the private sector model where a separate agency is responsible for each activity. The National Labor Relations Board (NLRB) serves as a neutral "judicial" body and the Federal Mediation and Conciliation Service (FMCS) is the neutral agency that provides dispute settlement assistance. Pennsylvania has adopted this model by dividing the functions between Pennsylvania Labor Relations Board and the Bureau of Mediation Services. The small number of public sector disputes in Hawaii makes it practical for that state to let ad hoc mediators and FMCS staff handle mediation activities while the PERB administers the law. In New York City the parties concluded that the tripartite Board of Collective Bargaining was too small to allow a clear separation of the mediation and strike penalty enforcement activities, so the OCB and the Board of Collective Bargaining were not given the authority to impose strike penalties.

In New York State, the conflict between mediation activities and the administration of strike penalties is minimized by separating the two activities within the PERB. Major responsibility for enforcement of the dues checkoff penalties has been delegated to the General Counsel's office and mediation to another department. This separation may break down in major strikes where the PERB board or the chairman becomes involved in mediation and then must participate in the dues checkoff

decision later. Fortunately, this occurs infrequently. Most labor and management representatives we spoke with did not believe that the way the dues checkoff penalty is currently administered has had a significant effect on the agency's mediation activities.

The third institution to which a state could delegate the penalty enforcement activity is the employer. In all seven states an employer may begin the proceedings that may result in a court injunction against an illegal strike. As some strikes are legal in Pennsylvania and Hawaii, to begin court action there the employer must demonstrate before the PERB in Hawaii or a court in Pennsylvania that an illegal strike has begun or is about to begin. In the other five states, where all public sector strikes are illegal, the employer is required only to prove to the court that a strike is in progress in order to obtain an injunction. In two of the states in our study, New York and Ohio, the employer also has a role in penalty enforcement. After a strike settlement in New York, the employer deducts one day's pay for each strike day from the pay of each striker, and in Ohio the employer may enforce the Ferguson Law penalties if he wishes.

The evidence from New York shows that employers have enforced this penalty in the majority of the strikes. There are two reasons for this result. First, in an attempt to eliminate strike settlements in which an employer is willing to forgive a penalty, the Taylor Law <u>requires</u> all employers to impose it, and as an additional incentive to ensure that they do, the Taylor Law provides for taxpayer suits against employers who fail to collect it. A second reason why New York employers usually enforce the "2 for 1" penalty is they keep the penalty monies they collect. If the local government were unable to keep these monies, local officials

might be less consistent about enforcing the penalty, and if the taxpayers did not benefit directly from the fines, they, too, might be less likely to sue a local government that did not enforce the penalty.

In New York State, the size of the penalty and its enforcement has had a significant deterrent effect on strikes because the employees are now convinced that they will be penalized if they strike and they take these costs into consideration as they reach their decision on whether or not to strike. This deterrent effect is in sharp contract to the experience with penalties in Ohio where in most strikes the employers decide not to enforce the Ferguson Law penalties. While their decisions are based on many valid practical and legal considerations that are summarized later, the mere fact that Ohio employers do not enforce the Ferguson Act means that its role in preventing strikes is minimal.

The strong incentive that New York employers have to enforce the Taylor Law penalty creates a different kind of problem—one that has to do with the concessions they may decide to make to prevent a strike or to settle one that has already begun. Because they know that they will benefit financially from the strike penalty, they may be less willing than they otherwise might be to make concessions during their negotiations with unions. This, of course, would have the effect of delaying settlements.

Study Limitations and Recommendations for Future Research

The results of our study, or of any study of this type, provide answers to some questions, but also, inevitably, raise a number of new ones. In this last section we summarize what we believe to be some of the major questions that warrant additional investigation. We also

emphasize that several caveats, previous noted, must be taken into account when interpreting our findings and that our study design probably limits the validity and generalizability of some of our findings.

There has been little research and only a few studies of public employee strikes, their determinants, and the impact of public policies on government employee strikes.[8] This study builds on the earlier research in a number of ways. First, we use a combination of institutional, descriptive, legal, and statistical research methods to examine the impact of policies in a limited number of states. Confining the analysis to only a few states enabled us to identify successfully a complex set of policies that have affected strikes in each state. Had we chosen to do a less thorough analysis of more states, we might have overlooked important interstate differences and incorrectly lumped together some states that should have been treated separately or separated out states that should have been combined with others that were similar. For example, our results show that if we would have simply classified states into two categories on the basis of whether or not a strike was legal, we would have missed important variations in strike frequencies and policies within either the legal or the illegal category.

While there were important advantages in studying the experience in only a few states, the principal drawback was that there are limits on the extent to which our results can be generalized to the rest of the nation. This has important implications for the kinds of policy that policymakers in other states might contemplate, based on our results. Although policy implications are partially dependent on the goals and values of the policymakers, any implications they are able to draw from

this study also depend on our ability to predict accurately what would happen in other states if they decided at some future time to adopt some of the policies that we have evaluated. All predictions from any study include error, and the size of the error can best be assessed by replicating this study in the same seven states over additional time periods or by examining the strike experience in a different set of states.

The importance of expanding this study to other states cannot be overstated. As noted in Chapter II, the seven states do not represent a balanced cross section of the states in the nation. In particular, the three states in our sample without laws covering all or most public employees (Illinois, Indiana, and Ohio) are not representative of the "no law" states. All three are in the Middle West and all are more highly organized in both their public and private sectors than other "no law" states which are located mainly in the South and the West. Compared to our sample, strikes over union recognition or the negotiations for a first contract in these southern and western states are likely to be relatively more numerous, and thus more important, than strikes in established bargaining relationships. This means that the states' union recognition procedures and bargaining rights statutes may have a greater effect on strikes than either penalties or strike substitutes that are designed primarily to be strike deterrents in established bargaining relationships. While recognition strikes did contribute to higher strike probabilities among nonuniformed municipal employees in Ohio and Illinois, the impact of the state policies that have a very direct effect on these

special kinds of strikes should be explicitly addressed in a much broader sample of states.

Expanding the sample to encompass a wider range of states would also allow a more precise identification of the impact of individual policies within a state. In this study the policy effects were captured by simple state dummy variables in all of the models except the one used to analyze police and firefighter strikes. The problem with this approach is that it is impossible to attribute differences between strike probabilities in different states to specific individual policies. This created two related problems. First, we could not determine which strike substitute or penalties within a state affected strikes. For example, while we attributed the lower strike probabilities in New York to the penalties, it was impossible to estimate empirically the separate impact on strikes of the "2 for 1" and the dues checkoff. Because of the theoretical costs to striking employees of the "2 for 1" penalty, we concluded that it was probably of greater significance. However, this conclusion could not be confirmed from our data. Information on the strike experience in a broader sample of states that were similar on some policy dimensions but different on others would permit a researcher to identify and evaluate the impact of each different strike policy.

There is a second problem in using only state dummies to measure the impact of policies: that is, state characteristics unrelated to public strike policies may be correlated with a state's strike experience. If they are, the estimated coefficients on the state dummy variable will reflect both state strike policies and these other state-specific

characteristics. A study that included additional states could be designed to control for these unobserved differences between states that may also have an impact on strikes.

Much of the research on private sector strikes emphasizes three strike dimensions: frequency, duration, and number of employees involved. In this study our major emphasis was on strike frequency and the extent to which the number of employees in a bargaining unit influences strike frequency. The latter effect was measured using the size dummies in each of the strike frequency equations. The only variable that was not examined explicitly in the statistical analysis was strike duration. The descriptive data, especially for New York and Pennsylvania, suggest that state strike policies do have an important impact on strike duration. The frequency data for Pennsylvania on strikes by strike length showed that teacher strikes typically were longer than noneducation strikes, and the mean differences between the two groups also were very dissimilar. About 60 percent of the nonteacher strikes lasted fewer than 10 days and 7.5 percent lasted more than 45 days; less than 1 percent of the teacher strikes lasted more than 45 days, but only about 40 percent were less than two weeks in duration. It was hypothesized that <u>within</u> Pennsylvania there are very few long teacher strikes because of the school-year requirement and the injunction standards, but there are also very few short strikes because of these same requirements. A year-by-year comparison of the mean and median teacher strike lengths in New York and Pennsylvania also suggests that the presence of penalties in New York results in shorter strikes there than in Pennsylvania where there are no

penalties and make-up days are not rescheduled. The preceding comparisons are interesting and deserve to be analyzed carefully in much the same way that strike frequencies were analyzed in Chapter X.

As noted earlier, one of the major findings from this study is that state educational requirements and their enforcement have an impact on strikes that is as great as that of most strike prohibitions and penalties. In this study we emphasize how differences in policies between states affect average strike probabilities. There are, however, important differences between the impacts of these policies within a state. For example, a complex state aid formula determines the amount of revenue each school district in Pennsylvania receives and, thus, this amount as a proportion of total revenue varies across districts. This means that the loss of state aid for failing to schedule make-up days will have different effects in different school districts. In richer districts that receive a smaller state subsidy, the state aid lost may be less than the teacher salary money saved if school days are not rescheduled. As the data from Pennsylvania showed, in about 30 percent of the strikes, the districts decided not to comply with the 180-day school-year requirement. The questions that remain are whether the decisions by these districts were related to state aid policies and what impact these decisions had on strike duration and the probability of a subsequent strike.

In addition to evaluating the impact of different public policies on strikes, we also attempted, using our case studies of individual states, to determine what effect strikes had on the bargaining outcomes and the

provision of public services. However, we did not try to analyze these effects statistically. The impact that strikes have on each of these variables speaks directly to the appropriateness of pursuing policies that penalize strikes or offer one or more strike substitutes. The presumption has been that strikes in the public sector have such an onerous effect on the public that public employees simply should not have the same rights, including the right to strike, that private sector employees have. But if the consequences of strikes by some public employees are not burdensome to the public, then, from an equity point of view, they should have the right to strike.

Our analyses of the attempts to implement this limited right to strike policy in Hawaii and Pennsylvania were summarized in the preceding section. However, what we learned about strike impacts in these states came only from our case studies of strikes and interviews with individuals. The next step would be to estimate what effect strikes actually have had on public services and outcomes under different strike policies. Although for many public services this analysis would be difficult, the data may be available in some states to evaluate the impact of strikes on certain of them. For example, if strikes by teachers do not have a detrimental impact on various measures of education quality, then we might be willing to conclude that the effect of teacher strikes on this public service is minimal.

While it is difficult to determine how the legal right to strike has affected public services, it should be easier to estimate the impact of both legal and illegal strikes on bargaining outcomes, since an analysi

of this kind is but an extension of the research that has been done over the past 20 years on union wage effects. The model in Chapter IV provides a theoretical beginning for evaluations of the impact of strike prohibitions and penalties on outcomes. That model suggests that in bargaining environments where unions or employees are penalized for striking, average outcomes will be lower than in environments where costly sanctions do not exist. This prediction applies even if employees do not strike. This is an important theoretical prediction that needs to be tested. If the hypothesis is confirmed, then we will be in a better position to evaluate whether or not these estimated effects justify the strike prohibitions that exist in most states.

The final issue that we believe deserves additional attention by the research community is the role and use of the strike by parties over an extended period of time in both legal and illegal strike environments. An examination of how bargainers resolve subsequent disputes after experiencing a strike would yield an evaluation of the long-term effectiveness of the strike as a device for settling disputes. The objective would be to determine whether one strike leads to more strikes or to a strike-free environment over the next ten years, as some labor relations experts claim! Explicit information about the nature of any dependence by the parties on the strike would also be useful in an evaluation of various strike substitutes.

Although the strike is most useful as a dispute settlement tool when merely the threat of one is sufficient to motivate the parties into reaching an agreement, its long-term effectiveness depends on how

the parties view the strike after it is over. Where a strike threat is insufficient and the parties actually do strike, the hope is that the effect will be for both parties to work harder in subsequent negotiations to reach an agreement and avoid a strike. But the experience in a strike may cause one party to be less fearful of a strike in subsequent negotiations; then the question is whether or not a state's policy toward strikes was what had this unexpected effect on the parties' attitude toward another strike. For example, if the imposition of harsh penalties discourages a later use of the strike as a bargaining device, it may be because one side consistently "wins" and not because both parties are willing to make additional concessions to avoid another strike.

If neither party is concerned about whether or not another strike occurs, then a strike threat is less likely to produce an agreement and the parties may be more willing to strike as their experience with strikes increase. If this dependence develops, then we would expect strikes to become more frequent because the average probability will increase as a larger fraction of the parties in a jurisdiction experience a strike for the first time. If an effective dispute settlement procedure is defined as one that is used infrequently because it motivates the parties to reach an agreement bilaterally, any positive dependence on the strike would indicate that it is not an effective dispute settlement device. It is likely that different degrees of dependence exist in jurisdictions that have different policies toward public sector strikes. How different policies affect this dependence would be an important factor in evaluating the impact of different strike policies.

The results of this study show that strike penalties, prohibitions, and substitutes can have a significant effect on strikes. However, the impact of the various policy variables is exceedingly complex. States that prohibit strikes but impose no harsh penalties may have as many strikes as states where there is a legal right to strike. On the other hand, the availability of arbitration may have an impact on strikes that is so dramatic that strike penalties become unimportant in the peaceful settlement of disputes. Finally, as the discussion in this final section shows, these conclusions need to be both confirmed and elaborated in additional investigations.

Chapter XI

Footnotes

1. The Hawaii law does not include a threat to public welfare as a limitation on the right to strike.

2. As we summarize later in this chapter, arbitration statutes also reduced the probability of a strike.

3. The 1977 amendments permit the union to strike if both parties withdraw their arbitration offers. If both final offers are not withdrawn a strike is illegal and specific individual and union fines will be imposed against striking employees and their union. There has not been any strike experience since these amendments which would permit an evaluation of their enforcement. The absence of strikes, however, is probably due more to strike penalties. In addition, the bargaining since the 1977 amendments occurred after the two year strike experience that was statistically analyzed in Chapter XI so no "pre-amendment" and "post-amendment" analysis of strikes could be conducted.

4. The school district in Hawaii has been struck twice in the recent past. In 1973 the teachers struck illegally and were unable to close the system. In the 1979 blue-collar strike some schools were closed because of the potential health problems created by the strike by janitors. See Chapter VII for a description of these two strikes.

5. Governor's Study Commission on Public Employee Relations, Pennsylvania Public Sectors Bargaining Issues, State of Pennsylvania, October, 1979, p. 3.

6. The 1973 teacher strike did not close down the school system. Although a minority of teachers worked during the strike and a minority of the students attended classes, the state kept most of the schools open. Whether teachers could close the system in a legal strike remains a matter of speculation.

7. Governor's Committee on Public Employee Relations: Final Report, State of New York, March 31, 1966, p. 43.

8. The major study to date is John F. Burton, Jr. and Charles E. Krider, "The Incidence of Strikes in the Public Sector" in Labor in the Public and Nonprofit Sectors, edited by Daniel S. Hamermesh (Princeton: Princeton University Press, 1975): 135-177.

Appendix A

Table AX-1

Logit Estimates of Teacher Strikes

in Illinois, 1975-1976

Variable	
CONSTANT	-2.71108 (-.848641)
SIZE (students $\geq$ 5000)	2.071821 (2.35207)
Δ $PROPTAX_{73-74}$	-2.100152 (-1.23883)
STATE AID %	-4.348602 (-1.64172)
UNIONIZATION	5.30083 (1.805714)
Δ $EMPLOY_{73-74}$	-1.503700 (-.40538)
Δ $WAGES_{73-74}$	.66605 (.293091)
$WAGES_{74}$	-.00157 (-.510593)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 108

Chi Square - 18.5570

Table AX-2

Logit Estimates of Teacher Strikes

in Indiana, 1975-1976

Variable	
CONSTANT	-3.10536 (-.57481)
SIZE (students $\geq$ 5000)	.89169 (.832231)
Δ PROPTAX$_{73-74}$	1.279551 (.54763)
STATE AID %	1.292931 (.25143)
UNIONIZATION	2.816810 (1.06405)
Δ EMPLOY$_{73-74}$	1.198213 (.23679)
Δ WAGES$_{73-74}$	-1.024340 (-.19778)
WAGES$_{74}$	-.00307 (-.56619)

Number in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 128

Chi Square = 3.3662

Table AX-3

Logit Estimates of Teacher Strikes

in New York, 1975-1976

Variable	
CONSTANT	-4.75669 (-1.848720)
SIZE (students $\geq$ 5000)	.25319 (.382492)
Δ PROPTAX$_{73-74}$	-1.496364 (-.437843)
STATE AID %	-1.795330 (-.813290)
UNIONIZATION	2.027174 (.91676)
Δ EMPLOY$_{73-74}$	-2.003800 (-.566670)
Δ WAGES$_{73-74}$	-4.18471 (-1.393800)
WAGES$_{74}$	.00111 (.593161)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 264

Chi Square = 4.19094

Table AX-4

Logit Estimates of Teacher Strikes

in Ohio, 1975-1976

Variable	
CONSTANT	-4.67617 (-1.78336)
SIZE (students $\geq$ 5000)	.797110 (1.111750)
Δ PROPTAX$_{73-74}$	.57075 (.23213)
STATE AID %	-1.094590 (-.458923)
UNIONIZATION	1.689273 (.80209)
Δ EMPLOY$_{73-74}$	-3.74453 (-.869754)
Δ WAGES$_{73-74}$	-12.31627 (-2.80063)
WAGES$_{74}$	.00185 (.69729)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 172

Chi Square = 12.0363

Table AX-5

Logit Estimates of Teacher Strikes

in Pennsylvania, 1975-1976

Variable	
CONSTANT	-3.032582 (-2.14372)
SIZE (students $\geq$ 5000)	1.271171 (3.859354)
Δ PROPTAX$_{73-74}$	1.98617 (1.502273)
STATE AID %	-3.239563 (-3.057530)
UNIONIZATION	1.571732 (1.68233)
Δ EMPLOY$_{73-74}$	-.44761 (-.22574)
Δ WAGES$_{73-74}$	-1.047032 (-.606732)
WAGES$_{74}$	.00139 (.91445)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 293

Chi Square = 25.3513

Table AX-6

Logit Estimates of Teacher Strikes

in New York, 1975-1978

Variable	
CONSTANT	-3.317781 (-1.486784)
SIZE (students $\geq$ 5000)	.693580 (1.018663)
Δ PROPTAX$_{73-74}$	-1.538340 (-.405391)
STATE AID %	-1.706553 (-.74317)
UNIONIZATION	-.919921 (-.652963)
Δ EMPLOY$_{73-74}$	-1.09712 (-.279322)
Δ WAGES$_{73-74}$	-2.929803 (-.95838)
WAGES$_{74}$	.001381 (.731081)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 264

Chi Square = 3.7563

Table AX-7

Logit Estimates of Teacher Strikes

in Pennsylvania, 1975-1978

Variable	
CONSTANT	-4.16797 (-2.789643)
SIZE (students $\geq$ 5000)	1.12216 (3.456912)
Δ $PROPTAX_{73-74}$	1.02350 (.769321)
STATE AID %	-3.139914 (-3.031841)
UNIONIZATION	2.28145 (2.240082)
Δ $EMPLOY_{73-74}$	-1.551171 (-.77482)
Δ $WAGES_{73-74}$	-2.29627 (-1.26996)
$WAGES_{74}$	.00226 (1.468624)

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 293

Chi Square = 25.9499

TABLE AX-8

Logit Estimates of Strikes By Nonuniformed City Employees, 1975-76

Variable		Variable	
CONSTANT	-4.10244 (3.1349)	ILLINOIS	1.34158 (1.9472)
MEDIUM	-1.04779 (2.445)	INDIANA	.63424 (.6922)
SMALL	-3.5060 (3.6823)	OHIO	1.99014 (3.1952)
Δ TAX_{73-74}	.7063 (.6309)	PENNSYLVANIA	1.5599 (2.3173)
AID	2.9022 (2.0330)	WISCONSIN	.10139 (.1020)
UNIONIZATION	.29201 (1.0872)		
Δ $WAGES_{73-74}$	-1.5508 (1.1780)		
$WAGES_{74}$	.00044 (.3022)		
Δ $EMPLOY_{73-74}$	.34246 (.8666)		

Numbers in parentheses are equal to the absolute value of the coefficient divided by the standard error.

N = 679

Chi Square = 47.7314

Appendix B

State Strike Prohibitions And Limitations

A. BRIEF INTRODUCTION

The considerable diversity associated with collective bargaining law in the public sector is even more staggering when one surveys the array of strike prohibitions, limitations, and penalties which may be found in state statutory and case law. In the continuing search for an appropriate method or methods to resolve public sector labor disputes, it is apparent that individual states have utilized (and continue to utilize) vastly differing approaches. This variety serves as a laboratory in which numerous "experiments" may be observed.

In general, with the exception of Montana public employees (excluding fire fighters) and some public employees under the Alaska statute, public employees are not permitted a right to strike which is equal to that of private sector employees. In most states there are either statutory constraints and/or common law prohibitions covering the right to strike by varying groups of public employees. For the purposes of analysis, state laws may be divided into three categories. There are those which do not mention strikes by public employees. In these states, courts have generally invoked a "common law strike ban" based on a theory that strikes by public employees are unlawful unless expressly authorized by the legislature. The second grouping is the largest: most states have enacted statutes which explicitly forbid strikes by public employees. To date, only a small group of states belong to the third category which permit strikes in the public sector, although typically on a limited basis.

Even when states are grouped into these three general categories, there remain numerous differences as to how a particular jurisdiction deals with public employee strikes and strike limitations. In order to understand these differences, it is apparent that a study of state legislation is insufficient since,

either in jurisdictions where there is no or very limited legislation or in jurisdictions where there has been significant litigation interpreting state statutes, court decisions are often critical to understand the legal framework governing public employers, public employees, and the right to strike. Among the points which a comprehensive survey of state law regarding public employees' right to strike (or lack of a right to strike) should explore are the following:

> 1) What is the definition, if any, of "strike"? 2) Are strikes explicitly prohibited or limited or are restrictions or limitations based upon common law decisions? 3) What is the array of penalties available for violations? 4) Are strike penalties legislatively mandated or developed by "judicial legislation"? 5) Where there is resort to injunctive relief, a) who may initiate such an action, b) are there standards to determine the appropriateness of equitable relief, and c) are there conditions which may be attached to the injunction? 6) Is a public employee strike an unfair labor practice? 7) What is the appropriate or exclusive forum for the determination of the existence of an illegal strike and for imposing strike penalties? 8) What affirmative defenses, if any, are available in an injunctive action or in a proceeding to impose penalties?

The survey which follows first discusses the current state of the law in each of the seven states which were selected to serve as the focal point for this study. It will then turn to a more general survey of the statutory and common law provisions found in other states, utilizing the three general categories noted above: 1) statutory prohibition states, 2) no statute states, and 3) right to strike states. For the seven states which will receive special attention, the study will first focus upon the pertinent statutory framework, if any, and then relevant case decisions will be examined. Distinctive features of each of the seven jurisdictions will then be summarized. Since it is impossible in a study of this

type to be exhaustive even as to this limited number of states, emphasis will be placed throughout upon the unique features of a state's statutory or case law. The same format will be followed in studying the remaining states: statutory provisions, if any, will be discussed first followed by the pertinent case law. Some general conclusions will complete the survey.

Certain caveats must be noted. First, although there have been a significant number of public employee strikes, very few of them have reached the courts and even fewer have resulted in reported appellate decisions. Most strikes are settled without the imposition of judicial or other penalties which produce appellate judicial review and opinions to serve as precedents. Thus, while there have been numerous questions involving the right to strike and strike penalties litigated, the body of published state decisions is often sparse and spotty with little applicability elsewhere. Second, there are a number of significant related legal issues which this study does not attempt to cover. These include the question of who is a public employee and thus covered by the jurisdiction's rules relating to public employee strikes and the question (which to date has been answered negatively) of whether the right to strike is inherent in the constitutional right to form a labor organization. Also omitted are extensive discussions of the myriad of general legal problems surrounding the granting of injunctive relief such as problems of service of injunction papers and the critical distinctions between criminal and civil contempt proceedings and penalties. Finally, the study makes no distinction among various types of strikes (recognitional, impasse or grievance) unless specifically noted, and used January 1, 1980 as a cut-off date. Generally 1980 cases and developments have not been included although there are some exceptions. Primary reliance has been placed upon pre-1980 reported decisions and statutes.

B. NEW YORK, INDIANA, OHIO, ILLINOIS, WISCONSIN, HAWAII, AND PENNSYLVANIA: A STATE BY STATE ANALYSIS OF THE STATE OF THE LAW.

NEW YORK

1) STATUTORY LAW

New York's Public Employees' Fair Employment Act (commonly known as the Taylor Law) has the most extensive statutory provisions implementing its express no-strike policy against public employees and employee organizations. N.Y. CIV. SERV. LAW Sec. 210(1)(McKinney). The law defines a strike as "any strike or other concerted stoppage of work or slowdown by public employees". N.Y. CIV. SERV. LAW Sec. 201(9)(McKinney). Not only are public employees and employee organizations expressly prohibited from striking, they are prohibited from causing, instigating, encouraging or condoning a strike. N.Y. CIV. SERV. LAW Sec. 210(1)(McKinney). Public employers are similarly prohibited from authorizing, approving, condoning or consenting to a strike. N.Y. CIV. SERV. LAW Sec. 210(2)(c)(McKinney). Employee organizations seeking recognition or certification must affirm that they do not assert the right to strike or impose an obligation to conduct, assist or participate in such a strike. N.Y. CIV. SERV. LAW Sec. 207(3)(b)(McKinney).

The statute goes on to provide that an employee who is absent from work without permission when a strike occurs is presumed to have engaged in the strike on that date. N.Y. CIV. SERV. LAW Sec. 210(2)(b)(McKinney). The chief executive officer of the government involved is authorized to determine whether a strike has occurred. The officer must notify the employee involved, the chief legal officer of the government involved, and the Public Employment Relations Board (PERB). N.Y. CIV. SERV. LAW Secs. 210(2)(b),(c)(McKinney).

The chief legal officer (or PERB on its own motion) is required to institute proceedings before PERB to determine whether an employee organization has violated the strike provision of the law.

N.Y. CIV. SERV. LAW Sec. 210(3)(c)(McKinney). PERB, in determining strike violation charges, is required to consider whether the employee organization called the strike or tried to prevent it, and whether the employee organization made or was making good faith efforts to terminate the strike. N.Y. CIV. SERV. LAW Sec. 210(3)(e)(McKinney).

An employee who objects to the chief executive officer's determination may file written objections. The officer may then either (1) sustain the objections, or (2) if he determines that a question of fact is involved, he is required to appoint a hearing officer to determine whether in fact the employee did violate the no-strike provision of the Taylor Law. If the chief executive officer sustains the objections or if the hearing officer's determination indicates that the employee is not in violation of the strike provision, all further penalty deductions cease and a refund is made of previous penalty deductions, if any.

When a strike occurs or is threatened, the chief executive officer of the government involved is further required to notify the chief legal officer of the government involved. The law then provides that "notwithstanding the failure or refusal of the chief executive officer to act as aforesaid, the chief legal officer ... shall forthwith apply to the supreme court for an injunction against such violation." N.Y. CIV. SERV. LAW Sec. 211 (McKinney).

As for employee penalties, the statute provides that a public employee in violation of the strike provision "may be subject to removal or other disciplinary action provided by law for misconduct." N.Y. CIV. SERV. LAW Sec. 210(2)(a)(McKinney). The statute further provides for a payroll deduction equal to twice an employee's daily rate of pay for every day (or part) the employee was on strike. N.Y. CIV. SERV. LAW Sec. 210(2)(g)(McKinney).

As for employee organizations, the law states if PERB determines that an employee organization has violated the strike law, PERB must order forfeiture of employee deduction rights, for such period of time as it shall determine. In fixing the duration of the forfeiture, PERB is required to consider "all the relevant facts and circumstances, including but not limited to: (i) the extent of any wilful defiance of subdivision one of this section (ii) the impact of the strike on the public health, safety, and welfare of the community and (iii) the financial resources of the employee organization, and the board may consider (i) the refusal of the employee organization or the appropriate public employer or the representative thereof, to submit to the mediation and fact-finding procedures and (ii) whether, if so alleged by the employee organization, the appropriate public employer or its representatives engaged in such acts of extreme provocation as to detract from the responsibility of the employee organization for the strike. In determining the financial resources of the employee organization, the board shall consider both the income and the assets of such employee organization." N.Y. CIV. SERV. LAW Sec. 210(3)(McKinney).

Non-compliance with a court injunction is subject to the Judiciary Law which states in part that punishment for a contempt is a fine not exceeding $250 or imprisonment not exceeding 30 days, or both. N.Y. JUD. LAW Sec. 751(1)(McKinney). Wilful disobedience or resistance to a lawful mandate of a court by an employee organization in a case involving a strike in violation of the civil service law, is punishable by a fine to be determined by the court. N.Y. JUD. LAW Sec. 751(2)(a)(McKinney).

Any taxpayer may seek judicial review for "failure to perform the duties required" under Secs. 210(2) and 210(3) (prohibition of strikes) and N.Y. CIV. SERV. LAW Sec. 211 (McKinney) (application for injunctive relief). N.Y. CIV. SERV. LAW Sec. 213(e)(McKinney).

Finally, the law requires a written report by the chief executive officer of the government involved within 60 days following the termination of a strike. The report is to be made public and is to contain the following information: "(a) the circumstances surrounding the commencement of the strike, (b) the efforts used to terminate the strike, (c) the names of those public employees whom the public officer or body had reason to believe were responsible for causing, instigating or encouraging the strike and (d) related to the varying degrees of individual responsibility, the sanctions imposed or proceedings pending against each such individual public employee." N.Y. CIV. SERV. LAW Sec. 210(4)(McKinney). N.Y. CIV. SERV. LAW Sec. 210(2)(f)(McKinney) relating to the one year probationary status of an employee determined to have violated the no-strike provisions of the law was repealed effective July 5, 1978.

2) CASE LAW

Despite the specificity of Taylor Law language in regard to the legal consequences mandated by a breach of the strike ban, as might be anticipated, there has been much litigation about these provisions initiated and pursued in state courts. To date, attacks on constitutionality based on due process and equal protection grounds, have been unsuccessful in state courts although, as will be noted, one federal court decision found one aspect of the statute to be unconstitutional.

In addition there are numerous reported lower court decisions from state courts discussing a wide variety of issues requiring interpretation of the Taylor Law. Few have been decided, however, by the Court of Appeals, the highest court in the state.

The Taylor Law's prohibition against strikes by public employees or their employee organizations have been uniformly held to be constitutional by state courts despite attacks alleging a

constitutional infirmity under either the federal or state constitution. The typical grounds for a constitutional challenge has been the Fourteenth Amendment's due process and equal protection requirements. For an early case decided by the Court of Appeals which rejected this type of constitutional challenge, see City of New York v. De Lury, 23 N.Y.2d 175, 295 N.Y.S.2d 901, 243 N.E.2d 128 (1968). An appeal to the United States Supreme Court in this case was subsequently dismissed. 394 U.S. 455 (1969), rehearing denied 396 U.S. 872 (1969). For a later, additional decision by the New York State Court of Appeals, see Sanford v. Rockefeller, 35 N.Y.2d 547, 364 N.Y.S.2d 450, 324 N.E.2d 113 (1974).

More recent examples of cases upholding constitutionality include Barni v. Board of Education of Lakeland, 408 N.Y.S.2d 659 (1978) and Board of Education of City School District of Buffalo v. Pisa, 55 A.D.2d 128, 389 N.Y.S.2d 938 (1976). In Rogoff v. Anderson, 34 A.D.2d 154, 310 N.Y.S.2d 174 (1970), the Appellate Division upheld the constitutionality of the Taylor Law's requirement conditioning a union's certification upon union affirmation that it does not assert the right to strike against the public employer. An argument had been made by the union that this was an unconstitutional infringement upon the right of free speech.

Federal courts however, have treated constitutional challenges less uniformly. In Buffalo Teachers Federation v. Helsby, 435 F. Supp. 1098 (S.D.N.Y. 1977), the federal district court held that a teachers' union was entitled to a preliminary injunction restraining PERB from holding a hearing on the union's loss of dues deduction rights pending resolution of the union's constitutional challenge to an aspect of the Taylor Law. The union's claim concerned the narrow issue of whether there is an unconstitutional discrimination between the forfeiture of dues check off rights required in a PERB proceeding in contrast to the jurisdiction of a mini-PERB or OCB where the statute gives discretion to the mini-PERB or to the court

(but not to New York City's Office of Collective Bargaining) to impose such a penalty.

In a similar lawsuit considered by a different federal district court judge in Civil Service Employees v. Helsby, 439 F. Supp. 1272 (S.D.N.Y. 1977), an opposite result was reached. In this latter case, a preliminary injunction was denied based on a finding that the statutory scheme was clearly and rationally related to a legitimate state purpose.

In Goodman v. State of New York, 31 N.Y.2d 381, 340 N.Y.S.2d 393 (1972), the Court of Appeals held that when funds were paid into court as a result of an adjudication of criminal contempt by illegally striking unions, the public employer which had commenced the action in which the contempt order was issued (in this case New York City) was entitled to the funds and not the State of New York.

Earlier, in Board of Education of Brookhaven v. NEA, 30 N.Y.2d 938, 335 N.Y.S.2d 690 (1972), a closely divided Court of Appeals held that the school board's complaint for money damages and an injunction against the national association's statements urging teachers not to take employment in that school district and applying sanctions against teachers taking such employment was legally insufficient.

On the issue of whether, in addition to statutory penalties, an illegally striking union may be liable for compensatory and even punitive damages, there is an interesting decision. In Caso v. District Council 37, 43 A.D.2d 159, 350 N.Y.S.2d 173 (1973), the Appellate Division held that the Act's policies are best served by permitting appropriate redress in addition to the express statutory remedies of the Taylor Law. Therefore, the court concluded that the plaintiffs (Long Island Sound municipalities) stated a cause of action by claiming damages done to their waters and beaches by striking unions when garbage dumped by New York City during the

strike ultimately washed up on Long Island Sound beaches and contaminated water supplies.

In People v. Vizzini, 78 Mis.2d. 1040, 359 N.Y.S.2d 143 (1974), another court held that Taylor Law penalties were not exclusive in the context of criminal reckless endangerment indictments against the president and two other union officers for their alleged fraud in calling a New York City firefighters strike.

3) UNIQUE NEW YORK FEATURES

a) Single statute with broad, explicit array of individual and union penalties. b) Among penalties: for individual strikers, payroll deduction of two days pay for every day on strike, fines for breach of an injunction, regular disciplinary penalties for misconduct; for unions, loss of dues deduction rights, fines for breach of an injunction. c) Special role for PERB, New York City's Office of Collective Bargaining, and approved "mini-PERBs". d) Chief legal officer of government involved must seek injunction against strike. e) Taxpayers have standing to seek court review of public official's failure to perform duties in connection with imposition of strike penalties against individuals and unions and the seeking of a mandatory injunction. f) Employer unfair labor practices are not relevant as to whether an injunction shall issue but are a mitigating circumstance in determining amount of penalty.

INDIANA

1) STATUTORY LAW

The Indiana Public Employee Bargaining Act (hereafter "Act") defined a "strike" as a:

". . .concerted failure to report for duty, willful absence from one's position, stoppage of work, or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer, or in any concerted manner interfering with the operation of the employer as defined in subsection (B) of this section for any purpose."

IND. CODE Sec. 22-6-4-1(M)(1976).

Public employee strikes were prohibited by IND. CODE Sec. 22-6-4-6. The statutory prohibition read as follows:

Sec. 22-6-4-6. Strikes.--(a) It is unlawful for any public employee, public employee organization, or any affiliate, including but not limited to state or national affiliates, to take part in, assist, or advocate a strike against a public employer. (b) Any public employer may in an action at law, suit in equity, or other proper proceeding, take action against any public employee organization, any affiliate thereof, or any person aiding or abetting in a strike, for redress of such unlawful act. (c) Where any exclusive representative engages in a strike, or aids or abets therein, it shall lose its dues deduction privilege for a period of one [1] year. (d) A public employer shall not pay any public employee for any day when the public employee fails as a result of a strike to report for work.

IND. CODE Sec. 22-6-4-6 (1976).

This particular statutory prohibition against public employee strikes did not apply to policemen, firemen, professional engineers, university faculty, certificated employees of school corporations, confidential employees, and municipal or county health care institution employees. IND. CODE Sec. 22-6-4-1(C)(1975).

Certificated educational employees are governed by sections 20-7.5-1-1 to 20-7.5-1-14 of the Indiana Code. The definition and prohibition of certificated educational employee strikes are almost identical to the provisions in the Act. IND. CODE Secs. 20-7.5-1-2(P), 20-7.5-1-14 (1976). Not only is a school employer prohibited from paying any school employee for days missed as a result of a strike, the employer cannot be required to schedule makeup days in strike situations. IND. CODE Sec. 20-7.5-1-14(D)(1976).

In addition, under the Act any public employee organization or its agents who engaged in a strike committed an unfair labor practice. IND. CODE Sec. 22-6-4-5(B)(5)(1976). The public employer could file a complaint against the employee and/or the employee organization with the Indiana Education Employment Relations Board (hereafter "Board"). IND. CODE Sec. 22-6-4-8(A)(1976). In addition, the employer could petition a circuit or superior court for injunctive relief, pending the final determination by the Board. IND. CODE Sec. 22-6-4-8(B)(1976). A court was required to grant injunctive relief if the court found the conduct in question to pose a "clear and present danger to public health or safety" and "it is in the best public interest to prevent". IND. CODE Sec. 22-6-4-8(B)(1976). The Board or the complaining party was authorized to petition the circuit or superior court for appropriate temporary or permanent relief and for the enforcement of the Board's order. IND. CODE Sec. 22-6-4-8(D)(1976).

Any school employee organization or its agents who engage in a strike commit an unfair labor practice. IND. CODE Sec. 20-7.5-1-7(B)(4). (1976). The school employer may file a complaint against the striking employee(s) with the Indiana Education Employment Relations Board. IND. CODE Sec. 20-7.5-1-11 (1976).

2) CASE LAW

In Indiana Education Employment Relations Board v. Benton Community School Corp., the Indiana Supreme Court held the Indiana Public Employee Bargaining Act IND. CODE Secs. 22-6-4-1 to 13 (1976) to be in violation of Article 1, Section 12 of the Indiana Constitution. 58 Ind. 261, 365 N.E.2d 752 (1977). Section 8 of the Act prohibited judicial review of unit determinations and certification of exclusive bargaining representatives by the Board. 365 N.E.2d at 760. Since the court found that the objectionable portions of Section 8 were not severable from the remainder of the Act, the entire statute was declared unconstitutional. 365 N.E.2d at 761. The Benton decision reflects the current status of the law in Indiana. No action has been taken by the legislature to modify, revoke or recreate portions of the Indiana Public Employee Bargaining Act.

Public employee strikes are illegal under Indiana common law and may be enjoined. Anderson Federation of Teachers v. School City, 252 Ind. 558, 254 N.E.2d 329. (1970). In Anderson, a restraining order was issued against the striking teachers and their local union. 254 N.E.2d at 330. A judgment of contempt was rendered against them and a fine of five hundred dollars was levied for each school day missed as a result of the strike. Id. In denying a petition for rehearing, the Supreme Court held that Indiana's Anti-Injunction Act does not apply to public employee conduct; thus, public employees may be enjoined from picketing and striking against the public employer. 254 N.E.2d at 331.

In Elder v. City of Jeffersonville, city firemen appealed a permanent injunction prohibiting them from engaging in any further strikes against their employer. 164 Ind. App. 422, 329 N.E.2d 654, 655 (1975). The court reaffirmed its decision in the Anderson case and found that public employee strikes were illegal and could be enjoined. Id. at 329 N.E.2d 657. A temporary injunction could issue to halt ongoing strikes, and a permanent injunction could issue to prevent future strikes. Id. at 660.

The court limited the question to be decided in the Elder case to 1) whether public employees were involved, and 2) whether there was in fact a strike or job action. Id. at 660. In deciding whether the preliminary injunction was properly issued, the court considered the following factors: 1) the probability that plaintiffs would prevail on the merits; 2) the probability that plaintiffs would suffer irreparable injury without an injunction; and 3) the interests of the parties with "special consideration of the public interest." Id. at 659. The court refused to consider the conduct of the employer during negotiations and rejected the firemen's "clean hands" defense. Id. at 660. The court held that as long as a possibility exists that further strikes will occur, a court may issue a temporary or a permanent injunction against the public employees — even in a situation where no strike is in progress when the injunction is issued. Id. at 658-660.

Relying on the Anderson and Elder decisions, the Third District Court of Appeals affirmed a temporary injunction issued after striking firemen returned to their jobs. Individual Members, etc. v. City of Mishawaka, 355 N.E.2d 447 (1976). The court noted the illegality of the firemen's strike. 355 N.E.2d at 449. While no strike was in progress or expressly threatened when the temporary injunction was issued, "the firemen had already demonstrated...their willingness to strike." Id. at 449. The lower court was, therefore, empowered to grant temporary relief pending a final disposition on the merits. Id. at 449.

The firemen raised a defense of equitable estoppel by claiming that the mayor had promised not to seek an injunction if the firemen returned to work. Id. at 449. In rejecting the firemen's argument, the court concluded that equitable estoppel could not be used to protect persons whose only claim of prejudice was interference with their ability to engage in an illegal strike. Id. at 449-450.

3) UNIQUE INDIANA FEATURES

a) Failure to legislate a replacement for the Indiana Public Employee Bargaining Act after it was declared unconstitutional in 1977. b) Public school teachers are thus covered by comprehensive bargaining and strike prohibition language while other public employees are not. c) Strong case law indicates broad judicial discretion to issue injunctions and enforce contempt of court penalties for violations of the common law strike ban in the absence of express statutory penalties.

OHIO

1) STATUTORY LAW

Ohio has no public sector collective bargaining legislation. it does have, however, anti-strike legislation, the Ferguson Act, which defines a strike as:

> "the failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of employment, or of intimidating, coercing, or unlawfully influencing others from remaining in or from assuming such public employment. . . .

OHIO REV. CODE. ANN. Sec. 4117.01(A) (Page) (1978). A public employee engages in a strike specifically prohibited by the Ferguson Act when the employee,

> "without the approval of his superior, unlawfully fails to report for duty, absents himself from his position, or abstains

> in whole or in part from full, faithful, and proper perfc mance of his position for the purpose of inducing, influencing, or coercing a change in the conditions, as compensation, rights, privileges, or obligations of employment or of intimidating, coercing, or unlawfully influencing others from remaining in or from assuming such public employment is on strike, provided that notice that he is on strike shall be sent to such employee by his superior by mail addressed to his residence as set forth in his employment record."

OHIO REV. CODE ANN. Sec. 4117.04 (Page) (1978). Coverage of the Act extends to every publicly employed person in Ohio. OHIO REV. CODE ANN. Sec. 4117.01(B) (Page). (1978).

A public employee is not engaged in a statutory strike in violation of the Ferguson Act unless and until he/she is sent the prescribed notice that he/she is on strike. Upon receiving the notice, the employee may file a written request, within ten days after his/her regular compensation has ceased, for the timely commencement of a hearing to determine whether he/she violated the Ferguson Act. OHIO REV. CODE ANN. Sec. 4117.04 (Page) (1978).

Any public employee who violates the Ferguson Act is considered to have abandoned and terminated his/her employment, unless he/she is appointed or reappointed under the conditions prescribed in Section 4117.03. OHIO REV. CODE ANN. Sec. 4117.05 (Page) (1978). Any person appointed or reappointed under Section 4117.03 cannot receive an increase in compensation which exceeds that received by him/her prior to his/her violation until one year has passed from the time of appointment or reappointment. OHIO REV. CODE ANN. Sec. 4117.03 (Page) (1978). Thus, the Ferguson Act denies to any striking public employee the fruits of the strike effort. In addition, such employee is placed on probation without tenure for two years following the date of appointment or reappointment. OHIO REV. CODE ANN. Sec. 4117.03 (Page) (1978).

Removal, suspension and demotion of classified civil service employees is governed by OHIO REV. CODE ANN. Sec. 124.34 (Page) (1978). Under this statutory provision, a striking classified civil service employee may be disciplined for "neglect of duty". OHIO REV. CODE ANN. Sec. 124.34 (Page) (1978). A copy of the disciplinary order must be sent to the employee and filed with the director of administrative services and the state personnel board of review or the commission, whichever is appropriate. OHIO REV. CODE ANN. Sec. 124.34 (Page) (1978). The employee may file a written appeal with the state personnel board of review or the commission within ten days of the filing of such order. OHIO REV. CODE ANN. Sec. 124.34 (Page) (1978). Such appeal must be heard within 30 days of its filing date. Either the public employer or the employee may appeal the decision of the state personnel board of review or the commission to the court of common pleas in the county where the employee resides. OHIO REV. CODE ANN. Sec. 124.34 (Page) (1978). An appeal to the court of common pleas is governed by the procedure provided in OHIO REV. CODE ANN. Sec. 119.12 (Page).

2) CASE LAW

In Cleveland v. Division 268, the County Court of Appeals concluded that the sanctions under the Ferguson Act applied only to public employees and not to their nonemployee union leaders. Cleveland v. Division 268, 85 Ohio App. 153, 161, 85 N.E.2d 811 (1949). The court held that the city could seek injunctive relief based upon the general equitable jurisdiction of the court. Criminal trespass was also a possible cause of action. Id. at 162-163.

An additional remedy was recognized in a later case, wherein AFSCME District Council 51 and its International were permanently enjoined from striking against the city of Cincinnati and the city collected damages against the union for failure to comply with the injunction. Cincinnati v. Cinncinnati District Council 51, 35 Ohio

St.2d 197, 193, 299 N.E.2d 686 (1973). Both the Council and the International were found in contempt of court for violating the injunction and were fined $37,000, $1,000 for each day of the strike. Id. at 198. On appeal, the Court of Appeals affirmed the judgment of the trial court. The court concluded that the International "aided and encouraged the strike in violation of the permanent injunction". Id. at 205-206. In addition, the court held that a taxpayer and citizen of a municipality could intervene in a contempt proceeding brought by the municipality against a union of municipal employees where such intervention was in the public interest. Id. at 201.

In Board of Education v. Ohio Education Association, the local board of education was granted the right to seek an injunction against its striking teachers. 42 Ohio Op. 2d 383, 235 N.E.2d 538.

On several occasions, Ohio courts have determined that the Ferguson Act is not self-executing and have suggested in dicta that the Act was not intended to affect court of common pleas' powers to enjoin common law strikes by public employees. In Markowski v. Backstrom, the court held that public employers had wide discretion over whether to invoke the provisions of the Ferguson Act or disregard them. Markowski v. Backstrom, 10 Ohio Misc. 139, 226 N.E.2d 825 (1967). Under the Ferguson Act, public employers determine whether a strike has occurred, which employees were on strike, and which employees would be reinstated. 10 Ohio Misc. 139, 151. Since the Ferguson Act applied to municipal employees, any municipal ordinance contrary to the Ferguson Act would be invalid. Id. at 152.

In Abbot v. Myers, the court upheld the constitutionality of the Ferguson Act. 20 Ohio App.2d 55, 251 N.E.2d n 869 (1969). In order to invoke the sanctions under the Act, the public employer must follow the notice procedure in Section 4117.04. A formal

finding that the public employee is on strike, however, need not be made prior to the sending of the notice. Id.

Public employers have been ordered by the courts to comply strictly with the notice procedure in Section 4117.04 of the Act if the Act's sanctions are to be available. Goldberg v. Cincinnati, 26 Ohio St.2d 228 271 N.E.2d 284 (1971). Due to the severity of the sanctions provided under the Act (termination, two-year probation with tenure, one-year ban on increases in compensation), public employers are required to send actual written notice to an employee that he/she is on strike. 271 N.E.2d at 289-290. A public employee is not engaged in a statutory strike unless the proper notice is sent, and the public employer has complete discretion as to when that notice is sent. Id. at 289-290. Although the court noted that all public employee strikes "are uniformly illegal" at common law and could be enjoined by a court of common pleas, yet the court concluded that "a common law strike does not, ipso facto, constitute a strike in violation of the Ferguson Act." Id. at 288-289. A public employee engages in a statutory strike only if the required notice is given by the public employer. Id. at 289; Diebler v. Denton, 49 Ohio App. 2d 303, 361 N.E.2d 1072 (1976).

In Diebler v. Denton, the court held that the punitive provisions of the Ferguson Act could not be invoked where the required notice was not given to the employees in question. 361 N.E.2d at 1078. On the other hand, the provisions of the Ferguson Act were cumulative and not exclusive where classified civil service employees were involved in a strike. Id. at 1079. The public employer could proceed under the Ferguson Act, OHIO REV. CODE ANN. Sec. 124.34 (Page), or both. Id. at 1079.

If the public employer proceeded under Section 124.34, however, the employer would have to base a removal on the grounds of "neglect of duty" or absence from work. Id. at 1079 citing Bell v. Board of Trustees, 21 Ohio App.2d 49, 254 N.E.2d 711 (1969). Upon the

issuance and receipt of removal order, the employee may appeal such order to the state personnel board of review or to the commission. A board or commission decision is then appealable to the court of common pleas in the county where the employee resides. Id. at 1076.

The court made it clear in Diebler v. Denton that public employee strikes were prohibited under any circumstances. Even a breach of the collective bargaining agreement by the public employer would not justify a public employee strike. Id. at 1079. The court left the issue of mitigation of penalty unresolved, however. Id. at 1079.

3) UNIQUE OHIO FEATURES

a) Strong anti-strike legislation and penalties exist in Ohio in the absence of collective bargaining legislation. b) Ferguson Act procedures and penalties exist side by side with the broad, general power of Ohio courts to enjoin common law prohibited strikes by public employees.

ILLINOIS

1) STATUTORY LAW

There is no statutory law in Illinois which explicitly governs public employee strikes and strike penalties nor is there any public employee collective bargaining statute. Executive Order No. 6, issued in 1973 by the governor, created collective bargaining rights and procedures for state employees. The Order, however, is silent on the right of state employees to strike and does not specify strike penalties.

The Illinois Anti-Injunction Act, prohibits courts from enjoining peaceful strikes and picketing. ILL. REV. STAT. ch. 48, Sec. 2a (1975). The language of the Act does not specifically indicate whether it was meant to apply to private or public labor disputes, or both.

2) CASE LAW

The first significant case involving an injunction against a strike by public employees was Board of Education v. Redding, 32 Ill.2d 567, 207 N.E.2d 427 (1965). The court held that public employees had no right to strike since the public policy to "provide a thorough and efficient system of free schools", expressly declared in Article VIII, Section 1 of the Illinois Constitution, transcended the right of employees to strike or picket a public school. Id. at 572. In support of the "essentiality of functions" doctrine, the court reasoned that governmental functions may not be impeded or obstructed by a public employee strike. Id. at 573. Thus, Redding provided Illinois with a constitutional rationale for a judicially construed no-strike policy for public employees. The applicability of the Anti-Injunction Act which was in effect at the time and its applicability to public school employees was neither raised nor ruled on.

Although the Redding decision has sometimes served as a basis for judicial refusal in Illinois to apply the provisions of the Anti-Injunction Act to public employee strikes, some Illinois courts have reached different results. In County of Peoria v. Benedict, the Illinois Supreme Court held that the Anti- Injunction Act applied to employees of a county nursing home; thus, the preliminary injunction enjoining their strike and picketing activities was erroneously issued. County of Peoria v. Benedict, 47 Ill. 2d 166, 265 N.E.2d 141 (1970), cert. denied, 402 U.S. 929 (1971). (A major reason for this conclusion was an earlier Illinois Supreme Court decision holding the Anti-Injunction Act applicable to

employees of a non-profit hospital.) The Court concluded, however, that the improperly issued injunction had to be obeyed nevertheless until it was reversed for error by the issuing court or a higher court. Id. at 170. The employees' violation of the injunction, therefore, warranted the imposition of fines and imprisonment for contempt. Id. at 171.

In Board of Junior College v. Cook County Teachers Union, the appellate district court held that the Anti-Injunction Act did not preclude a circuit court from deciding whether to enjoin a threatened teachers strike. 126 Ill. App. 2d 418, 262 N.E. 2d 125 (1970), cert. denied, 402 U.S. 998 (1971). The court affirmed the temporary injunction issued and the trial court's finding that the teachers were guilty, beyond a reasonable doubt, of criminal contempt for violating the injunction. The court upheld a $5,000 fine imposed against the union and a $1,000 fine, plus 30 days imprisonment, imposed against the union president. Id. at 435.

In Board of Education v. Morton Council Teachers Local 571, the Illinois Supreme Court was faced with the prospect of jailing 64 out of 378 teachers for refusing to comply with a temporary restraining order enjoining their strike. 50 Ill. 2d 258, 278 N.E. 2d 679 (1972). The Court remanded the case to the circuit court and ordered that a change ofjudges be made. Id. at 261-262. (Later on, the Governor of Illinois pardoned the union leaders who ended up in jail.)

In 1974, the Illinois Supreme Court construed the Anti-Injunction Act and held expressly that municipal employees had no legal right to strike. City of Pana v. Crowe, 57 Ill. 2d 547, 316 N.E. 2d 513 (1974). The Court declared that the purpose of the Anti-Injunction Act was to prohibit only the enjoining of lawful conduct; thus, the Act did not prohibit a court from enjoining unlawful strikes by public employees. Id. at 549.

In Board of Trustees v. Cook County Teachers Union, the appellate district court held that the issuance of an exparte temporary restraining order violated the Illinois Anti-Injunction Act, where the order was issued without notice and without an adequate explanation of why notice was not given to Union counsel. 42 Ill. App. 3d 1056, 1061-1062, 356 N.E. 2d 1089 (1976). In addition, the ex parte extension of the temporary restraining order violated the Injunction Act. Id. at 1062.

Although, the restraining order and its extension were erroneously issued, both orders had to be obeyed until they were set aside. Id. at 1063 citing County of Peoria v. Benedict, supra. Any error in the restraining order and its extension could not be attacked in a contempt proceeding. Id. at 1063 citing Board of Junior College v. Cook County Teachers Union, Local 1600, supra. Despite the errors found by the court, the restraining order and its extension were still valid, as were contempt proceedings based on these orders. Id. at 1064. The appellate district court reversed the temporary restraining order and the order extending it. Although the court affirmed the findings of criminal contempt, it reduced the fine of $1,000 imposed for each day during the disputed time period to $100 per day. Id. at 1067.

Board of Education v. Parkhill is another example of an Illinois court holding that public employee strikes were illegal as a matter of public policy. 50 Ill. App. 3d 60, 62, 365 N.E. 2d 195 (1977).

3) UNIQUE ILLINOIS FEATURES

a) In the absence of any collective bargaining or strike ban legislation, Illinois litigation has centered around the applicability of the state's Anti-Injunction Act. b) After some initial uncertainty, the Act has been interpreted as not being applicable to public employee strikes. c) There may be a

constitutional basis for Illinois' judicial strike ban against public employee strikes. c) There may be a constitutional basis for Illinois' judicial strike ban against public employee strikes.

WISCONSIN

1) STATUTORY LAW

a) State Employees

Wisconsin state employees are governed by the comprehensive State Employement Labor Relations Act (SELRA), WIS. STAT. Sec. 111.80-.97. Section 111.81(18) defines a "strike" as follows:

> "Strike" includes any strike or other concerted stoppage of work by employees, and any concerted slowdown or other concerted interruption of operations or services by employees, or any concerted refusal to work or perform their usual duties as employees of the state. The occurrence of a strike and the participation therein by an employee do not affect the right of the employer, in law or equity, to deal with such strike. WIS. STAT. Sec. 111.81(18). (1978).

State employee strikes are expressly prohibited under WIS. STAT. Sec. 111.89 (1978). Once the state employer establishes that a strike is in progress, the Department of Employment Relations has the responsibility of deciding whether to seek an injunction or file an unfair labor practice under WIS. STAT. Sec. 111.84(2)(e) or both. Under WIS. STAT. Sec. 111.84(2)(e) Stats. (1973), it is an unfair labor practice for state employees to "engage in, induce or encourage any employees to engage in a strike, or a concerted refusal to work or perform their usual duties as employees."

Administrative remedies do not preclude the granting of injunctive relief to the employer. In dealing with a state employee strike, the employer has the following expressed rights under WIS. STAT. Sec. 111.89 (1978):

> (a) The right to impose discipline, including discharge, or suspension without pay, of any employee participating therein; (b) The right to cancel the reinstatement eligibility of any employee engaging therein; and (c) The right to request the imposition of fines, either against the labor organization or the employee engaging therein, or to sue for damages because of such strike activity.

The Wisconsin legislature has declared that neither the state employer nor the state employee has any right to "jeopardize the public safety and interest and interfere with the effective conduct of public business." WIS. STAT. Sec. 111.80(2) (1978). The employer is authorized to seek injunctive relief in order to effectuate this legislative declaration of public policy. WIS. STAT. Sec. 111.89(1) (1978). Temporary injunctions may be sought under WIS. STAT. Sec. 813.02 (1976). Wisconsin courts are permitted to restrain striking state employees when it appears from the pleading that "a party is entitled to judgment and any part thereof consists in restraining some act the commission or continuance of which during the litigation would injure him, or when during the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party and tending to render the judgment ineffectual." WIS. STAT. Sec. 813.02 (1976).

b) Municipal Employees

Wisconsin municipal employees are governed by the comprehensive Municipal Employment Relations Act (MERA), WIS. STAT. Sec.

111.70. (1977). Section 111.70(1)(nm) defines a "strike" in the following manner:

> (nm) "Strike" includes any strike or other concerted stoppage of work by municipal employees, and any concerted slowdown or other concerted interruption of operations or services by municipal employees, or any concerted refusal to work or perform their usual duties as municipal employees, for the purpose of enforcing demands upon a municipal employer. Such conduct by municipal employees which is not authorized or condoned by a labor organization constitutes a "strike", but does not subject such labor organization to the penalties under this sub- chapter. This paragraph does not apply to collective bargaining units composed of law enforcement or fire fighting personnel.

WIS. STAT. Sec. 111.70(1)(nm) (1977). This section will become void after October 31, 1981, unless the Wisconsin legislature extends or repeals the expiration date of the Act.( ) While Section 111.70(1)(nm) does not expressly subject a union to penalties for a "wildcat" strike, the individual striking employees can be subjected to penalties under Sections (7) and (7m) of the Act. Subsection (1)(nm) does not apply to law enforcement or fire fighting employees. WIS. STAT. Sec. 111.70(1)(nm).

Municipal employee strikes are expressly prohibited, except under the conditions authorized in WIS. STAT. Secs. 111.70(4)(cm)(5),(6). WIS. STAT. Sec. 111.70(4)(1) (1978). WIS. STAT. Sec. 111.70(4)(1) (1978) expressly provides that Section 111.70(4)(cm) does not authorize strikes which occur after they have been enjoined under WIS. STAT. Sec. 111.70(7m)

Under WIS. STAT. Sec. 111.70(4)(cm)(5), parties may negotiate and agree in writing to an authorization for municipal employee strikes as their chosen procedure for resolving any impasse over the

terms of their contract. During the statutory impasse resolution procedures of mediation-arbitration, a municipal employee union may strike if both parties withdraw their final offers (and mutually agree upon modification) and the union gives ten days' written advance notice to the municipal employer and the Wisconsin Employment Relations Commission (WERC). WIS. STAT. Sec. 111.70(4)(cm)(6)(c). Section 111.70(4)(cm) does not apply to law enforcement and fire fighting employees.

Any strike prohibited under the Act is enjoinable, per se upon petition to the circuit court by the municipal employer or any citizen "directly affected" by the strike. WIS. STAT. Sec. 111.70(7m)(a) (1977). Any strike authorized under subsection (4)(cm) (5.) and (6.) of the Act may be enjoined upon petition to the circuit court by the municipal employer or any citizen "directly affected" by the strike, if the court finds that the strike poses an imminent threat to public health or safety. WIS. STAT. Sec. 111.70(7m)(b) (1977).

A labor organization which engages in a strike prohibited under subsection (4)(1) of the Act shall be penalized by a one-year suspension of any dues check-off agreement and fair share agreement with the municipal employer. WIS. STAT. Sec. 111.70(7m)(c) 1.a. (1977). This penalty does not apply to "wildcat" strikes. WIS. STAT. Sec. 111.70(1)(nm) (1977). Any labor organization which violates subsection (4)(1) by engaging in a strike after it has been enjoined must forfeit two dollars per member per day, with a maximum fine of $10,000 per day. WIS. STAT. Sec. 111.70(7m)(c)(1)(b) (1977). Each day of continued violation constitutes a separate offense. WIS. STAT. Sec. 111.70(7m)(c)(1)(b) (1977). This penalty also does not apply to "wildcat" strikes. WIS. STAT. Sec. 111.70(1)(nm) (1977).

Any individual who violates subsection (4)(1) by participating in a strike after it has been enjoined must pay a fine of ten

dollars for each day of continued violation. WIS. STAT. Sec. 111.70(7m)(c)(2) (1977). Any individual who participates in a strike after the issuance of a final and binding arbitration award must pay a fine of fifteen dollars for each day of continued violation. WIS. STAT. Sec. 111.70(7m)(c)(3) (1977). A municipal employee forfeits his/her wages or salary for the period during which he/she participates in a strike. WIS. STAT. Sec. 111.70(7m)(d) (1977).

Illegally striking municipal employees and labor organizations are subject to penalties for contempt of court. WIS. STAT. Sec. 111.70 (7m)((c)(4) (1977). In addition, a labor organization which strikes in violation of a final and binding arbitration award is liable for attorney fees and other costs incurred by the nonoffending party to enforce the award. WIS. STAT. Sec. 111.70(7m)(e) (1977). Subsection (7m) of the Act does not apply to strikes involving law enforcement and fire fighting employees. WIS. STAT. Sec. 111.70(7m)(f) (1977).

As to law enforcement and fire fighting employees, until October 31, 1981, Subsection (7) of Section 111.70 directs the courts to issue a ten dollar fine to anyone who violates subsection (4)(1) by participating in a strike after it has been enjoined. Each day of continued violation is a separate offense. WIS. STAT. Sec. 111.70(7) (1977). After October 31, 1981, Subsection (7) applies to all municipal employees. WIS. STAT. Sec. 111.70(7)(b) (1977).

c) Law Enforcement and Fire Fighting

Police and firefighters are generally governed by WIS. STAT. Sec. 111.77 (1977). Under that section, they have an express statutory duty to refrain from strikes and to comply with the dispute settlement procedures (including arbitration) provided by law. WIS. STAT. Sec. 111.77 (1977).

2) CASE LAW

a) State Employees

In State v. King, the state initiated civil contempt proceedings against striking state employees after a strike had been settled and the employees had returned to work. 82 Wis.2d 124, 262 N.W.2d 80 (1978). Neither party challenged the validity of the temporary injunctions enjoining those employees engaged in "essential services" for the mentally disadvantaged since the striking state employees were committing an unfair labor practice and had violated the statutory prohibition on strikes. 82 Wis.2d at 129.

The union challenged the civil contempt actions and argued that settlement of an underlying controversy required dismissal of civil contempt grounded in that controversy. (In prior cases, Wisconsin courts had created a unique category of contempt — civil contempt with punitive sanctions.) The Wisconsin Supreme Court took judicial notice that the legislature no longer recognized punitive sanctions for civil contempt. 82 Wis.2d at 134-135 citing WIS. STAT. Sec. 275.02(5) (1975). Since the court had consistently held that the contempt power was subject to reasonable legislative regulation and the Court concluded that the legislative prohibition of punitive civil contempt was a reasonable regulation, the court followed the legislative prohibition and rejected the concept of civil contempt with purely punitive sanctions. 82 Wis.2d at 136-137. The court concluded that the remedy of civil contempt expired when the strike was settled and the parties moved to dismiss the actions. Thus the civil contempt proceedings too had to be dismissed. 82 Wis.2d at 138.

b) Municipal Employees

In Hortonville Education Association v. Hortonville Joint School District, the court found that the school district had the right to discharge their illegally striking employees. 66 Wis.2d 469, 225 N.W.2d 658 (1975), rev'd and remanded, 426 U.S. 482 (1976); on remand, 87 Wis.2d 347 (1979). While the statutory prohibition against strikes did not expressly provide municipal employers with the right to discharge striking employees, such a right could be implied from the school board's power to "dismiss" a teacher under WIS. STAT. Sec. 111.22(2), and the master contract. Hortonville, 66 Wis.2d at 480-481; WIS. STAT. Sec. 111.70(4)(1).

The Hortonville case involved the first known instance in Wisconsin where striking teachers had been discharged. Recognizing that other remedies were available to the employer, the court found that the employer's decision to discharge the striking teachers did not constitute selective enforcement of the law and a denial of equal protection. 66 Wis.2d at 482-483. The court considered the union's equal protection challenges to WIS. STAT. Sec. 111.70(4)(1) and concluded: 1) the strike ban imposed on public employees, but not private employees, was based on a valid classification and was not an unconstitutional denial of equal protection citing the peculiar nature of governmental operations and the protection of the public health, safety and welfare as justifications for the strike ban and 2) the legislative provision for binding interest arbitration for police and fire fighters, but not for teachers, was rationally based on the high degree of danger which would result from a police or fire fighter strike, and the distinction did not deny the teachers equal protection of the laws. 66 Wis.2d at 485-487, 484-435.

Further, the court held that employer's discharge of the striking teachers involved state action, deprivation of property, and deprivation of liberty; thus, the discharged teachers were entitled to due process of law in the dismissal proceedings. 66 Wis.2d at 487-491. Although the Wisconsin Supreme Court went on to

hold that the teachers who were disciplined or discharged for striking were entitled to petition for a de novo court determination of all issues, the United States Supreme Court reversed on this point, holding that there had been no per se deprivation of striking teachers' due process rights when discharge resulted from a hearing held by the same governing body which is the target of the union's strike activity. 426 U.S. 482 (1976). (The Hortonville litigation arose prior to the 1977 mediation-arbitration statute.)

Wisconsin's "Little Norris-La Guardia Act, chapter 376, Laws of 1931, was found by the Wisconsin Supreme Court to apply only to labor disputes in the private sector; it does not apply to injunction or contempt proceedings brought by public employers against public employees. Joint School v. Wisconsin Rapids Education Association, 70 Wis.2d 292, 306-307, 234 N.W.2d 289 (1975). In Wisconsin Rapids, the court relied on common law guidelines in reviewing a temporary injunction, contempt judgment and fine assessment issued against striking teachers. The court refused to find an abuse of discretion unless the factors considered by the trial court were clearly irrelevant, improper, or improperly weighed against each other. 70 Wis.2d at 309.

The court went on to make a further criterial holding in Wisconsin Rapids. It found that the key prerequisite to injunctive relief must be irreparable harm, 70 Wis.2d at 311. Unless the injury sought to be avoided was actually threatened or had occurred, the court would not restrain an illegal act merely because it was illegal. 70 Wis.2d at 311. Judicial intervention in municipal labor disputes was intended to be an alternative of last resort. Id. at 311. The Court distinguished strikes by police and fire fighters from strikes by teachers and clerical employees, concluding that the potential for immediate and serious harm to public health and safety was diminished in the latter case. 70 Wis.2d at 312. An injunction should, therefore, be issued only after a showing of irreparable harm based on the facts and circumstances of the

particular case. Since there had been an adequate showing of irreparable harm, the injunction had properly issued in the Wisconsin Rapids case, the court noting that the trial court had looked at the following factors: illegal nature of strike; the inability of the board to operate the school system; the inability of students to obtain education; the possible loss of state aids; the cancellation of school activities; and the fact that there was no assurance that the strike would be settled quickly. Id. at 309, 313.

The court next responded to the union's challenges to the legal effects of the issuance of the temporary injunction and the contempt judgments issued by the trial court. In holding that a person must have actual notice of an injunction in order to be bound by it, the Wisconsin Supreme Court ruled that only those teachers who were actually served with the order or were present at the meeting where the injunction order was read were bound by the order and subject to civil contempt for violating the injunction. 70 Wis.2d at 313-315. The employer, in claiming a violation of the order, had the burden of showing that the teachers had knowledge of the temporary injunction. Id. at 317.

The teachers were entitled to notice of the contempt charges and an opportunity to present a defense to those charges. Id. at 317. Actual notice of the injunction order and contempt hearing on the part of counsel for the teachers and an opportunity for defendents' to show a lack of knowledge of the injunction or the contempt hearing constituted sufficient procedural due process for civil contempt proceedings. Id. at 319.

In upholding the contempt findings and fines issued, the Wisconsin Supreme Court concluded by observing that the teachers had failed to sustain their burden and show that: 1) their conduct did not actually violate the injunction order; or 2) the employer did not bargain in good faith, an express condition of the temporary

injunction, or 3) that due process required a jury trial for civil contempt proceedings in state court. Id. at 321 and 323.

In Kenosha School District v. Kenosha Education Association, striking teachers were individually fined ten dollars for each day they violated a temporary injunction enjoining their strike. 70 Wis.2d 325, 329, 234 N.W.2d 311 (1975). The trial court fined the union $7500 for each day its membership defied the injunction. Id. at 329. Following a civil contempt proceeding and motion to vacate the firms, the trial court had reduced the union's fines to a total of $3000. Id. at 329.

The Wisconsin Supreme Court interpreted Section 111.70(7), (prior to 1977 amendments) as providing a $10 per day fine for individual municipal employees, not labor organizations. Id. at 331-332. On the other hand, Section 111.70(7), did not preclude the imposition of an additional fine on the union as a separate entity. Id. at 332. The union was found in contempt of the injunction under the general civil contempt provisions in WIS. STAT. ch. 295 and fined $250 plus costs and expenses. Id. at 332, 335. In reversing the trial court, the Supreme Court held that the $250 limit under Section 295.14, could not be exceeded unless the court found that such a limit would render its contempt power "ineffectual". Id. at 335.

c) Police and Fire Fighters

In Durkin v. Board of Police and Fire Commissioners the city and union had signed a contract which included a clause granting amnesty to those fire fighters who had recently participated in an economic illegal strike against the city. A city elector filed a complaint with the city's Board of Police and Fire Commissioners against an illegally striking fire fighter (who allegedly led the strike) requesting a Board disciplinary hearing. Following the hearing, the Board suspended the strike leader. 48

Wis.2d 112, 115, 180 N.W.2d 1 (1970). The Wisconsin Supreme Court held that the amnesty clause did not abrogate the statutory right of an elector to file a complaint with the Board against illegally striking fire fighters. Id. at 120-121; WIS. STAT. Secs. 111.70(4)(i), 62.13(5)(b). However, while the fireman named in the elector's complaint had notice of and an opportunity to defend against the alleged statutory violation, the Court noted that he did not have notice of any alleged violation of departmental rules; thus, his suspension by the Board based upon fire department rule violation violated procedural due process. Id. at 122. The Court reversed the Board's order and directed the employer to reinstate the fireman. Id. at 123.

3) UNIQUE WISCONSIN FEATURES

1) Treatment of many phases of collective bargaining differs under SELRA (state employees) and MERA (municipal employees). 2) Under SELRA, a strike is an unfair labor practice. Under MERA, there are express penalties against employees and unions for illegal strikes there is also a limited right to strike (excluding police and firefighters) in the context of MERA's mediation-arbitration procedures. 3) Prior to mediation-arbitration legislation, Wisconsin courts were required to make a finding of irreparable harm, not mere violation, before an injunction could be issued. At the present time, it is uncertain whether the new 1977 statutory provisions in MERA relating to the granting of injunctions (which uses the work "shall") supersedes that prior case law. 4) 1977 MERA amendements grant to an aggrieved citizen the right to seek injunctive relief (in addition to the municipal employer's similar right).

HAWAII

1) STATUTORY LAW

Hawaiian public employees are governed by the comprehensive Hawaii Public Employment Relations Act, HAWAII REV. STAT. ch. 89 (1978) (hereafter "HPERA" or "Act"). Section 89-2(17) of the Act defines a "strike" in the following manner:

> (17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

A public employee may not participate in a strike when: 1) the employee is not a member of an appropriate bargaining unit certified by the Hawaii Public Employment Relations Board (HPERB); or 2) the employee is a member of an appropriate bargaining unit whose dispute resolution procedure calls for final and binding arbitration. HAWAII REV. STAT. Section 89-12(a) (1978).

A public employee, (except firefighters) who is a member of an appropriate bargaining unit, may participate in a strike during impasse when 1) the requirements of Section 89-11 on dispute resolution have been complied with in good faith; 2) the proceedings for prevention of prohibited practices have been exhausted; 3) sixty days have passed since the fact-finding board has publicly announced its findings and recommendation; 4) the union has given a ten-day notice of intent to strike to the HPERB and the employer. HAWAII REV. STAT. Sec. 89-12(b) (1978).

The public employer may petition the HPERB to investigate any strike, or threatened strike, which endangers the public health or safety. If the HPERB finds that the strike poses "imminent or present danger" to public health and safety, the HPERB shall set requirements which the parties must follow to avoid or remove any such immenent or present danger. HAWAII REV. STAT. Sec. 89-12(c) (1978).

The public employer may apply to the HPERB for a declaration that a public employee strike violates Section 89-12 of the Act. HAWAII REV. STAT. Sec. 89-12(d) (1978). Upon such a declaration by the HPERB, or upon reasonable cause to believe a violation will occur, the HPERB is required to proceed in the appropriate circuit court to enjoin the strike or compel the employees and their representative to comply with Section 89-12. HAWAII REV. STAT. Sec. 89-12(e) (1978). The circuit court may issue any appropriate order or decree, by way of injunction or otherwise, that will enforce section 89-12. HAWAII REV. STAT. Sec. 89-12(e) (1978). Both parties have the express right to appeal any temporary injunction, arising out of their labor dispute, which is issued or denied by the circuit court. HAWAII REV. STAT. Ch. 380, Sec. 10 (1978).

A public employee, or employee organization, commits a prohibited (unfair labor) practice by refusing to participate in good faith in the dispute resolution procedure provided in section 89-11. HAWAII REV. STAT. Sec. 89-13(b)(3). In addition, any person who "wilfully assaults, resists, prevents, impedes, or interferes with" a mediator, fact-finder, arbitrator, or any member of the HPERB or its agents in the performance of their statutory duties shall be fined not more than $500 or imprisoned not more than one year, or both. HAWAII REV. STAT. Sec. 89-18 (1978). Furthermore, an employee, or employee organizaion, commits a prohibited practice by refusing or failing to comply with any provision in the Act. HAWAII REV. STAT. Sec. 89-13(b) (1978).

Under Chapter 380, express priority judicial review of the issuance or denial of a temporary injunction in a labor dispute is provided.

2) CASE LAW

In HPERB v. Hawaii State Teachers Association, the circuit court enjoined a teacher strike arising out of grievances under their contract with the State. HPERB v. Hawaii Teachers Assn., 54 HAWAII 531, 511 P.2d 1080 (1973). Upon appeal, the Hawaii Supreme Court interpreted HAWAII REV. STAT. Sec. 89-12(a)(2) and 89-12(e) to confer jurisdiction upon the circuit court to grant injunctive relief. HPERB v. Hawaii Teachers Association, 54 HAWAII at 541. Regardless of whether the strike violated the parties' contract and was subject to the sanctions provided by the prohibited practice procedures in HAWAII REV. STAT. Secs. 89-13, 89-14 the strike could still be enjoined under HAWAII REV. STAT. Secs. 89-12(a), 89-12(e) the court held. Id. at 542. A finding of irreparable harm was not required as a precondition for relief for violation of the prohibition against strikes where the parties' dispute resolution procedure provided for final and binding arbitraion. Id. at 543; HAWAII REV. STAT. Sec. 89-12(a)(2). On the other hand, any restraining order or injunction granted in a case concerning a labor dispute could prohibit only those specific acts expressly complained of in the petition or complaint filed. Id. at 543-544; HAWAII REV. STAT. Secs. 380-9, 89-12(e).

In a later case arising out of the same strike, the teachers association was found to be in violation of the preliminary injunction. HPERB v. Hawaii State Teachers Association, 55 HAWAII 386, 520 P.2d 422 (1974). Civil contempt proceedings were instituted and the teachers association was fined $100,000 for violating the injunction and $90,000 for the additional strike days. Id. at 388. Although the Hawaii Supreme Court affirmed the contempt judgment rendered by the circuit court, the court reduced

the fine from $190,000 to $100,000 in order to "better enhance the promotion of justice." Id. at 392-393.

In the most recent case arising out of that same teachers strike of April 1973, the Hawaii Supreme Court ruled that a board of education service credit formula, which caused striking teachers to lose one month's seniority credit, was neither discriminatory nor retaliatory. Hawaii State Teachers Association v. HPERB, 60 HAWAII 361, 590 P.2d 993 (1979). Application of the formula to the striking teachers did not violate the parties' strike settlement agreement, nor did it constitute a prohibited practice under HAWAII REV. STAT. Secs. 89-13(a)(1), 89-13(a)(3). Id. at 590 P.2d 998-999.

Only interference with lawful employee activity, or discrimination affecting the exercise of protected employee rights, may be the subject of a prohibited practice charge under the Act. Id. at 590 P.2d 996. An illegal strike does not constitute protected activity, nor does participation in an illegal strike involve the exercise of protected employee rights; thus, illegal strike activities cannot be used as a basis for prohibited practice charges. Id. at 590 P.2d 996.

The court rejected the Association's condonation argument and held that the Association had failed to establish employer condonation of the strike by clear and convincing evidence. Id. at 590 P.2d 997. Since the employer did not condone the strike, by way of the strike settlement agreement, the strike remained an unprotected activity under the Act. Id. at 590 P.2d 997. The court affirmed the decision of the HPERB that the Board of Education had not committed any prohibited practice within the meaning of HAWAII REV. STAT. Sec. 89-13. Id. at 590 P.2d 995.

3) UNIQUE HAWAII FEATURES

a) While there are many procedural and substantive limitations on the right of public employees to strike, the Hawaiian statute incorporates a significant right to strike. b) HPERB is assigned a primary, active role. There is express provision for judicial review of temporary injunctions issued in labor disputes. c) There is no general irreparable harm finding required.

PENNSYLVANIA

1) STATUTORY LAW

Public employees in Pennsylvania, with the exception of police and fire fighters, are governed by the comprehensive Public Employee Relations Act (PERA), PA. STAT. ANN. tit. 43, Ch. 19 (Purdon) (1979). Police and firefighters are governed by PA. STAT. ANN. tit. 43, Sec. 217 (Purdon) (1979).

Under the PERA, a "strike" is defined in the following manner:

> (9) "Strike" means concerted action in failing to report for duty, the wilful absence from one's position, the stoppage of work, slowdown, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions or compensation or the rights, privileges, or obligations of employment."

PA. STAT. ANN. tit. 43, Sec. 1101.301(9) (Purdon) (1979).

Guard and court employees are prohibited from striking at any time. PA. STAT. ANN. tit. 43, Sec. 1101.1001 (Purdon) (1979). Strikes by public employees during the pendency of collective bargaining and mediation and fact-finding are prohibited. PA. STAT. ANN. tit. 43, Sec. 1101.1002 (Purdon) (1979). Public employees may strike after mediation and factfinding procedures have

been "completely utilized and exhausted..." unless or until such a strike creates a clear and present danger or threat to the health safety or welfare of the public." PA. STAT. ANN. tit. 43, Sec. 1101.1003 (Purdon) (1979).

Public employees, other than those engaged in a lawful strike, who refuse to cross a picket line are considered to be engaged in a prohibited strike. PA. STAT. ANN. tit. 43, Sec. 1101.1101 (Purdon) (1979). Under Section 1101.1201, public employees and their labor organizations commit an unfair labor practice if they participate in a strike, boycott or picket against a public employer on account of a jurisdictional controversy. PA. STAT. ANN. tit. 43, Sec. 1101.1201(b)(6) (Purdon) (1979). Furthermore, a public employee union and its members cannot participate in a strike or boycott for secondary boycott purposes, and a noncertified union cannot engage in a strike or boycott for recognition purposes. PA. STAT. ANN. tit. 43, Sec. 1101.1201(b)(7) (Purdon) (1979). An unfair labor practice committed by the public employer cannot be used to justify a prohibited strike. PA. STAT. ANN. tit. 43, Sec. 1101.1004 (Purdon) (1979).

Where a strike occurs in violation of the law, the public employer shall petition the court of common pleas for "appropriate equitable relief including but not limited to injunctions." PA. STAT. ANN. tit. 43, Secs. 1101.1001,.1002 (Purdon) (1979). If a lawful strike creates a "clear and present danger or threat to the health, safety or welfare of the public", the public employer shall petition the court of common pleas for "equitable relief including but not limited to appropriate injunctions." PA. STAT. ANN. tit. 43, Sec. 1101.1003 (Purdon) (1979). A copy of the petition or complaint must be issued to the defendant, and a hearing is required before relief can be granted by the court. PA. STAT. ANN. tit. 43, Sec. 1101.1003 (Purdon) (1979).

The Pennsylvania Labor Relations Board (PLRB) may petition the court of competent jurisdiction for "appropriate relief or restraining order", upon receiving an unfair labor practice charge which alleges a violation of the statutory mediation and factfinding procedures. PA. STAT. ANN. tit. 43, Sec. 1101.1401 (Purdon) (1979). The court may grant to the PLRB "such temporary relief or restraining order as it deems just and proper." PA. STAT. ANN. tit. 43, Sec. 1101.1401 (Purdon) (1979). After the PLRB finds that an unfair labor practice has occurred, the board may petition the court of competent jurisdiction for enforcement of a board order and for "appropriate relief or restraining order." PA. STAT. ANN. tit. 43, Sec. 1101.1501 (Purdon) (1979). The court shall cause notice to be served on the defendant and shall have the power to grant "such temporary relief, restraining or mandamus order as it deems just and proper." PA. STAT. ANN. tit. 43, Sec. 1101.1501 (Purdon) (1979).

If a public employee refuses to comply with a lawful court order issued for a violation of the strike provisions of the Act, the public employer shall initiate an action for contempt. PA. STAT. ANN. tit. 43, Sec. 1101.1005 (Purdon) (1979). A public employee is subject to the following penalties when he or she is found guilty of contempt in refusing to comply with a lawful court order: 1) "suspension, demotion or discharge at the discretion of the public employer"; and 2) "fine or imprisonment, or both" at the discretion of the court. PA. STAT. ANN. tit. 43, Secs. 1101.1005, .1007 (Purdon) (1979). Public employees cannot receive compensation from the public employer for the period they engage in any strike. PA. STAT. ANN. tit. 43, Sec. 1101.1006 (Purdon) (1979).

A union found in contempt of a lawful court order may be punished for each day of contempt by a fine fixed at the discretion of the court. PA. STAT. ANN. tit. 43, Sec. 1101.1009 (Purdon) (1979). In fixing the amount of the fine or imprisonment for

contempt, "the court shall consider all the facts and circumstances directly related to the contempt including but not limited to 1) any unfair practices committed by the public employer during the collective bargaining processes; 2) the extent of the wilful defiance or resistance to the court's order; 3) the impact of the strike on the health, safety or welfare of the public, and 4) the ability of the employee organization or the employee to pay the fine imposed." PA. STAT. ANN. tit. 43, Sec. 1101.1009 (Purdon) (1979). The parties may request the court to reduce or suspend any fines or penalties imposed. PA. STAT. ANN. tit. 43, Sec. 1101.1010 (Purdon) (1979). Such requests by employee representatives are subject to the requirements of "meet and discuss". PA. STAT. ANN. tit. 43, Sec. 1101.1010 (Purdon) (1979).

Parties may appeal decisions (final orders) of the PLRB to the appropriate court of common pleas or to the commonwealth court (for cases involving commonwealth employees). Court orders issued by the courts of common pleas may be appealed to the commonwealth court. See 752 and 933 of the Judiciary Act Repealer Act, 1978 Pa. Laws (April 28, 1978, effective June 27, 1978).

The Labor Anti-Injunction Act of June 2, 1937 PA. STAT. ANN. tit. 43, Sec. 206a-r (Purdon) does not apply to PLRB orders, violations of PLRB orders, or to court orders enforcing PLRB orders or any provisions of the PERA. PA. STAT. ANN. tit. 43, Sec. 1101.1504 (Purdon) (1979). On the other hand, Section 2(a) (1442) 1978 Pa. Laws (April 28, 1978) provides in part: "On appeal from the [PLRB] the court shall have jurisdiction to grant to the board the same relief as in an enforcement proceeding under section 1501 of the PERA [PA. STAT. ANN. tit. 43, Sec. 1101.1501 (Purdon)]." The court will not hear a petition or charge which relates to unfair labor practices occurring more than four months prior to the filing of the petition or charge. PA. STAT. ANN. tit. 43, Sec. 1101.1505 (Purdon) (1979).

Police and firefighters may not strike in Pennsylvania. The exclusive remedy provided for impasses arising during the collective bargaining process is final and binding arbitration. PA. STAT. ANN. tit. 43, Secs. 217.4, 217.7 (Purdon) (1979).

2) CASE LAW

The constitutionality of the Pennsylvania Public Employee Relations Act (PERA) and the limited right of public employees to strike was upheld in Butler Area School District v. Butler Education Association, 481 Pa. 20, 391 A.2d 1295, (1978). The flat ban against strikes by guards and court employees did not render the PERA unconstitutional as an impermissible legislative intrusion on the independence of the judiciary. Washington County v. PLRB, 364 A.2d 519, (1976).

In School District of Aliquippa v. Pennsylvania State Education Association, the County Court of Common Pleas enjoined a teachers' strike and attached certain conditions to the teachers' return to work. The teachers complied with the order and returned to work; however, the school district was dissatisfied with the order. In dismissing the school district's appeal, the court noted that a stay of the injunctive order would have returned the parties to a strike situation. 33 Pa. Commw. Ct. 202, 205, 381 A.2d 1005, (1977).

If either a public employee or an employee organization refuses to comply with a lawful injunctive order issued by a court of competent jurisdiction for a violation of the strike provisions of the PERA, the court may impose a penalty for contempt. School District of Pittsburgh v. Pittsburgh Federation of Teachers, Local 400, 31 Pa. Commw. Ct. 461, 469, 376 A.2d 1021, (1977). Where the dominant purpose of the court in issuing the contempt order was to coerce the employees to end a strike which constituted a clear and present danger or threat to public welfare, the adjudication of

contempt was civil. 31 Pa. Commw. Ct. at 465-468. The defendant teachers were required to obey the injunctive order until it was dissolved by a motion to the issuing court or reversed on appeal by the appellate court. 31 Pa. Commw. Ct. at 469-470. The teachers could not disregard or violate the order or collaterally attack the order on an appeal from a contempt judgment. 31 Pa. Commw. Ct. at 469-470. In this same case, the teachers' union was fined $25,000 and $10,000 for each school day of continued violation of the injunctive order. For another aspect of this case, see below.

Under the strike provisions of Article X of the PERA, only the public employer may bring a court action to restrain a public employee strike; private individuals have no standing to bring such an action. Alling v. Williamsport School District, 67 Pa. D. & C. 2d 624, 13 Lycoming 53 (1974); Hilinski v. Christy, 58 Erie 62 (1974).

The fact that a teacher strike may cause the school district to lose state subsidies and a quality assessment program and particularly harm the substantial number of underachievers created a "clear and present danger or threat to the public health, safety and welfare" and justified the issuance of an injunction against the strike, since the teachers failed to request the appointment of a fact-finding panel as provided in Section 1101.802 of the PERA. Bellefonte Area Board of Education v. Bellefonte Area Education Association, 60 Pa. D. & C. 2d 649 (1972). (For another aspect of this case, see below.)

County employees who feed, give medical attention and attend to institutionalized patients should not be permitted to strike on the ground that to do so presents a clear and present danger to the health, safety and welfare of the public. Mercer County v. USWA, 60 Pa. D. & C. 2d 631 (1973).

In Bellefonte School Board v. Bellefonte Education Association, the collective bargaining procedures contemplated by Section 802 of the PERA were exhausted when the PLRB decided not to appoint fact finders, thereby relieving the union of the prohibitory language under Section 1002 and allowing a strike to proceed. 9 Pa. Commw. Ct. 210, 304 A.2d 922, (1973). However, the mandatory substantive procedures of collective bargaining designated by Sections 801 and 802 of the PERA must be utilized to exhaustion prior to the lawful initiation of any strike by public employees. United Transportation Union v. S.E.P.T.A., 22 Pa. Commw. 347 A.2d 509, Ct. 25, 31-32 (1975). City of Scranton School District v. Scranton Federation of Teachers, Local 1147, 72 Lack. Jur. 29 (1971), appeal dismissed 445 Pa. 155, 281 A.2d 235. Failure of the Pennsylvania Bureau of Mediation to meet the statutory time schedule and expiration of the existing contract did not constitute sufficient grounds to hold that the mediation procedure under Section 802 of the PERA was utilized to exhaustion. 22 Pa. Commw. Ct. at 32.

If a group of teachers resign during the term of their contract as part of a strike action during contract negotiations, they are engaging in unprotected activity; and the employer does not commit an unfair labor practice by refusing to reinstate them. PLRB v. Pleasant Valley School District, 66 Pa. D. & C. 2d 637 (1974).

A public employer is obligated to seek an injunction to halt any public employee strike that occurs while negotiation and/or mediation between the parties is still in progress. South Allegheny School District v. South Allegheny Education Association, 55 Pa. D. & C. 2d 94 (1971).

In Port Authority of Allegheny County v. Division 85, the court held that the mandatory impasse procedures of Sections 801 and 802 of the PERA were not exhausted prior to the employees' strike and affirmed the lower court order enjoining the strike. 34 Pa.

Commw. Ct. 71, 84-85 284 A.2d 954, (1978). Failure of the parties to meet the statutory schedule for mediation was irrelevant, because "Section 1002 speaks of the exhaustion of procedures and not of the adherence to schedules..." Id. at 34 Pa. Commw. Ct. 84, quoting United Transportation Union v. SEPTA, supra at 22 Pa. Commw. Ct. at 32. (1975).

In Pittsburgh Fed. of Teachers (see above), the court held that the injunction issued by the lower court was a final injunction or decree, since it constituted a final adjudication on the merits of the only issue before that court -- whether or not the strike was prohibited by Section 1003 of PERA because it created a clear and present danger, or threat, to public health, safety or welfare. 31 Pa. Commw. Ct. at 473. Since the injunction issued was not a preliminary injunction, the lower court was not bound by the procedural requirements provided by Pa. Rule of Civil Procedure No. 1531 for preliminary and special injunctions involving freedom of expression. 31 Pa. Commw. Ct. at 473.

In another case involving Division 85 and the Port Authority of Allegheny County, the court did not have jurisdiction to grant equitable relief under Section 1002 of PERA until the strike was actually in progress. Division 85, Amalgamated Transit Union v. Port Authority of Allegheny Co., 16 Pa. Commw. Ct. 50, 329 A.2d 292, (1974); see also Commonwealth v. Ryan, 459 Pa. 148 327 A.2d 351, (1974). On the other hand, a strike was enjoined even though the strike was not yet in progress when the public employer filed a complaint for injunctive relief although the order would not be issued until the strike was actually in progress. Ross v. Philadelphia Federation of Teachers, 8 Pa. Commw. Ct. 204, 301 A.2d 405, (1973). The court concluded that it had jurisdiction to entertain the action, since the teachers had previously engaged in a strike that same school year and intended to resume the strike on the court hearing date. 8 Pa. Commw. Ct. at 207-208.

In interpreting Section 1003 of PERA, the court held that equitable relief could only be granted upon hearing and proof of a clear and present danger or threat to public health, safety or welfare. Id. at 210 and 214 citing Armstrong Education Association v. Armstrong School District, 5 Pa. Commw. Ct. 378, 291 A.2d 120, (1972). The court cited the following combination of factors as sufficient to establish as a matter of law a threat to the public health, welfare or safety: Possibilities of increased gang activity; increased costs of police protection; possible loss of state aid; loss of instructional days; and the adverse effects on college admissions for high school seniors. 8 Pa. Commw. Ct. at 213-215.

In Armstrong, the court held that a "clear and present danger or threat" must be real or actual or there must be a strong likelihood that it will occur. 5 Pa. Commw. Ct. 378, 383-384, 291 A.2d 120, (1972). In addition, the danger of threat cannot be one that is a normal incident to a public employee strike. Id. at 384. The alleged disruption of routine school administrative procedures, community unrest, harassment of public officials by persons not shown to be connected with the teachers' strike, and possible loss of state subsidies did not constitute a clear and present danger or threat to public health, safety or welfare; thus, an injunction against the strike was not justified. Id. at 386-387.

Upon finding that a teachers strike threatened the educational program for high school seniors and special education students, the court enjoined the strike only insofar as those classes were concerned. Blackhawk School District v. Pennsylvania State Education Association, 74 Pa. D. & C. 2d 665 (1976). The court retained jurisdiction of the dispute, in the event that further dangers or threats to public welfare developed.

Public employee strikes will not be enjoined unless the public employer meets the burden of showing that a clear and present danger to the health and safety of the public existed by reason of the strike. Highland Sewer & Water Authority v. IBEW Local 459, 67 Pa. D. & C. 2d 564 (1973). Minor inconvenience to the employer did not satisfy the burden. On the other hand, inconveniences suffered by the students and community as a result of a 26-day teachers strike were held to satisfy the employer's burden of proof. Bristol Township Education Association v. School District of Bristol Township, 14 Pa. Commw. Ct. 463, 322 A.2d 767, (1974).

Common pleas courts have limited equity jurisdiction under the strike provisions of PERA and may act only to end a public employees' strike, not to impose a judicial settlement on the parties. Id. at 471-472. Further, common pleas courts lack the authority to force public employees and a public employer into binding arbitration to settle a labor dispute. Armstrong, supra, at 392.

The scope of review of the issuance of an injunction is limited to determining whether or not apparently reasonable grounds existed for equitable relief ordered by the lower court. Bristol at 468-469.

Pursuant to Section 1006 of the PERA, a public employer may terminate fringe benefits, as well as wages and salaries, during a strike period. Div. 85, Amalgamated Transit Union v. Port Authority of Allegheny Co., 9 Pa. D. & C. 3d 350 (1978) citing Hazleton Area Board of School Directors, 7 P.P.E.R. 234 (1976). The employer may terminate Blue Cross, Blue Shield and other forms of health and accident insurance during a strike period. Id. at 352.

A work stoppage is properly categorized as a lockout rather than a strike when the employees offer to continue working on a

day-to-day basis for a reasonable time under the terms and conditions of the pre-existing contract during negotiations for a new contract, but the public employer refuses to agree to such an agreement to maintain the status quo. McKeesport School District v. Unemployment Compensation Board of Review et al., 40 Pa. Commw. Ct. 334 (1979).

Proper notice to the PLRB of failure to reach an agreement after mediation is one of the mandatory substantive collective bargaining procedures required by Section 802 of the PERA. It is only after the PLRB appoints a fact-finding panel and the panel's recommendations are rejected, or after the PLRB declines to appoint a panel, that the mandated procedures are considered exhausted and the public employees are permitted to strike. Lawrence County v. District Council 85, AFSCME, 10 Pa. D. & C. 3d 127, 140 (1979). The parties did not adhere to the schedule of bargaining procedures set forth in Sections 801 and 802 of PERA, in that they failed to notify the Bureau of Mediation that a dispute existed until only 76 days before the municipality's budget submission date or 74 days late. Id. at 138. Since the PLRB had not been given the opportunity to decide whether or not to appoint a fact- finding panel to investigate the dispute, the collective bargaining procedures had not been fully utilized and exhausted; thus, the employees' strike was illegal and could be enjoined. Id. at 142. The court rejected the clean hands defense of the union. Id. at 142.

3) UNIQUE PENNSYLVANIA FEATURES

a) Like Hawaii, once procedural and substantive requirements have been met, there is a significant right to strike in Pennsylvania. b) Express legislation provides that sympathy strikes are illegal, that employer unfair labor practices do not justify an illegal strike but may be considered in determining penalties and for express contempt of court remedies.

C. STATUTORY PROHIBITION STATES: SOME SELECTED EXAMPLES

Jurisdictions which have enacted express strike prohibitions for public employees have done so in a wide variety of ways ranging from Delaware and Maryland, for example, where the prohibition is not part of a comprehensive package of penalties and procedures to Iowa and Florida, for example, where the prohibition is an integral piece of a complex legislative scheme implementing the no-strike policy. Interesting examples of "intermediate" legislation states include Connecticut, Massachusetts, and Michigan. It should be noted that express strike prohibition (and penalty) legislation, whether it be "simple", "intermediate" or "comprehensive," may be found in states which have or do not have comprehensive collective bargaining legislation. Examples of jurisdictions where an explicit prohibition on the right to strike exists in the absence of any express collective bargaining rights include Virginia and state employees in Georgia. Further, while many jurisdictions clearly state that public employee strikes are illegal or prohibited, the ban may be stated indirectly. Thus, in Missouri, the statute simply says that "nothing contained herein shall be construed as granting a right to employees covered hereby to strike."

DELAWARE

1) STATUTORY LAW

Public school employees are prohibited from striking while in the performance of their official duties. DEL. CODE tit. 14, Sec. 4011. In fact, no public employee is allowed to strike while in the performance of his or her duties. DEL. CODE tit. 19, Sec. 1312. An employee organization representing teachers which violate the no-strike provisions is subject to revocation of its status as exclusive representative, is ineligible to serve as exclusive representative for two years and loses its dues deduction privileges for one year.

2) CASE LAW

Public employees in Delaware have no common law right to strike, regardless of whether the work which they perform is public or proprietary. City of Wilmington v. Teamsters Local 326, 290 A.2d 8, 11 (1972). Since a public employee strike is illegal and can be enjoined, picketing in support of such a strike can also be enjoined. Id. at 13.

In a later case between the same two parties, the city instituted contempt proceedings against the union and its officers for violating a preliminary injunction which enjoined their strike. City of Wilmington v. Teamsters Local 326, 305 A.2d 338 (1973). The court held that the union and its officers were not in contempt since they had urged their members not to strike and had lost control over their members' strike activities (wildcat strike). 305 A.2d at 340.

The city instituted contempt proceedings against the union and its officers for another work stoppage or strike in 1974. City of Wilmington v. Teamsters Local 326, 321 A.2d 123 (1974). The Supreme Court found that a work stoppage which lasted approximately one hour and another stoppage which resulted from union workers refusing to cross a picket line both constituted "strikes" within the meaning of Section 1312 of Delaware Statutes. Id. at 126. Furthermore, a mass refusal to work overtime, where acceptance of overtime assignments had been an established past practice, constituted a "strike". Id. at 127.

Since the city failed to show that the union officers engaged in or encouraged city employees to strike or picket, the officers were not held to be in civil contempt. Id. at 127. The union, on the other hand, was held to be in civil contempt for the concerted activities of its members. Id. at 127. The union could not avoid

its responsibilities under Delaware law by characterizing its members' conduct as a "wildcat strike". Id. at 127-128.

Where union members of a city sanitation department struck illegally and ignored the court's restraining order, the individual officers of the union were not immune from contempt sanctions simply because they were not themselves employees of the city. City of Wilmington v. AFSCME Local 320, 307 A.2d 820, 822-823 (1973). "Even a person not named in a labor injunction can be ordered to obey the terms of the injunction when he knows them to the extent that he must not aid or abet its violation by others." Id. at 823.

A "job action" instituted by a teachers association, which resulted in 51.9% absenteeism of school employees from their jobs, constituted an illegal one-day strike even though the teachers were statutorily entitled to take a personal day during the course of the year. State v. Delaware State Education Association, 325 A.2d 868, 871 (1974). Some of the teachers were later penalized for participating in the one-day strike.

In State v. Barshay et. al., 364 A.2d 830 (1976), the Supreme Court held that public school teachers were "public servants" within the meaning of Delaware law and could be criminally prosecuted for "refraining from performing their duties". Id. at 831-832. In Board of Education of Marshallton, Etc. v. Sinclair, 373 A.2d 572 (1977), the Supreme Court held that the board of education had the authority to disapprove of the teacher's absence taken without leave (one-day strike) and to withhold his salary for the day.

The absence of an actual strike does not preclude the issuance of a temporary restraining order enjoining teachers from striking, where the threat of a strike is "imminent". Wilmington Federation of Teachers v. Howell, 374 A.2d 832 (1978). (Strike vote was held and strike action was approved by teachers.) The Supreme Court also considered the effect of a public employer's violation of the

"Sunshine Law" in a strike situation. The Court held that, even if the board of education had violated the Sunshine Law by deciding its strike strategy in a closed executive session, the board's seeking of an anticipatory strike injunction was not invalidated by the Sunshine Law. Id. at 835-836.

MARYLAND

1) STATUTORY LAW

MD. [EDUC.] CODE ANN. Sec. 6-410 prohibits strikes by certificated education employees. (1979 Supp.) If a teachers union engages in or directs a strike, it will lose its certification as the exclusion bargaining representative for a period of 2 years after the strike and will lose dues checkoff privileges for 1 year after the strike. MD. [EDUC.] CODE ANN. Sec. 6-410 (1979).

According to the Attorney General, the Maryland legislature intended the sanctions of 6-410 to be applied in every case in which the no-strike provision is violated, and the provisions are mandatory. 59 OAG 241 (1974).

Noncertificated education employees are prohibited from striking and are subject to the same penalties. MD. [EDUC.] CODE ANN. Sec. 6-513 (1979).

2) CASE LAW

In Board of Education of Montgomery County v. Montgomery County Education Association, 1 PBC 10,128 (CCH 1968), the public school teachers struck in violation of their employment contract. While the teachers could be enjoined from continuing to strike or urging other school teachers to strike, the state court held that it had not authority to compel the teachers by injunction to resume their duties. 1 PBC at 10,563. Compelling a person to labor

against his or her will, except as a punishment for a crime, would violate the 13th Amendment of the U.S. Constitution. 1 PBC at 10,563.

In Bennett v. Gravelle, 323 F. Supp. 203 (D.C. Md. 1971), the U.S. District Court held that public employees have no right to strike under Maryland law, absent an authorizing statute. The court refused to make an exception to the strike prohibition and the discharging of illegally striking public employees, even though this particular strike was called to bring about changes in racially discriminatory employment practices and reasonable efforts to make changes had failed. 323 F. Supp. at 209. Since the employees had participated in an unauthorized and unprotected strike, the public employer (sanitary commission) had a lawful basis to discharge them. 323 F. Supp. at 210. This decision was later upheld by the 4th Circuit Court of Appeals in Bennett v. Gravelle, 451 F.2d 1011 (1971).

In Hoyt v. Police Commissioner of Baltimore City, 279 Md. 74, 367 A.2d 924 (1977), 55 police officers were dismissed for participating in a strike. The Maryland Court of Appeals held that the dismissals were not invalid by reason of disparity of treatment among the strikers. 367 A.2d at 932-933. As long as the punishment of the police officers for striking against the department was neither arbitrary nor capricious and was supported by the facts, such punishment may be imposed on a case-by-case basis. 367 A.2d at 933.

In Hartford County Education Association v. Bd. of Hartford County, 380 A.2d 1041 (1977), the Maryland Court of Appeals held that Maryland's "Little Norris-La Guardia Act" did not apply to injunctions issued against striking teachers, since Maryland labor laws did not apply to public school employment. 380 A.2d at 1050.

CONNECTICUT

1) STATUTORY LAW

CONN. GEN. STAT. Sec. 5-279 (1979) prohibits state employee strikes. A state employee strike constitutes a "refusal to bargain in good faith" and a prohibited practice under CONN. GEN. STAT. Sec. 5-272(b)(3) (1979). If the State Board of Labor Relations determines that a prohibited practice has been or is being committed, the board shall issue a cease and desist order and may withdraw the union's certification as exclusive representative. CONN. GEN. STAT. Sec. 5-274(b)(1) (1979). In addition, the board can order fact finding and charges the costs of fact finding to the party refusing to bargain. CONN. GEN. STAT. Sec. 5-274(b)(3) (1979).

CONN. GEN. STAT. Sec. 7-475 (1979) prohibits municipal employee strikes. Similarly, the "refusal to bargain in good faith" constitutes a prohibited practice under CONN. GEN. STAT. Sec. 7-470(b)(2) (1979). In the event that a contract between a municipal employer and municipal employee union expires before the parties approve a new contract, the terms of the expired contract remain in effect until a new contract is reached and approved. CONN. GEN. STAT. Sec. 7-475 (1979).

CONN. GEN. STAT. Sec. 10-153e (1979) prohibits teachers from striking or engaging in a concerted refusal to render services. This prohibition may be enforced by a board of education in the appropriate superior court. CONN. GEN. STAT. Section 10-153e(a). Teachers are prohibited from "refusing to negotiate in good faith" and "refusing to participate in good faith in mediation or arbitration". CONN. GEN. STAT. Secs. 10-153e(c)(3), (4). Upon finding that a prohibited practice has or is occurring, the state board of labor relations may issue a cease and desist order and petition the appropriate superior court for temporary relief or a restraining order. CONN. GEN. STAT. Section 10-153e(g)(1).

2) CASE LAW

In McTigue v. New London Education Association, 164 Conn. 348, 321 A.2d 462 (1973), the defendant-teachers had been found guilty of contempt for failing to comply with two injunctions enjoining their strike activities, and had been fined by the lower court. The Connecticut Supreme Court held that where the fines were payable to the state, were imposed to punish for past violations and were absolute rather than conditional, the contempt judgment was criminal; therefore, the defendant-teachers were entitled to the safeguards of criminal proceedings and to having their guilt established by proof beyond a reasonable doubt. 321 A.2d at 465-466. Since the defendant-teachers had not been given a criminal trial, their contempt judgments were clearly erroneous. Id. at 466. The contempt judgments were set aside and new trials were ordered by the court. Id. at 466. This approach was subsequently followed in Bd. of Ed. of City of Shelton v. Shelton Education Association, 173 Conn. 81, 376 A.2d 1080 (1977).

MASSACHUSETTS

1) STATUTORY LAW

State and local government employees in Massachusetts are governed by MASS. GEN. LAWS ANN. Ch. 150E (West) (1976). Public employees and their unions are expressly prohibited from participating in, inducing, encouraging or condoning any strike, work stoppage, slowdown or withholding of services. MASS. GEN. LAWS ANN. Ch. 150E, Section 9A(a) (West) (1976). If a strike occurs or is about to occur, the employer shall petition the Labor Relations Commission to make an investigation. MASS. GEN. LAWS ANN. Ch. 150E, Sec. 9A(b) (West) (1976). If the Commission determines that Section 9A(a) has been violated, then the Commission shall immediately set requirements to be complied with and may seek

court enforcement of such requirements. MASS. GEN. LAWS ANN. Ch. 150E, Sec. 9A(b) (West) (1976).

A public employee union commits a prohibited practice if it refuses to bargain in good faith with the public employer; or it refuses to participate in good faith in the mediation, fact finding and arbitration procedures provided by law. MASS. GEN. LAWS ANN. Ch. 150E, Sec. 10(b)(2) and (3) (West) (1976).

Any person who wilfully resists or interferes with a mediator, fact-finder, or arbitrator, or commission member in the performance of their statutory duties shall be fined up to $5,000 or imprisoned up to 1 year, or both. MASS. GEN. LAWS ANN. Ch. 150E, Sec. 15 (West) (1976).

Public employees cannot be paid by their employer for strike days, nor can they be paid at a later date if they are required to work additional days to make up days lost by the strike. MASS. GEN. LAWS ANN. Ch. 150E, Sec. 15 (1976).

Any public employee who participates in a strike is subject to discipline proceedings by the employer. MASS. GEN. LAWS. ANN. Ch. 150E, Sec. 15 (1976).

2) CASE LAW

In School Committee of Boston v. Reilly, 285 N.E.2d 795 (1972), the Massachusetts Supreme Judicial Court dealt with the law preceding Chapter 150E. The court held that the enactment of a statutory prohibition against strikes by municipal employees did not displace all previous common law remedies. Id. at 798. A court could still issue a injunction where the work stoppage was a breach of contract. Id. at 798. On a procedural question, the court ruled that the defendant teachers were entitled to notice and

opportunity to be heard on the iddue of the form of the final decree resulting from the contempt hearing. Id. at 800.

In Director of Division of Employee Relations v. Labor Relations Commission, 346 N.E.2d 852 (1976), the same court interpreted Section 9A(b) of Chapter 150E to mean that the Labor Relations Commission could require performance of a specified work load by public employees who were found to be engaging in an illegal slowdown or strike. Id. at 858. Such a requirement would then provide the basis for judicial sanctions against concerted activities by public employees which prevented the attainment of the required work load. Id. at 858. However, absent an arbitration clause in the contract, the Commission lacked the authority to order the parties to submit to binding arbitration. Id. at 860. While a union's contractual waiver of its statutory right to strike presumes and implies the employer's acceptance of binding arbitration in the private sector, no such presumption exists in the public sector. Id. at 859.

In Labor Relations Commission v. Boston Teachers Union, Local 66, 371 N.E.2d 761 (1977), the union membership voted to go on strike and authorized their officers to draw up a list of sanctions ("sanction sheet") to be taken against teachers who failed to honor the strike. The employer petitioned the Commission for a strike investigation under Ch. 150E, sec. 9A(b). The Commission ordered the union to "cease and desist from encouraging or condoning the threatened strike", and it obtained a preliminary injunction to enforce its order. After the union went ahead and struck, the Commission filed a contempt petition. Both the union and its officers were found to be in contempt and were fined.

Upon appeal, the court held that the terms "encourage or condone" and "authorize or ratify", as used in the injunctive order, were sufficient to put the union officers on notice that they would be held liable for as for any affirmative action taken. Id. at

768. By standing idly by and letting the force of prior actions and events carry the members to a strike, the union officers violated the terms of the restraining orders and were subject to a contempt judgment. Id. at 769. If they had any doubt as to their responsibilities under the court orders, they should have taken the initiative to make sure that they didn't violate the orders. Id. at 769. Further, Chapter 150, Section 9(A) does not provide an exclusive remedy for public employee strikes. The Commission is authorized to seek judicial enforcement of its orders and resort to the contempt power. Id. at 770.

MICHIGAN

1) STATUTORY LAW

MICH. STAT. ANN. Sec. 423.202 (1978) of Public Employment Relations Act (PERA), prohibits public employee strikes. Section 423.204a of the statutes applies the strike prohibition to state civil service employees. Police and firefighters are separately prohibited from striking in MICH. STAT. ANN. Sec. 423.231 (1978). Wilful disobedience of a court injunction restraining a police or fire strike or lockout may result in a fine of up to $250.00 per day of continued contempt. MICH. STAT. ANN. Sec. 423.241 (1978). However, no person shall be imprisoned for any violation of Sections 423.231 through 423.246 of the statutes. MICH. STAT. ANN. Sec. 423.246 (1978). Any public employee deemed to be on strike is entitled, upon request, to a hearing to determine whether he or she violated the no-strike law. MICH. STAT. ANN. Sec. 423.206 (1978).

2) CASE LAW

In School District of City of Holland v. Holland Education Association, the Michigan Supreme Court overturned the issuance of a temporary restraining order by a lower court and remanded the case

for further testimony on whether the school board had refused to bargain in good faith and whether an injunction should be issued at all. It held that injunctive relief required more than a showing that a strike was taking place."...it is basically contrary to public policy in this state to issue injunctions in labor disputes absent a showing of violence, irreparable injury, or breach of the peace." 380 Mich. 314, 157 N.W.2d 206, 208 (1963).

In Lamphere Schools v. Lamphere Federation of Teachers, the Michigan Supreme Court ruled that the Public Employment Relations Act (Section 423.201, et. seq.) proscribed public employee strikes and provided exclusive after-the-fact statutory remedies for public employers. 400 Mich. 104, 252 N.W.2d 818 (1977). A disciplinary discharge was held to be the unitary and exclusive remedy available to public employers in dealing with illegal public employee strikes. 252 N.W.2d at 822. Neither Michigan common law nor statutory law permitted a common-law tort action by school districts for damages resulting from illegal teacher strikes. 252 N.W.2d at 822, 827-828. The public employer, however, may seek equitable relief against an illegal strike, via an injunction. Id., 252 N.W.2d at 822.

In Rockwell v. Board of Education of Crestwood, the Michigan Supreme Court held that a teacher who strikes in violation of the Public Employment Relations Act could be disciplined without a prior hearing. 393 Mich. 616, 227 N.W.2d 736 (1975). The Act provides for a hearing only upon the request of an employee who has been disciplined. 227 N.W.2d at 741. The court concluded that the Act intended to treat all public employees on a uniform basis; thus, tenured and nontenured teachers had the same rights and obligations under the Act. 227 N.W.2d at 742.

It should be noted that the court implicitly ordered the Michigan Employment Relations Commission (MERC) to consider and decide the union's unfair labor practice charge against the school board and request for temporary relief. 227 N.W.2d at 748. The

court directed the MERC to weigh the misconduct committed by both sides. If the employer committed an unfair labor practice, the MERC could order reinstatement of the discharged teachers -- despite the illegality of their strike. 227 N.W.2d at 746.

FLORIDA

1) STATUTORY LAW

Florida's state constitution prohibits public employees from striking. Article I, Section 6.

Participation in a public employee strike constitutes an unfair labor practice. FLA. STAT. ANN. Sec. 447.501(2)(e) (1979). The Public Employees Relations Commission (PERC) may petition the circuit court for injunctive relief in a strike situation where a ULP charge files pending. FLA. STAT. ANN. Sec. 447.503(3)(b) (1979).

Florida's Public Employees Relations Act expressly prohibits public employee strikes. FLA. STAT. ANN. Sec. 447.505 (1979). The Act grants authority to circuit courts to hear and determine all actions alleging violations of section 447.505. FLA. STAT. ANN. Sec. 447.507 (1979). If the public employer makes a prima facie showing that a strike is in progress or that there is a "clear, real and present danger" that a strike is about to occur, the circuit court shall issue a temporary injunction enjoining the strike. FLA. STAT. ANN. Sec. 447.507 (1979). If the injunction is violated, the circuit court shall immediately initiate contempt proceedings against the violators. Id. In determining the fine, the court must consider the extent of lost services and the particular nature and position of the employee group in violation. Id. The union cannot be fined more than $5,000. Union officers or agents cannot be fined less than $50 or more than $100 for each day of violation of the

injunction. Id. Striking employees may be ordered terminated by the PERC. Id.

The union is liable for any damages which were suffered by the employer as a result of the strike. Id. Union initiation fees or dues can be attached or garnished for collection of damages. Id. The PERC may suspend or revoke the union's certification and dues checkoff privileges. Id. In addition, the PERC may fine the union up to $20,000 for each calendar day of violation of the statutory strike prohibition or fine the union the approximate cost of the strike to the public. Id.

2) CASE LAW

In Broward County Classroom Teachers Association v. PERC, the First District Court of Appeals of Florida held that the PERC had authority to investigate and act on its own motion or act on the complaint of another regarding a public employee strike. 331 So. 2d 342, 345 (1976). Even in the absence of an unfair labor practice charge filed against the union, the PERC was authorized to seek to enforce or implement the statutory prohibition against public employee strikes. Id. at 345. Failure of the PERC to adopt specific rules of procedure governing the investigation of and imposition of sanctions for strikes did not invalidate the proceedings. Id. at 345. In the absence of its own specific rules, the PERC could proceed under the model rules adopted pursuant to the Administrative Procedure Act. Id. at 345.

A public employer may refuse to recognize a public employee union that asserts the right to strike. AFSCME Local 532 v. City of Fort Lauderdale, 273 So. 2d 441, 443-444 (4th District Ct. of Appeal, 1973). A public employee who participates in a strike or is a member of an organization which asserts a right to strike is in violation with state law and, consequently, does not have the right to collectively bargain. 273 So. 2d 444. The union can seek to be

recognized as the bargaining agent for its members when it is able to clearly show that it no longer asserts the right to strike. AFSCME Local 532 v. City of Fort Lauderdale, 294 So.2d 104, 106 (4th Dist. Ct. of App., 1974).

In Dade Co. Classroom Teachers Association v. Rubin, 217 So.2d 293 (1968), the Florida Supreme Court ruled that the contempt proceeding brought against the Association for violating a temporary restraining order (enjoining their strike activities) was a criminal contempt proceeding; therefore, the Association's request for a jury trial should have been granted. 217 So. 2d at 296-297. In a later case between the same two parties, the Florida Supreme Court held that the Association and its officers had no standing to challenge the validity of a temporary injunction in contempt proceedings brought against them for violation of the injunction. Dade Co. Classroom Teachers Association v. Rubin, 238 So. 2d 234, 238 (1970). The Association should have appealed the injunction, rather than wilfully violate it. Id. at 238. The Supreme Court held that the injunction was appropriate even in the absence of any showing of violence or threat of violence. Id. at 238.

IOWA

1) STATUTORY LAW

The Iowa Public Employment Relations Act (PERA) prohibits all public employees from striking. IOWA CODE ANN. Secs. 20.1, 20.10(3)(e), 20.12 (West) (1977). Public employers may not consent to or condone strikes, nor may they compensate public employees for any day in which the employees participate in a strike. IOWA CODE ANN. Sec. 20.12 (West) (1977). Public employers and public employee unions are expressly prohibited from bargaining over the suspension or modification of any statutory strike penalties.

Any citizen may petition the appropriate district court for an injunction restraining a strike or threatened strike. The plaintiff need not show that the strike or threatened strike will greatly or irreparably injure him.

Failure to comply with a temporary or permanent injunction order restraining strike activities shall constitute contempt. An individual in contempt may be fined up to $500 per day or imprisoned in the county jail up to 6 months, or both. A public employer or union in contempt may be fined up to $10,000 each day. Individuals or unions who make an "active good faith effort" to comply with the injunction won't be found in contempt.

Any individual who violates Section 20.12, or is found in contempt, shall be immediately discharged and cannot be reinstated for 12 months, unless the court permits further judicial proceedings. Any public employee union (or its officers) who violates 20.12, or is found in contempt, "shall be immediately decertified, shall cease to represent the bargaining unit", shall lose dues checkoff privileges, and cannot be recertified until 12 months after the date of decertification.

The penalties provided by section 20.12 may be suspended or modified by the court upon a request by the public employer, if the court deems the suspension or modification to be in the public interest. Each of the remedies and penalties provided by section 20.12 is "separate and several, and is in addition to any other legal or equitable remedy or penalty." In short, they are not exclusive.

2) CASE LAW

In State Board of Regents v. United Packing House, 175 N.W.2d 110 (1970), decided prior to the enactment of PERA, the Iowa Supreme Court held that: 1) the striking nonacademic personnel who operated

the physical plant of the University were public employees; and 2) public employees do not have the right to strike.

An opinion by the Attorney General's office declared that all public employees are prohibited from engaging in strike activity. OAG (Millen), July 14, 1976.

In City of Des Moines v. PERB, 275 N.W.2d 753 (1979), the Iowa Supreme Court reaffirmed the prohibition against public employee strikes. The court concluded that the primary purpose of the PERA was to "assure continued effective and orderly government operations" and the impasse procedures, which were established by the PERA to replace the strike, were the means to attain that purpose. Id. at 760-761.

D. STATES WITHOUT EXPRESS STATUTORY (OR CONSTITUTIONAL) PROHIBITIONS ON PUBLIC SECTOR EMPLOYEES RIGHT TO STRIKE: SOME SELECTED EXAMPLES

There are a number of jurisdictions, some with comprehensive collective bargaining statutes, others without any statutory provisions relating to public employee collective bargaining rights, where there are no express constitutional or legislative provisions prohibiting public employees from striking and/or prescribing sanctions and procedures for dealing with illegally striking public employees and their unions. There is a smaller group of jurisdictions where the only express mention of public employee strike limitations and penalties is to be found in legislation governing firefighters. In addition, a large number of jurisdictions have anti-injunction statutes which limit the jurisdiction of a state court to issue injunctions in labor disputes without expressly stating whether public employees as well as private sector employees are covered by the limitation.

Thus, in the absence of express legislation policy, state courts have been called upon from time to time to explore and determine these issues of public policy without express legislative guidance. Courts have consistently held that public employees under the common law do not have a right to strike. California and New Jersey present two interesting examples of such jurisdictions where there is no general express strike ban (except as to firefighters in California and the uniformed services in New Jersey) in the setting of comprehensive collective bargaining statutues. A very few state courts have held that their state's "Little Norris-LaGuardia Act" is applicable to all strikes, public as well as private sector, thus effectively barring injunctive relief in many illegal strike situations except where there is violence or serious misconduct. An even smaller number of state courts has interpreted the absence of an express legislative strike ban as an indication that the legislature intended to confer upon public employees, or a group thereof, a right to strike. Idaho has produced one such case which is discussed in this section. Montana is another such jurisdiction. Discussion of the leading Montana case will be found in the next section dealing with jurisdictions where some legal right to strike exists.

CALIFORNIA

1) STATUTORY LAW

California law contains no constitutional or legislative provisions prescribing mandatory sanctions for striking public employees. Public employee strikes and strike penalties are not mentioned in the various comprehensive collective bargaining sections of the statutes, except that firefighters "shall not have the right to strike or to recognize a picket line of a labor organization while in the course of the performance of their official duties." CAL. [LABOR] CODE Sec. 1962 (West) (1959).

Both public and private labor disputes in California are governed by CAL. CIV. PRO. CODE Sec. 527.3 (West). Section 527.3 limits the authority of California courts to issue injunctions in labor disputes. A "labor dispute" is defined as follows:

> (i) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (a) between one or more employers or associations of employers and one or more employees or associations of employees; (b) between one or more employers or associations of employers and one or more employers or associations of employers; or (c) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" of "persons participating or interested" therein (as defined in subparagraph (ii)).
>
> (ii) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.
>
> (iii) The term "labor dispute" includes any Controversy concerning items or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether or not the

disputants stand in the proximate relation of employer and employee.

CAL. CIV. PRO. CODE Sec. 527.3(b)(4) (West) (1975).

Section 527.3 does not permit unlawful conduct "including breach of the peace, disorderly conduct, the unlawful blocking of access or egress to premises where a labor dispute exists, or other similar unlawful activity." CAL. CIV. PRO. Sec. 527.3(e) (West) (1975). California courts have interpreted the phrase "or other similar unlawful activity" to include public employee strikes.

2) CASE LAW

California courts have consistently held that public employees do not have the right to strike under existing state law. Some courts have further held that a strike by a public employee terminates the employment relationship or is sufficient grounds for discharge. See, for example, Newmarker v. Regents of University of California, 160 Cal. App. 2d 640, 325 P.2d 553 (1958); Almond v. County of Sacramento, 80 Cal. Rptr. 518, 276 Cal. App. 2d 32 (1969); San Francisco v. Cooper, 120 Cal. Rptr. 707, 534 P.2d 403 (1975); Stationary Engineers Local 39 v. San Juan Water District, 153 Cal. Rptr. 666, 90 Calif. App. 3rd 796 (1979).

California courts have also consistently held that illegal public employee strikes are enjoinable. A very recent decision of the California Supreme Court has the effect of modifying that generalization, however. The issue did not concern application of the anti-injunction statute, however, but instead involved the primacy of the state labor board's jurisdiction. In San Diego Teachers Association v. Superior Court, the association sought annulment of the court's contempt orders which punished the association and its president for conducting a strike against the school district in violation of a restraining order and a

preliminary injunction. 154 Cal. Rptr. 893, 894-895, 593, P.2d 838 (1979). The association had been fined 500 for each of its violations; the president was fined $4,000 and sentenced to 40 days in jail of which 30 days were suspended.

Both the association and the school district had filed unfair labor practice charges aginst each other at the time the injunction was issued. The Supreme Court did not resolve the question of the legality of that public employee strike. Instead the court held that the California Public Employment Relations Board (PERB) had exclusive initial jurisdiction to determine whether a public employee strike was an unfair practice and what, if any, remedies the PERB should pursue. Id., 154 Cal. Rptr. at 897 and 900-902. The court indicated that a strike conducted prior to the completion of statutory impasse procedures constituted an unfair practice under Section 3543.6(d) of the statutes. The court annulled the contempt orders as being beyond the authority of the superior court, citing United Farm Workers v. Superior Court as supporting precedent for the principle of exclusive initial jurisdiction of California labor agencies over remedies against strikes. In the United Farm Workers case, declaratory relief was denied on the grounds that the issue could be raised in a proceeding of the Agricultural Labor Relations Board (ALRB). 140 Cal. Rptr. 361, 72 Cal. App. 3d 268, 273 (1977).

A recently reported March 10, 1980 decision by the California Public Employment Relations Board indicates a division within the Board as to the propriety of the Board's seeking injunctive relief in a teachers' strike and on the broader question of the legality of teachers' strikes. In Modesto City Schools v. Modesto Teachers Association, a two person Board majority held that granting the employer's request for an injunction required an evaluation of all circumstances, including the possibility that the union was engaging in an unfair labor practice strike. Thus the majority directed continuation of the agency's investigation of the filed unfair labor

practice charges. The dissenting Board member argued that the effect of the majority's action was to permit strikes against public employers and that this policy decision is for the legislature, or courts, not an administrative agency. See 803 GOV'T EMPL. REL. REP. (BNA) 23 (May 26, 1980). (It has been subsequently reported that on March 13, 1980 a court injunction was issued ordering striking teachers back to work in this case in response to a petition for injunctive relief filed by the General Counsel of the California PERB.)

NEW JERSEY

1) STATUTORY LAW

Although New Jersey is often included in a listing of jurisdictions with legislation prohibiting public employees from exercising a right to strike, this has only been expressly true since 1977 and then only in regard to police and firefighting employees. This treatment of public employees is in contrast to treatment of private sector employees whose right to strike is expressly recognized by N.J. STAT. ANN. Sec. 34:13A-3 (West) (1979-80).

The New Jersey Employer-Employee Relations Act (governing public and private employees) does not provide specific strike penalties for public employees, nor does it specifically provide injunctive relief for public employers.

2) CASE LAW

It is well settled law in New Jersey that public employees, such as teachers, may not strike. Board of Education of Asbury Park v. Asbury Park Ed. Assoc., 145 N.J. Super. 495, 368 A.2d 396 (1976), 363 A.2d at 405 citing Union Beach Board of Education v. New Jersey Education Association, 53 N.J. 29, 36-37, 247 A.2d 367

(1968). Although the New Jersey Employer-Employee Relations Act gave PERC the exclusive power to prevent persons from engaging in unfair labor practices and gave PERC the authority to grant interim relief in unfair labor practice proceedings and scope of negotiations proceedings, the Superior Court held, as a matter of law, that the PERC lacks the authority in any situation to enjoin a strike. Board of Education, Etc. v. Asbury Park Education Association, supra, 363 A.2d at 406. Since PERC's authority to grant interim relief arises only as to matters directly related to unfair labor practice proceedings and scope of negotiations determinations, the court found that PERC's authority to grant interim relief does not impinge on the Superior Court's inherent power to enjoin strikes in the public sector. 363 A.2d at 406-407.

In addition, the Appellate Division of the New Jersey Superior Court ruled that a public employee strike may constitute a refusal to negotiate in good faith and an unfair labor practice under Section 34:13A-5.4(b)(3). In the Matter of Hoboken Teacher's Association, 147 N.J. Super. 240, 371 A.2d 99, 101 (1977). Although PERC has primary jurisdiction in this area, it does not have exclusive jurisdiction. 371 A.2d at 103. The court concluded that: 1) the jurisdiction of an equity court to enjoin public employee strikes is beyond question; 2) PERC has no right of injunctive relief; and 3) the employer's right to resort to the courts for injunctive relief does not usurp PERC's authority to decide upon the matters which precipitated the strike. 371 A.2d at 103.

The Association had filed a complaint with the chancery division judge regarding the employer's failure to negotiate. While that complaint should have been transferred by the judge to the PERC under the doctrine of primary jurisdiction, the court's order requiring the employer to negotiate was held not to be in excess of the court's jurisdiction. 371 A.2d at 104. Furthermore, the court's imposition of a fine of $5,000 per day against the

Association for violation of an order enjoining them from striking was upheld as reasonable. 371 A.2d at 105.

In Matter of Elizabeth Education Association, 154 N.J. Super. 291, 381 A.2d 369 (1977), the trial judge had issued an ex parte restraining order enjoining striking and picketing teachers and an order to show cause. On the day following the issuance of the restraining order, the judge directed the teachers to show cause in a penal contempt proceeding. 381 A.2d at 370-371.

The Appellate Court defined penal contempt as "a public wrong, a defiance of governmental authority which must be accompanied by a mens rea, an intention to wilfully disobey or an indifferenct to it." 381 A.2d at 371. In a penal or criminal contempt proceeding, the judgment must be a "finite sentence". 381 A.2d at 372. If further acts of contempt are committed, prosecution and punishment is available only in proceedings thereafter to be instituted charging such new violations. 381 A.2d at 372.

Because the hearing and convictions of the lower court went beyond the single day charged in the contempt show-cause order, the lower court's orders were vacated in all respects except as to the contempts which occurred on that date. 381 A.2d at 372. The Appellate Court held that the defendants were entitled to the same type of notice as an indictment would provide, that is, "a written statement of the essential facts constituting the offense charged." 381 A.2d at 372. The lower court's contempt show-cause order was upheld as supplying sufficient notice to the defendant teachers. 381 A.2d at 372. In addition, the penalties imposed upon the defendants were affirmed. They included: $4,500 fine for the Association; fines of $70 to $100 for Union officers; and jail sentences of 2 1/2 to 5 days for the same officers. The sentences were suspended and the individuals were placed on probation. 381 A.2d at 373.

The public employer sought to enjoin a teachers strike one day before the employer filed an unfair labor practice charge against the striking teachers with the Public Employment Relations Commission (PERC). The Superior Court held that the concerted resignations of 28 teachers from their extra-curricular activity assignments constituted an illegal strike. 363 A.2d at 404.

IDAHO

1) STATUTORY LAW

Section 33-1271 of the Idaho Code (1979 Supp.) — also known as "Professional Negotiations Act" — provides professional education employees (teachers) with collective bargaining rights and does not expressly prohibit strikes. Firefighters, on the other hand, are expressly prohibited from striking or recognizing a union picket line "upon consummation and during the term of the written contract." IDAHO CODE Sec. 44-1811 (1979 Supp.). There is no legislation covering the collective bargaining rights of other public employees in Idaho.

2) CASE LAW

In School District No. 351 Oneida County v. Oneida Education Association, 98 Idaho 486, 567 P.2d 830 (1977 public employees had neither a constitutional nor a common law right to strike. 567 P.2d at 833. Furthermore, public school teachers were not inferentially granted a right to strike by the absence of an express prohibition in the Professional Negotiations Act. 567 P.2d at 833.

The Court held that the Idaho statutes governing the issuance of injunctions in labor disputes applied to public school teacher strikes. 567 P.2d at 833. However, the mere illegality of the teachers strike did not require the automatic issuance of an injunction. 567 P.2d at 834.

Basing its decision on the equitable doctrine of clean hands, the Court held that the trial court had erred in issuing injunctive orders in the face of the school board's refusal to abide by the statutorily mandated impasse procedure. 567 P.2d at 835.

In Local 1494 of IAFF v. City Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978), the Idaho Supreme Court interpreted Section 44-1811 of the Idaho Code, however, to grant a limited right to strike to fire- fighters. By expressly prohibiting strikes by firefighters after consummation and during the term of the contract, "the legislature either implied impliedly recognized their right to strike after the expiration of the contract or, at a minimum, opened the door to such contractual agreements as the parties might reach in that regard." 586 P.2d at 1356. The parties are free to negotiate one way or another depending on their relative economic strengths. 586 P.2d at 1357.

In this particular case, the parties negotiated and agreed upon a contract provision which stated: "Failure to sign subsequent agreement, shall be the only grounds for a strike." 586 P.2d at 1353. Thus, the contract provided the firefighters with a residual right to strike. Id. A strike under this provision was not illegal and could not be enjoined. Id. at 1353.

While the firefighters had a right to strike, they were not immune from discharge for refusing to report for work when ordered to do so. Id. at 1358-1359. Such refusal gave the city "cause" for discharge. Id. at 1358-13599. On the other hand, the city was required to act in "good faith" when attempting to discharge striking firefighters. Id. at 1359. The city could not refuse to bargain in good faith, push the firefighters into striking, and then discharge the strikers. Id. at 1359. The court ordered the city to reinstate the striking firefighters and resume good-faith bargaining. Id. at 1359.

OTHER EXAMPLES

Other examples of jurisdictions where there are no statutory bans on public employee strikes and where state courts have concluded that there is a common law no-strike rule in the public sector include: Tennessee (although a collective bargaining statute covering teachers was enacted in 1978 which includes an express no-strike policy); Kentucky, (where there is an express ban against police and firefighters' strikes); Alabama (where there is only an express ban against strikes by firefighters); South Carolina, and West Virginia.

In another grouping of states without an express statutory strike ban, it is often assumed that the common law rule against public employee strikes is applicable but there is little or no authority for such a conclusion. Included in this category are such states as Georgia (where there is an express ban and penalties for strikes by state employees and firefighters), North Carolina (where there is a unique provision declaring collective bargaining agreements illegal and avoid), Louisiana, and Mississippi.

E. STATES PROVIDING FOR LIMITED RIGHT TO STRIKE

Even in the limited number of states which expressly provide for the right of some public employees to strike under some circumstances, certain strikes continue to be illegal. This may be because the particular group of employees does not have such a strike right, that statutorily mandated procedures (such as participation in mediation or filing a timely notice of intention to strike) have not been followed, or there has been a failure to comply with an injunction issued to stop the commencement or continuation of the strike. Thus, the issue of legislative treatment of strike penalties is relevant to all jurisdictions, including those permitting some public employee strikes.

In addition to the previously noted provisions to be found in Hawaii, Pennsylvania and Wisconsin (under MERA) relating to strike penalties, there are five other jusisdictions to be noted. (An argument may be made that Idaho, discussed in the prior section, in regard to firefighters striking during a bargaining impasse should also be included in this section as a sixth jurisdiction where there is a limited right to strike.). As might be anticipated, there is no uniformity to be found in the legislation of these five jurisdictions. The variety already observed in comparing Hawaii, Pennsylvania, and Wisconsin (under MERA) is repeated when one closely examines Alaska, Minnesota, Oregon, Vermont (under MERA) and Montana (except for firefighters since 1979). In these jurisdictions, the following generalizations are usually, but not uniformly, applicable:

1) An injunction is available to limit a strike when public health and safety (sometimes welfare) is endangered or threatened. A clear and present danger standard may be expressly articulated as a limitation on a state court's equitable powers to issue an injunction.

2) The right to engage in legal strikes typically follows completion of certain mandatory impasse procedures and timetables.

3) A notice of intent to strike may be required of the union asserting the right to strike within a specified number of days prior to taking the action.

VERMONT

Like Wisconsin, Vermont denies the right to strike to state employees. Certain strikes under SELRA and MERA are unfair labor practices. Municipal employees in Vermont are permitted to strike under MERA if certain impasse procedures are completed and if public health, safety or welfare is not endangered and certain impasse

procedures have been complied with. VT. STAT. ANN. tit. 21, Sec. 1730. An employer may petition for a court injunction VT. STAT. ANN. tit.. 21, Sec. 1730(3), or the state labor board may petition to enforce its orders. VT. STAT. ANN. tit. 21, Sec. 1729(a), (b). In addition, strikes by Vermont teachers cannot be enjoined in the absence of a finding that "the commencement or continuation of the action poses a clear and present danger to a sound program of school education which in the light of all relevant circumstances it is in the best public interest to prevent." VT. STAT. ANN. Tit. 16, Sec. 2010. A lower state court has recently ruled that a Rutland teachers strike was legal, 854 GOV'T EMPL. REL. REP. (BNA) 45 (March 24, 1980).

ALASKA

For strike purposes, Alaskan public employees are divided into three categories. Some employees (such as police and fire protection employees) have no right to strike under any circumstances. A court is required to grant injunctive relief and interest arbitration is mandated. ALASKA STAT. Sec. 23.40.200(b). A second category of employees (public utility, snow removal, sanitation, and public school) is permitted a right to strike for a limited period. However, whenever the strike a court determines that the strike threatens public health, safety, or welfare, it may be enjoined (and interest arbitration mandated). ALASKA STAT. Sec. 23.40.200(c). The court is mandated to consider the "total equities." Finally, there is the third classification of public employees which has an unlimited right to strike if a majority in the bargaining unit vote by secret ballot to do so. Sec. 23.40.200. There are no specified penalties against illegal strikers and their unions.

OREGON

In Oregon, certain public employees such as police, firefighters, guards at correctional institutions, and mental hospitals are prohibited from striking. OR. REV. STAT. Sec. 243.736. Other employees are permitted to strike if they meet the following qualifications: 1) they must be part of an established appropriate bargaining unit; 2) there is no agreement to submit disputes to binding interest arbitration; 3) mandated mediation and fact-finding procedures have been exhausted (also unfair labor practice procedures, where appropriate); 4) 30 days must have elapsed since receipt of fact-finding board's recommendation; 5) 10-day notice of intent to strike has been given; and 6) strike does not create a clear and present danger to public health, safety, or welfare of the public. OR. REV. STAT. Sec. 243.726.

MINNESOTA

In Minnesota, prior to 1980, there was a general prohibition on the right of public employees to strike. MINN. STAT. ANN. Sec. 179.64(1). However, nonessential employees were permitted to strike in two limited circumstances: 1) the employer has refused to submit an interest dispute to arbitration and 2) the employer has failed to comply with a valid arbitration award. MINN. STAT. ANN. Sec. 179.64(7). Employer unfair labor practices cannot justify a strike but may be considered by a court in assessing strike penalties against individuals and their union. MINN. STAT. ANN. Sec. 179.64(7).

1980 amendments to the Minnesota Public Employment Labor Relations Act (PELRA) have made major changes in that jurisdiction's no-strike policy for public employees who ae not confidential, essential, managerial, and supervisory employees (including principals and assistant principals). Essential employees have a right to binding arbitration. Covered public employees may strike if the collective bargaining agreement has expired (or there is no agreement), an impasse has occurred, required mediation has been

unsuccessful for a specified period of time, and written notice has been served. MINN. STAT. ANN. Sec. 179.64. Any employee who strikes illegally may have his or her employment terminated; if rehired, there must be a two-year probation period. MINN. STAT. ANN. Sec. 179.64(6). An employee organization which strikes illegally loses its exclusive representation status, may not be certified for a period of two years, and may lose its employee payment deduction rights for a period of two years. MINN. STAT. ANN. Sec. 179.64(6).

MONTANA

Finally, Montana expressly permits strikes by employees (both private and public) of health care facilities provided that a 30-day notice has been given and employees at another health care facility within a radius of 150 miles ae not on strike.

In addition to the limited statutory right to strike, in 1974, the Montana Supreme Court in Montana v. Public Employees Council held that the statutory grant to public employees to engage in "concerted activities includes the right to engage in strikes. The court believed this conclusion was reinforced by the fact that there was nowhere an express prohibition against striking while there was (or had been) specific restrictions on nurses' and teachers' right to strike. 529 P.2d 785 (1974).

F. SOME GENERAL CONCLUSIONS

While the variety of statutory and judicial treatment is enormous, when one considers the jurisdictions with express strike bans (and penalties), those with no such specific provisions and those with a limited right to strike, certain generalizations may be made about the array of legal materials (both statutory and case law) covered. One grouping of critical legal issues revolves around

the availability of injunctions to halt illegal strikes. These include:

a) Will an injunction be issued automatically once it is established that an illegal strike is in progress or must the normal elements of injunctive relief be present (i.e. irreparable harm, "clean hands," etc.)? The latter choice permits a de facto right to strike in some circumstances. For an example of this result, see the earlier discussion of the Holland case in Michigan. Rhode Island and New Hampshire have also chosen this approach.

b) Must an employer seek relief in the first instance from the state labor relations agency and, if so, does the employer have the right subsequently to apply for an injunction if the administrative agency does not? Requiring resort in the first instance to the state agency is another way of permitting a de facto right to strike for a limited period of time (until the agency acts). If the agency refuses to seek an injunction and it is further determined that the employer has no independent right to pursue injunctive relief, then the limited de facto right to strike is extended indefinitely. Contrast treatment of this issue in California (as discussed above) with a recently reported decision of the New Hampshire Supreme Court. 859 GOVT. EMPL. REL. REP. (BNA) 45 (April 28, 1980).

c) Are penalties against individuals and their organization mandatory? Are they administered by employer, state labor agency, or courts, or some combination thereof?

d) May an aggrieved party or interested taxpayer seek injunctive relief if the public employer fails to?

e) Under what circumstances, if any, will an injunction be issued prior to an actual strike?

It appears that resolution of the above issues on a jurisdiction by jurisdiction basis does not turn on the presence or absence of an express strike prohibition. Moreover, it does not turn on the existence of a comprehensive collective bargaining statute or other specific legislation. Even in jurisdictions which permit some limited right to strike, there may be illegal strikes (i.e. those where statutory requirements are not met) and thus no state may avoid the problem of devising appropriate legislative, judicial, or administrative remedies and answers to the above questions. To date, such answers have been spotty and unpredictable.

In addition to the issues concerning injunctive relief noted above, other important and unusual legal issues, have also arisen in recent years. These "frontier" issues include:

a) Is there any limitation on the right of the employer or aggrieved persons to receive a damage award for harm flowing from an illegal strike (typically, based upon a tort recovery theory)? Few jurisdictions have considered this question. Where it has been litigated, there are very diverse results. For example, compare treatment of this issue by Michigan's court and Florida's legislature.

b) What is the legal status of a settlement agreement following an illegal strike? May it be challenged by a citizen/taxpayer as being contrary to public policy? The Missouri Supreme Court had little difficulty declaring that such an agreement was illegal in St. Louis Teachers Association v. Board of Education, 544 S.W.2d 573 (1976).

c) Does a state labor board have the right to reinstate illegal strikers to remedy an employer's unfair labor practices? Where the right of a labor board to order this type of relief is recognized, another type of de facto right to strike is established. For one example, see a recent decision

of the Maine Supreme Court, AFSCME Local 481 v Town of Sanford, 104 LRRM 2398 (1980).

From all the above, one may generalize and state that, in the absence of legislative authorization to strike, express or implied, there is universal acceptance of the common law rule that public employees do not have the right to strike. However, one must immediately add that in a significant number of jurisdictions, this policy may be clouded because, among other reasons, 1) no mandatory express strike penalties for violation exist except usual, broadly discretionary contempt of court penalties for disobedience of an injunction; 2) injunctions may be difficult to secure from a court unless certain substantive standards are met and this may be difficult to do; 3) there may be a requirement that a public employer first seek relief from the state's administrative agency before a court injunction may be sought; and 4) damage actions against illegally striking unions and public employees by employers and third parties may not be permitted. For legislatures wishing to deal effectively with implementation of a strike ban policy (broad or narrow) for public employee strikes, it is important that these issues be comprehensively addressed. Since that has rarely happened, unpredictable, diverse, and even perverse results will continue to occur in many jurisdictions as state courts are required to deal with these difficult policy issues with little, if any, legislative thought and guidance. (For a discussion of several of these issues, see Lehmann, "Public Sector Strikes: A Comparison of the Respective Roles of the Courts and Labor Relations Agencies in the Enjoining of Strikes in Various States" in Selected Proceedings of the 28th Annual Conference of the Association of Labor Relations Agencies (Labor Relations Press 1980).