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## THE RIGHT TO STRIKE IN THE PUBLIC SECTOR

by Dan Hagen

The recent firings of striking air traffic controllers and the decertification of PATCO has led to renewed interest in the debate over whether public employees should be allowed to strike. In spite of laws prohibiting federal and most state and local government employees from striking, strikes in the public sector have been common. The crackdown on striking controllers was unusual and, some would complain, unfair. The point of contention is the following: Why should workers in the public sector be denied something which for private sector employees is held to be a fundamental right - the right to strike?

### 1. Some General Pros and Cons

It has been argued that many of the services provided by public sector workers are essential, so that a strike would unduly harm the public. There is a weak relation at best, however, between how essential a job is and its location in the public or private sector. Many essential services, such as health care, transit, teaching and trash collection are performed by both private and public workers. In addition, many less essential services are performed by public employees. Can we justify denying the right to strike to cashiers in state-run liquor stores, while upholding the right to strike of nurses working in private hospitals? Not, it would seem, on the basis of the essentiality of the job. Perhaps there is a need to protect the public from strikes which seriously threaten the public's health or safety (as is done now in the case of disputes that represent a national emergency), but this does not constitute a basis for denying the right to strike to all public workers.

There is also a common conception that public workers do not require the strike weapon since they work for model employers. The argument is that government employees have high wages, excellent benefits and no job security fears. Also, public employers do not face the profit and loss concerns of private employers, and are thus more likely to provide reasonable compensation. It is claimed that these factors even reduce government resistance to public employee unions during strikes, thus providing an additional reason for prohibiting them. While public employers may, on average, be less avaricious than their private counterparts, it does not necessarily follow that they are in any sense "ideal" employers. And it is not true that public employees have no legitimate concerns regarding compensation and job security - particularly in the present period of massive government budget cuts. There are many low paid government workers, and falling real income has become an almost universal concern. The existence of such concerns has been implicitly recognized by the granting of the right to bargain collectively to the majority of government employees. Without the strike threat, however, unions have very little with which to back up their bargaining demands. The right to bargain collectively means much less in the absence of the right to strike.

### 2. The Political Mandate of Elected Officials

The infringement on government sovereignty has also been advanced as a reason for denying public employees the right to strike. Those elected to government positions, or their representatives, it is argued, should not have to share their

decision-making authority with the union. Their responsibility is to the voters. Strikes are thus held to be a form of coercion which threatens basic governmental responsibility.

It is difficult to understand, however, why the nature of the worker-employer relationship should be any different in the public than in the private sector. The right to strike is based on more fundamental rights, which cannot easily be denied to workers simply because their employer happens to be the government. The right to bargain and to strike should not be viewed as "coercion" or as an infringement on governmental sovereignty. The authority of the government is constrained in other areas of its operations; why should it not be held fully accountable in its labor relations.

After considering these issues, the Canadian parliament in 1967 passed the Public Service Staff Relations Act, which gave workers a choice of two dispute resolution processes. One of the options allows public employees the right to strike after carrying out a conciliation board procedure. Other countries have also adopted legislation defining the rights of public sector employees to bargain and to strike. There is nothing about the innate sovereignty of government to prevent us from doing the same here.

### 3. The Practical Issues

Strikes in the public sector do occur, even where they are illegal. Studies done comparing similar states with different strike legislation suggest that not only do prohibitions fail to prevent strikes from occurring, they do not even reduce the frequency of occurrence. It appears that strikes cannot be legislated away. If strikes were legalized and more effective impasse procedures were established, time and energy devoted to enforcing untenable prohibitions could then be redirected towards solving substantive issues.

Even when laws prohibiting strikes are strictly enforced the effect is often not to stop the strike. As in the PATCO case, tough action often does not result in avoiding a work stoppage - rather it can exacerbate the situation, resulting in very high costs to the striking workers and to the nation as a whole. If the Reagan Administration refuses to allow the PATCO workers back, the country will have lost a large group of skilled workers who must be replaced at a very high cost. Attempts to prevent public workers from striking seem not only unjust, but impractical as well.

Finally, it can be argued that the avoidance of strikes is not necessarily a sign of healthy labor relations. It has been suggested that one of the effects of strikes is to provide an outlet for anger and frustration, which can build up enough to have an adverse effect on morale and productivity. Attempts to prevent strikes through threats or force can add to latent frustration and anger - particularly when the right to strike is perceived as being unfairly limited or denied.

In conclusion, there seems to be no good reason for denying the right to strike to workers in the public sector. Attempts to do so are both unfair and impractical. There is little to distinguish the public sector employees as a group from their counterparts in the private sector. Increased recognition of the rights of public employees to form unions and to bargain collectively should now be followed by the elimination of prohibitions against public employee strikes.

- Dan Hagen

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