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A STUDY OF THE ROLE OF THE JUDICIARY IN RESOLVING TEACHER STRIKES IN SIX SELECTED OHIO SCHOOL SYSTEMS.

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Education, administration

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A STUDY OF THE ROLE OF THE JUDICIARY IN RESOLVING
TEACHER STRIKES IN SIX SELECTED OHIO SCHOOL SYSTEMS

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
Edwin S. Nordin, B.A., M. Ed.

* * * * *

The Ohio State University
1976

Reading Committee: Approved By

Dr. Walter G. Hack, Chairman
Dr. Roy A. Larmee
Dr. W. Frederick Staub
Dr. Lonnie Wagstaff

Walter G. Hack
Advisor
Department of Educational Administration
ACKNOWLEDGMENTS

The writer wishes to express his deepest appreciation to his very patient wife, Estella E. Nordin, whose continuing support and encouragement through the years has helped to make this study a reality.

To Dr. Walter G. Hack, who never lost faith in the writer's ability and desire to complete this study and who offered subtle encouragement through the years, the writer will always be grateful.

To Mr. Roger O. Hoffman, Superintendent of the Hamilton Local School District, Franklin County, Ohio, the writer acknowledges with a sense of gratitude the concept which initiated this study. His courage and conviction to challenge an improper court order provided the inspiration to the writer to conduct this study.

The writer also acknowledges the interest and concern of Dr. Roy A. Larmee, Dr. W. Frederick Staub, and Dr. Lonnie Wagstaff who willingly and graciously critiqued this study.

The writer is also appreciative of the time and concern of those judges and school superintendents who verified the accuracy of the contents of this study as it affected the school strike situation in which they were involved.
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| 1952     | B.A. Degree  
Ohio University  
Athens, Ohio             |
| 1953     | M.Ed.  
Ohio University  
Athens, Ohio             |
| 1953-1958 | Classroom Teacher  
Austintown Local School District  
Mahoning County, Ohio  
Bexley City School District  
Bexley, Ohio             |
| 1958-1966 | Elementary School Principal  
Hamilton South Elementary School  
Hamilton Local School District  
Franklin County, Ohio     |
| 1966-1969 | Administrative Assistant  
Hamilton Local School District  
Franklin County, Ohio     |
| 1969-1970 | Teaching Associate, Department of Early Childhood Education  
College of Education  
The Ohio State University  
Columbus, Ohio            |
| 1970     | Administrative Assistant  
Hamilton Local School District  
Franklin County, Ohio     |
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CHAPTER I

BACKGROUND OF THE PROBLEM

"The law and its institutions change as social conditions change. They must change if they are to preserve, much less advance, the political and social values from which they derive their purposes and their life."¹ The educative process and its institutions, the public schools, must also change if they are to preserve and transmit the cultural heritage as well as to pass-on new knowledge and new technology in an ever-increasing complex, dynamic society. Gregg² writing in 1960 stated that viewing educational administration over its past history reveals that the place of education in the structure of government has been affected by marked changes. He writes that in the early part of the present century public education was almost wholly the concern and responsibility of the often small local school district. Increasingly, local districts have become larger and leadership and financial responsibilities have been allocated to the state and federal levels.

Preserving and enhancing the traditional values inherent in local control of, and responsibility for public education present a challenge to administrative leadership. This will have to be done in spite of, or perhaps as a result of, the great network of cooperative relationships which seemingly are necessary to meet adequately the educational needs of present day society.  

Hack, writing a decade later, asserts that the school administrator is a student of the cultural values which Americans cherish; he knows when and how these values are being challenged.

He assesses the forces that impinge upon education in our society. He realizes that culture is dynamic and that the schools and other institutions created by people must also be dynamic. In the present decade change has accelerated more rapidly that in any other time in history. How can education meet the challenge of change? If it does, what happens to our time-honored values?

Today, many time-honored values are being challenged within the public sector of the nation's economy by public school teachers. The traditional concept of governmental sovereignty is being questioned by public school teachers. The collegial relationship that formerly existed among school administrators and classroom teachers is becoming an adversary relationship due to the impact of professional collective bargaining. Today, many school administrators are facing the problem of employees in the public sector striking against their employers,

3Ibid.


5Ibid.
the various levels of local, state, and federal government. Teacher associations and boards of education are finding themselves increasingly in conflict and dispute as public employees are searching for viable mechanisms to obtain economic benefits and other privileges which their counterparts already enjoy in the public sector. Lieberman\(^6\) maintains that for generations the educational establishment has been seeking public support for education without having to fight for it in the political arena. He states that to this day, it is committed to separating education from the political processes that determine the level of support for public services generally. "This anachronistic structure of educational governance is about to be wiped out."\(^7\) The same author states that, paradoxically, the National Education Association which adamantly opposed "compulsory unionism" twelve years ago, currently advocates federal legislation that would not only legalize the agency shop nationally but render it unnecessary for the teacher organization to bargain for it.

Certainly one of the most serious challenges facing school administrators today is the increasing use of the strike weapon by public school teachers as they continue to challenge the status-quo and its accepted \textit{modus operandi}. Nationally, there were 105 strikes by teachers' unions between 1941 and 1961. In the 1975-76 school year there were 203 teacher strikes.\(^8\) During the 1972-73 and 1973-74


\(^7\)Ibid.

\(^8\)"Pacts In Dispute Portend Trouble in School Ranks," Survey conducted by the National Education Association and reported by its executive secretary in the \textit{Columbus Evening Dispatch}, Monday, September 6, 1976.
school years the Ohio School Boards' Association has recorded twenty-eight teacher strikes in each year.⁹ Every school administrator must be aware that public school teachers today are willing to use the strike weapon and to withhold their services when they are unable to achieve their aims through professional collective bargaining. Acceptable and standard procedures to resolve employer-employee conflicts under the National Labor Relations Act which exist in the private sector of the nation's economy do not apply in the public sector for governmental employees. The National Labor Relations Act excludes most public employees from the statute's operation, including public school teachers.¹⁰

Since strikes or work stoppages by public officers or employees, both federal and state, are almost universally prohibited, either by statute or by judicial decision,¹¹ public school teachers find themselves in a legal and moral dilemma if and when they decide collectively to strike against their employing boards of education. They must either abandon their employment thereby depriving themselves of all income, or else they defy the law. The time-honored value that public employees can not strike against the sovereignty of the state is in serious question in contemporary American society.

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⁹Information on file with the Ohio School Boards' Association, Worthington, Ohio.


Van Miller\(^{12}\) writes that each administrator should have a "central core of values" that provides him with a philosophical stance from which to assume his responsibilities. Today, a pertinent question facing any school administrator is what stance does he assume as public school teachers create work stoppage situations. In Ohio, the Ferguson Act which prohibits striking by public employees goes no further than strictly banning strikes. The Act is not self-executing and the public employer has wide discretion whether to proceed or not to proceed against striking teachers. The employer determines whether a strike has occurred under this Act and which employees are deemed to be on strike. The unique provision to send notice or not to send notice stating the employee is on strike gives school administrators of education wide discretion in avoiding the severe penalties of this act.\(^{13}\) The school administrator finds himself in a legal and moral dilemma under existing Ohio statute. On the one hand, if the statutes state that public school teachers who strike against boards of education must be dismissed, his recommendation to the board of education is clear. On the other hand, if he feels his position as the educational leader of the system's teachers would be jeopardized by recommending that the Ferguson Act be invoked and notice be sent, he can take no stance under existing Ohio Law and seek injunctive relief against the strike in the form of a temporary restraining order, temporary injunction, or a permanent

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\(^{13}\)Billman, \textit{Op. cit.}. 


\textit{\textsuperscript{13}}Billman, \textit{Op. cit.}. 

A permanent injunction is granted only at a final hearing of the case on the merits. Such an injunction is usually perpetual in its effect.  

\textsuperscript{15}Van Miller, \textit{Op. cit.}  

\textsuperscript{16}American Law Reports ALR 3d, \textit{Op. cit.}
held that the National Labor Relations Act was constitutional.\(^1\) This Act gave employees in the private sector the right of self-determination in designating collective bargaining agents, and just as important, to have collective bargaining. The Act also affirmed the right to continue the employee relationship during a strike. It would seem that the legislation enacted by the Congress with the supportive decision of the United States Supreme Court is the basis for the demands of public employees to be given equal freedom with private sector employees.

There is probably little doubt the history of labor relations in the private sector has tremendously affected the current attitude of public employees. There are many authorities in the field of labor relations who believe that until public employees receive rights and benefits similar to those of the private sector, problems, agitations, and strikes in the public sector will continue, despite what the law says.

This concern of the labor movement in the public sector assumes new dimensions when one realizes that while the percentage of union members in the entire labor force has been declining, or remaining stable, many public employee unions have doubled and more than doubled their membership. There are now some 8.5 million workers employed by state, county, and local governments and it is estimated that there will be another four million added to this number by the year 1975.\(^2\)


\(^2\)Ibid.
Lieberman stresses that nationally the potential might of merged employees in the educational portion of the public sector could be as many as 3,524,000 members. As this dramatic shift in the composition of the nation's labor force continues, many problems and issues will arise affecting the employer-employee relationship in the public sector. School administrators and the boards of education they counsel will not be immune from these newly-created problems, particularly when one realizes that the teacher coalition merger will represent the largest union within the A.F.L.-C.I.O. And if Tradenberg's prediction holds true that in the not too distant future, the Congress of the United States will complete the historical process by applying the principles of the National Labor Relations Act to public employees, school administrators and boards of education will have to seek new means whereby the decision making powers of boards of education can be maintained in order to be responsive to their communities, and yet, at the same time, abide by new laws and regulations which could undoubtedly impinge upon the authority and decision making powers of education.

Generally, the proper function of the courts is threefold: (1) they rule on the constitutionality of legislative enactment; (2) they interpret laws; and (3) they settle disputes. The question must now

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20 Ibid.

be raised: "What is and ought to be the role of the judiciary as problems dealing with labor management concerns increase between boards of education and teacher unions?" The Constitutions of the United States and the State of Ohio provide for the establishment and functioning of three branches of government: a legislative branch, an executive branch, and a judicial branch. Each of these branches of government assumes authority and performs functions which have significant implications for public education. In recent years much more attention has been focused on the judicial branch of government than on either of the other two branches in matters concerning schools.\(^{22}\) Bolmeier\(^{23}\) states that during the years 1789-1888, the United States Supreme Court ruled on three school decisions. From 1889 through 1948, twenty-two cases concerning schools went before the Court. During the years 1954 through 1973, Bolmeier predicts it is quite likely that there will be more school decisions rendered during this span than for the entire period preceding. Students of educational administration should be keenly aware that even though the legislative branch of government assumes the major responsibility for making educational policy, this can not be interpreted as denying the fact that the courts, the judicial branch of government, also make educational policy.

Because of the effects of their rulings, the courts generally are very conscious of the principle of separation of powers. Two general


\(^{23}\)Ibid.
principles have emerged in handling school decisions. They are:
(1) the courts presume legislation concerning schools as constitutional, and the one alleging unconstitutionality has the burden of proof; and (2) the courts take the position that in questions involving the judgment or discretion of the legislative they have no concern in the absence of evidence that its acts are arbitrary or unconstitutional. A common statement in court decisions is that "the wisdom of the law is for the legislative, not the courts." A minor principle is that the courts presume school board actions are legal and they will not concern themselves with matters of judgment or discretion in the absence of arbitrariness. Garber and Reutter assert that for the courts to assume any other principle would result in conflicts between branches of government and would result in conflicts between branches of government and would not result in supporting the principle of separation of powers. Even though it would seem the courts try to avoid usurping the power of boards of education, they are sometimes accused of doing so. Supreme Court Justice Black in the now famous Tinker Case involving a student's long hair, in a dissenting opinion, opined that the majority opinion of the United States Supreme Court did that very thing.

The public school is strictly a legal entity. It is created, supported, and governed by law. All levels of government, federal, state, and local, assume certain responsibilities for and exercise

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24 Ibid.


various degrees of control over the public school system. Even though the people have distributed powers and responsibilities regarding the public schools among the different levels and branches of government, and despite the benefits accruing from this separation of powers, it frequently results in dispute and litigation. It seems reasonable to assume that with the impact of collective bargaining in the public sector, a current development, and with little precedent or statute to follow in resolving labor disputes in the public sector, that the courts will be greatly involved in resolving teacher-board disputes particularly in the absence of collective bargaining rules and regulations. Despite the law, teachers strike. Bolmeier\textsuperscript{27} states that the strike movement will continue simply because teachers feel they will not be dismissed, fined, or penalized in other ways for strike activity. He continues by asserting that since 1960 there has been an accelerated trend, both in the legislative and the judiciary, to support teacher-board negotiations on matters which could generate litigation.

In Ohio, at least six school districts experienced dramatic teacher strikes in the calendar years of 1972 through 1974. Dramatic impacts were created in these six communities due to the length of the strikes and of the involvement of the courts and judges in resolving issues of such teacher activity. Bolmeir\textsuperscript{28} states another reason teachers strike is that the judiciary appears to be moving toward a more liberal viewpoint regarding the legality of forced

\textsuperscript{28}\textit{Ibid.}, p. 90.
negotiations. If this judicial trend is developing, the major research question which this study will address itself to is whether local boards of education have been forced to shift any degree of their decision making authority to decision making bodies which are not representative of the community and the people therein. Has the intercession of the courts in these six school systems enhanced or diminished the decision making power and functions of local boards of education?

Bolmeir finally states:

Sudden, social and economic change necessitates a redistribution of governmental responsibilities and controls. Fortunately, within the scheme of American government, it is possible to redistribute responsibilities and controls over the public schools to meet the needs of changing times. Through legal processes, state statutes and constitutional provisions at the state and federal level may be adopted, amended, or repealed to meet the needs and demands of the citizenry.29

Campbell30 writes that both state and federal courts are exercising more power in the governance of schools. This raises the question as expressed by M. A. McGheney, executive director of the Nation on Legal Problems in Education:

Perhaps the most important question facing public education today is concerned with the kind of structure we should have to control the policy decisions and the implementation of policy in the public schools. The term which is currently in fashion is governance.31

29 Ibid., p. 97.
The same writer states that the latest and most significant challenge to school board control may be found in the two areas of student rights and teacher rights. Through court decisions, legislation and administrative rules and regulations, the authority of school boards has been continuously diminished. He states the real issue is not one of local control but rather one of lay control. Shall the essential direction of American education be decided by the public or shall it be delegated entirely to the professional educator? He asserts the efforts of teacher organizations, through state legislatures, the Congress, administrative agencies and through courts, are aimed at complete and total domination of the system of public education.32

John C. Hogan33 maintains there have been five stages in the evolution of the role of the courts in education. From 1789 to about 1850 the federal and state courts ignored education. Federal courts viewed it as a state and local matter, and state courts were rarely called upon to intervene in a school matter. This first state was strictly a judicial stance of laissez faire.

Hogan's second stage is that of state control of education. During the period 1850 to about 1950, state courts asserted that education was exclusively a state and local matter. Few cases affecting education were present to the Supreme Court of the United States, and consequently a body of case law developed at the state level which permitted educational policies and practices that failed to meet federal constitutional standards and requirements.

32Ibid.

Beginning about 1950 and continuing until today, the reformation stage is characterized by the fact the federal courts, the Supreme Court in particular, recognized that educational policies and practices as they had developed under state laws and state court decisions were not in conformity with federal constitutional requirements. This is the period of federal court intrusion of constitutional minima into existing educational structures. Hogan writes, "It is a conclusion of law that the equal protection clause of the Fourteenth Amendment empowers federal courts to thus actively intervene in a state function."^Hogan's fourth stage is named the stage of education under supervision of the courts. Concurrent with the reformation stage, Hogan asserts there has been a discernible tendency of the courts, federal and state, to expand the scope of their powers over the schools. He cites such examples as court intervention in matters affecting the administration, organization and programs of public school systems. Courts have retained jurisdiction over cases until their mandates, orders, and decrees have been carried into effect. It is therefore clear in his judgment that a new judicial function is taking place. The same writer contends that the landmark decision in the school finance case, San Antonio Independent School District v. Rodriguez, marks the initiation of a fifth stage of strict construction. The Supreme Court declared that education is not among the rights afforded explicit protection under the Federal Constitution. Hogan believes this strict construction posture of the Nixon Court is bound to affect the trend of federal court decisions concerned with the organization and administration of the public schools. He writes:

^Ibid., p. 150.
The modern trend in decisional law is toward education under supervision of the courts. A new judicial function is clearly emerging: it involves supervision of the schools to assure that constitutional minima required by the First and Fourteenth Amendments are met....Not only do the courts today decide more cases affecting the schools, but when they issue mandates, orders, and decrees, they retain jurisdiction over the cases to assure that their orders are effectively carried out.35

Table 1 shows that approximately 40,000 court cases affecting the organization and administration of the schools were decided between 1789 and 1971. This includes decisions reported by state courts, federal courts, and the Supreme Court.

TABLE 1

STATE AND FEDERAL COURT CASES WHICH HAVE AFFECTED THE ORGANIZATION, ADMINISTRATION, AND PROGRAMS OF THE SCHOOLS (1789 Through 1971)

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<td>2,304</td>
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<td>1967 - 1971</td>
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39,925 & 37,125 & 2,800 \\
\end{array}
\]


The total number of federal court cases affecting education has increased in every period shown since 1897, with sharp increases for the periods beginning in 1956 and in 1967. It is also worth noting that the total number of state court decisions affecting education, while still substantial, has decreased since 1956.

Hogan concludes his chapter on the changing conceptions of the role of the courts in education by asserting some justices have warned that with the tendency of the Supreme Court to involve itself with educational matters, the Court could become a "super school board." A major reform has been taking place in the way public schools are governed, he writes, and far reaching changes are occurring in the area of school governance, first in the South and now in the North. Some of these changes are a result of lower federal court decisions that appear to be silently challenging the concept of education as a power reserved to the states under the Tenth Amendment.

Michael W. LaMorte expresses his belief that case law now determines how school systems should be governed. He states that not too many years ago courts were reluctant to interfer in most aspects of educational decision making. He believes the docility of the courts has changed markedly in recent years and that, consequently, courts have become an integral part of the educational decision making process. He maintains that an awareness, or lack thereof, of applicable school law in specific situations should provide a basis for school administrators to establish a proper proactive stance rather than merely being reactive when incidents involving the courts arise.

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William R. Hazard states that over the past two decades, state and federal courts have exercised increasing influence on school policy making and, by preemption, have taken the policy-making play away from local boards in many important issues. He writes school board decisions and related policies are now seen as being negotiable in court. As a result, he claims educational policies are the product of constitutional, statutory, and case-law interpretations. He argues that court decisions are more than judicial solutions to school board problems or legal interpretations of board policies. Rather, he claims court decisions have made new policy.

Hazard points out that in the case of *Hobson v. Hansen*, a judge invalidated a broad spectrum of school policies in the Washington D. C. school system. The judge, by retaining jurisdiction over the case in order to implement the mandates in the court decision, acted as the de facto school board for the school system.

The same writer also observes that the courts have been powerful in so far as the emergence of collective bargaining policy across the thirty-eight states in the past fifteen years. He asserts that in the area of teacher-board bargaining, local boards of education can do little more than reaffirm court-made policy.

Hazard summarizes his article by noting that the locus of policy-making activity seems to have shifted from the local school board to state and federal agencies, including the courts. He suggests that policy-making determinants are already vested in agencies outside the school board. In conclusion, he writes:

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38 269 F. Supplement 401 (1967).
The policy-making role of local school boards is modified by the capacity of the courts to examine educational issues and adopt positions which effectively pre-empt the board's policies on these matters. Through federal and state legislation, court decisions and local opinions, the law clearly denies the mythology that says educational policy making is the function of the local school board. Myths die hard in education; but the myth of local control over school board policy making is in a terminal state. The Honorable Don J. Young writes that the relationship between the courts and the schools appear to be changing. He asserts that the interplay between the school and the judicial system is an active one, full of great tensions at this time. He claims there is reason to believe the high courts will be rendering more decisions with direct impact upon school operations. He predicts the cry that the courts should not try to run the schools will increasingly be heard. The federal judge argues that basically, the Anglo-American system of law which Americans have operated for many centuries uses precedents, a codification of past experience, to resolve controversies that arise from changing conditions in society. He charges that once the basic legal structure of the educational system was established, school administrators turned to the courts in an effort to make the system work by force. He asserts that the present conflicts between the judicial system and the educational system are to a great extent the result of the demands made by the educational system upon the judicial system. There is always a quid pro quo, asserts the judge. He states that those who resort to the law for an easy solution to their problems, instead of solving their problems, run the risk of finding the law dominating them.

STATEMENT OF THE PROBLEM

The purpose of this study is to ascertain what way and to what degree the judiciary, including the courts, have affected certain decision making powers of local boards of education in Ohio. Six selected Ohio school systems will be studied where dramatic teacher strikes occurred during the calendar years 1972 through 1974. The six school systems are: (1) The Campbell City School District; (2) The Hamilton Local School District, Franklin County; (3) The Elyria City School District; (4) The Vinton County Local School District; (5) The Wellston City School District; and (6) The Youngstown City School District.

The major research question can be articulated in terms of when court decisions and actions assume the legal characteristics of judicial precedents, thus becoming incorporated in the common law, has there been a change in the decision making power of local boards of education, and, if so, what is the character of this change?

In the absence of a collective bargaining law in Ohio for public employees and the Ohio General Assembly having spoken through the Ferguson Act denying public school teachers the right to strike, nevertheless, teacher strikes and illegal work stoppages have occurred. These six selected school systems had to resort to the courts in order to resolve crucial issues and differences which existed between the boards of education and their respective teachers' associations.
In 1947 the Ohio General Assembly passed the Ferguson Act "to provide disciplinary action in cases of strike by persons employed by the State of Ohio or any political subdivision thereof, or in any branch of the public service." Perhaps the most unusual aspect of the Ferguson Act is the section which requires the public employer to send notice to the striking employee that he is on strike. This provision creates ambiguities and uncertainties because it suggests that a public employee on strike might not be on strike under the Ferguson Act if the public employer chooses to ignore the action or fails to respond according to the proper statutory procedure. Ohio Statutes 4117.02 through 4117.05 are commonly referred to as the Ferguson Act. As the Act is now interpreted, it does not prevent strikes in Ohio because the government employer can nullify the full effect of the statute by exercising its discretion not to send a strike notice to each striking employee. Many superintendents and boards of education are advised not to enforce this Act because of its extremely punitive measures. Statute 4117.03 concerning reinstatement reads as follows:

42Section 4117.04 Ohio Revised Code.
A person violating sections 4117.01 to 4117.05 inclusive of the Revised Code may be appointed or reappointed, employed, or reemployed, as a public employee, but only upon the following conditions:
(A) His compensation shall in no event exceed that received by him immediately prior to the time of such violation; (B) His compensation shall not be increased until after the expiration or reappointment, employment or reemployment, and (C) Such person shall be on probation for a period of two years following such appointment or reappointment, employment or reemployment, during which period he shall serve without tenure and at the pleasure of the appointing officer or body.¹⁴

Statute 4117.05 states that any public employee who violates this Act shall be considered to have abandoned and terminated his appointment or reemployment and shall no longer hold such position, or be entitled to any of the rights or emoluments thereof, except if appointed or reappointed. Knowing the school administrator and the board of education may feel these measures are too severe, teachers' associations throughout Ohio can be advised through field representatives of the Ohio Education Association that the Ferguson Act is unenforceable and public school teachers have not lost their positions or been penalized in any way where teachers have striked in the past.

At the beginning of the 1973 - 1974 school year, five Ohio school districts had to delay their openings due to teacher strikes or work stoppages.¹⁵ These teachers' strikes resulted from a failure of teacher associations and boards of education to negotiate successfully,

¹⁴ Section 4117.03, Ohio Revised Code.
even though there is no constitutional or legislative provision in Ohio for boards of education to enter into professional negotiations agreements. The power to do so by boards of education lies in the discretionary power of boards of education.

Another dimension of the research question is whether the courts in some instances have assumed the role of "self-appointed interlopers," in order to resolve conflict and dispute as quickly and as orderly as possible... One authority states that "It is not for the courts to usurp the legislative function. It is the duty of the legislative to bestow them."47

Stanley48 writes that in the state courts, new law is being made as judges decide suits on public labor issues and rules on requests for injunctions to halt strikes. He continues by stating that assuming a more active role, albeit reluctantly, the courts have issued contempt citations and have fined or imprisoned union leaders who refuse to comply with court orders. Interestingly enough, the Executive Secretary of the Ohio Education Association writing in an editorial of the Ohio Schools speaks directly to this point that not only has the Ferguson Act proved to be totally unworkable in the arena of the public

46This particular phraseology was used by Professor of Law, Addison Dewey of the Capital Law School, in an address at the School Law Institute held on February 16, 1974. This institute is sponsored jointly by the Division of Urban Education of the Ohio State Department of Education and the Capital Law School.


schools, but the courts have assumed more and more of a role in negotiations in the absence of a collective bargaining law in Ohio. Of particular interest is the following comment:

The other issue apparent in any observation of recent work stoppages is the growing role of the courts in resolving school district conflict. In three of the six work stoppages in the month of September (1973), the court was a party in the eventual settlement. The judge is a catalyst. This role is one that rightfully belongs in a state labor board and reemphasizes the need for legal guidelines for collective bargaining in Ohio schools.49

If the public sector of the labor force is reliving the early history of the private sector's labor development, it seems best that the defects and inconsistencies in current Ohio school law should not be left to the courts to remedy. Many courts are reluctant to make major changes in policy and, even if so inclined, could only do so in a piece-meal fashion. Students of school law would be inclined to agree the burden to provide mechanisms to resolve teacher-board disputes lie with the Ohio General Assembly, not the court and judges serving as peace advocates or "self-appointed interlopers."

Still, another basic research question this study will probe is whether there is evidence of predictable and noticeable trends emerging in teacher-board labor relations. Bolmeier50 feels it is highly


conceivable that the same social and economic forces which have caused greater state responsibility and control over local boards are likely to develop on a still broader scope so as to bring about federal-state relations analogous to those now existing between state and local school districts.

Another trend which seems to be predictable and noticeable at this time is the push for a change in present statutes regarding the strict ban of teacher strikes in Ohio. Again, the Executive Secretary of the Ohio Education Association writes:

Courts' orders that send striking teachers back to the classroom without giving the benefit of a hearing have drawn the censure of the Ohio Education Association. The Court injunction served on the Massillon Education Association January 3, 1973 is a flagrant abuse of judicial authority. The Ohio Education Association is not asking for special treatment by the courts, but it believes that hearing both sides of an issue before issuing an order is "just plain fair play."51

As the law now stands in Ohio, teachers who strike are in defiance of the law. It is understandable why the Ohio Education Association's 1973 legislative program called for the repeal of the Ferguson Act.52

Another trend which seems to be appearing with the impact of professional agreements is a growing chasm between school administrators and classroom teachers. This dichotomy of management-labor relations which exists in the private sector of the economy appears to

52Ibid., p. 18.
have arrived in the public sector in Ohio. The president of the Columbus, Ohio based independent School Management Institute asserts that some form of labor-management confrontation will be a permanent part of the education scene.\textsuperscript{53} That a power struggle is occurring in Ohio between teacher groups and administrative-board community groups and that this struggle will be in controlling teacher power can not be doubted by advocates either expressing allegiance to teacher associations or boards of education. This chasm probably has resulted from the use of contract negotiations as a way of school life.\textsuperscript{54}

Another research consideration to which this study addresses itself is whether the courts consider teaching to be a public service rendered in an employer-employee relationship or are there aspects of the teaching activity which may give credence to the assumption by some that teaching is a professional activity in a similar sense to that of the medical and legal profession. Another way in which this issue can be expressed is: Does a teacher have a vested interest in a teaching position once employed by a board of education? It should be interesting to hear how the courts may be interpreting this concept of the vested interest right by teachers as the Fourteenth Amendment with its general welfare clause and equal protection clause are given as the Constitutional basis for such an assumption.


\textsuperscript{54}Ibid., statement attributed to the Executive Director of the \textit{Ohio Association of Elementary School Principals}. 
What new dimensions are modifying the concepts of the police power of the state and the right of the individual teacher to liberty, property, and equal protection of the law under the Fourteenth Amendment and the Civil Rights Act of 1964?

Finally, are the courts, through their actions, moving to coerce the legitimation of collective bargaining to the public sector as it operates within the private sector? Strikes by public employees are intolerable. A comprehensive solution to prevent them is essential in an economically integrated urban society, where most people are steps removed from the basic source necessary for living. Equally intolerable, however, is the notion that governmental employees should somehow subsist apart from the level of employment benefits enjoyed by others.

In summary, this study speaks to the following questions: (1) In what ways and to what extent has the decision making power and authority of local boards of education changed due to the influence of the judiciary in the resolution of teacher-board disputes associated with teacher strikes in six Ohio school systems? (2) If there has been a change in the decision making power and authority of local boards of education, can discrete trends be observed and predicted? (3) Is the judiciary perceiving the teaching activity as a public service rendered in an employer-employee relationship or whether the teaching activity is gaining a new image or status as a professional activity within the labor force of the public sector? and (4) As the courts and judges rule on school issues thereby creating a new body of common law in school management-labor relations, what implications relative to public policy can be derived in creating new legislation for the governance of Ohio's school systems?
SIGNIFICANCE OF THIS STUDY

The central question of this study relates to a direction of public education in America: Is there evidence of public education being decided by the public through its elected representatives or being directed to special interest groups? Historically, the time-honored belief has been that the best opportunity for public school systems which will be most responsive to the need of people lies in a system in which the government is directly responsible to the people.

Good faith collective bargaining or professional negotiations is the best deterrent to the illegal teacher's strike. It is generally agreed that it would be better for school administrators to formulate reasonable policies pertaining to negotiations in advance, and in an amicable climate, rather than to be coerced into bargaining situations because of teachers' strikes or threats to strike which can potentially cause injury to the school and animosity in the community.

Ohio has no collective bargaining law or a public employment relations act as do many states. In February, 1969, the Ohio Legislative Service Commission issued a comprehensive study of labor relations in both public and private employment. It concluded that positive state legislation was necessary to formalize collective bargaining in Ohio's public sector. It did not, however, draft proposed legislation or make specific recommendations.

Under its discussion of the scope of bargaining, the Commission stated:

The scope of bargaining could be left undefined in the law for each employer and employee representative to work out; it could be defined in general terms, such as terms and conditions of employment; it could be specifically defined in terms of what is to be included or excluded; or it could be generally defined (terms and conditions of employment) with a general exclusion (not otherwise provided by law).\(^57\)

The Commission did not endorse any of the approaches that it suggested for consideration.

Eugene Greene writing in the *Journal of Law and Education*\(^58\) in 1973 reported that Ohio legislators, for the past twenty years at each session of the Legislature, have been exhorted to enact legislation regulating collective bargaining in the public sector. The legislation urged has ranged from a total prohibition against public sector bargaining to compulsory good faith bargaining with administrative and judicial safeguards to protect the integrity of the bargaining process. Greene states despite the lack of legislatively prescribed standards, collective bargaining over the terms and conditions of employees in universities, schools, and state and city government has burgeoned. He explains that the growth of employee organizations has led many to conclude that there is no need for state legislation, since


the common law process of judicial elucidation has adequately resolved disputes as they have arisen. He flatly states that, indeed, in Ohio, collective bargaining is working without state intervention.

Green's posture, however, is clearly articulated. He skillfully argues that because of uncertainty as to legal rules and standards that apply to bargaining by government agencies, there is an overriding need for state intervention and control. The uncertainty itself is the cause of numberless disputes which generates strikes in his opinion. Strikes by teachers are held to be intolerable, imposing such hardships on the public as to require the prompt enactment of laws regulating the conduct of governmental management labor relations. The legal scholar reveals that to date, no court has held or found that a board of education is under a common law duty to bargain. On the contrary, Green claims the duty to bargain has been held to be purely statutory and within the exclusive province of the legislature to grant or regulate. He cites Ohio's legal view is reflected in Building Service and Maintenance Union Local No. 47 v. St. Luke's Hospital, Ohio Case 843, 188 (C. P. Cuyahoga County, 1967), where the court, after exhaustive examination of available authorities, concluded that there is no common law duty to bargain.

Finally, the writer asks whether decisions of the Ohio courts have encouraged a public policy inimicable to the peaceful settlement of public sector disputes. Implicit in such decisions, according to Green's judgment, is the suggestion that only the public employer is competent to establish terms and conditions of employment. He asserts that the passage of the Ferguson Act, with its sanctions, has
authoritatively been held not to affect the basic common law outlawing public employee strikes, or the authority of the courts to terminate or regulate strike conduct through the issuance of mandatory court orders. Nevertheless, he claims the law's prohibitions, whether statutory or common law, have not deterred the ability of Ohio's teachers to strike in support of bargaining demands.

Frederic R. Livingston writes collective bargaining has probably grown more rapidly in public education than any other area of governmental activity. This unusual expansion of collective bargaining during the course of a very few years has put great pressure on public school boards. Livingston maintains the role of a school board in the area of collective bargaining is uniquely different from other governmental bodies due to the fact a school board is a legislative as well as an executive body. These dual functions contrast sharply with such governmental executives as governors or mayors who have strictly executive functions and rely on separate legislative bodies for the funds which they spend. A board of education is in a precarious dilemma when it has entered into a collective bargaining agreement, has provided the necessary authority to finance demands in the school budget, and then have the voting public reject operating levies which would have financed the terms of agreement.

Livingston also analyzes the broad scope of bargaining in school districts. The scope of what is negotiable tends to be considerably broader in school districts than in other units of government.

Teachers generally desire to bargain over a much broader range of matters other than terms and conditions of employment than their private sector counterparts. This is because they are professionals and have an interest in and expertise about many policy decisions which non-professional employees would not.

Weitzman\(^\text{60}\) in addressing herself to the broad scope of bargaining of professional teachers in the public sector reasons the problem is complex because professionals demand autonomy which often runs counter to society's demands for accountability. She states that in light of judicial uncertainty about the meaning of professional and nonprofessional public employee, it is not surprising that sharply divergent opinions on the scope of bargaining have been handed down by boards of education and the courts of various states.

Wellington and Winters\(^\text{61}\) write that in many jurisdictions the legislatures have delegated to the courts the task of clarifying the seemingly innocuous phrase of terms and conditions of employment as it pertains to the scope of what is negotiable in public sector labor relations.

Another concern arising out of the scope of what is negotiable is that most school boards probably allocate from seventy-five to ninety percent of their total school budgets to whatever is meant by the concept of "terms and conditions of employment." The time is long past due for school boards to be represented by professional labor


relations experts, either full-time staff members employed for that purpose or outside attorneys, or, in large city school districts, a combination of both. It is imperative that effective bargaining procedures be developed that will enable school boards and their teachers to arrive at reasonable accommodation of their view while not alienating the general public from financial support of school systems.

Nine years ago, the United Federation of Teachers was elected bargaining agent to represent New York's 50,000 public school teachers. Most observers mark this date as the beginning of the collective bargaining movement in education. Since that time, enormous changes have taken place in educational administration, particularly in the areas of teacher-board employment relationships and in teacher-association input in the decision making power and authority of local boards of education. Thirty states now have enacted statutes requiring or authorizing boards of education to negotiate with teacher associations and unions. Twenty states have varying degrees of collective bargaining in the absence of specific statutes. Ohio is among these twenty. Today, school administrators must recognize that the institution of education is a public sector industry with industrial personnel relations problems, the dynamics of which are rooted in forty years of labor relations history. Today's school administrator must realize that public school teachers will organize into labor organizations to bargain collectively for their demands, not only economically but also in


63 Ibid.
participating in the decision making process. Today's school administrator must assume that an understanding of the fundamentals of labor relations, as prescribed by the National Labor Relations Act, modified by the Taft-Hartley Act, the Labor-Management Reporting and Disclosure Act, and the Taft-Hartley Act Amendments of 1959, should become an integral part of his continuing personal professional in-service growth. Not only is knowledge of the fundamental concepts of leadership, pupil personnel, curriculum, supervision and school finance absolutely but new knowledge in the arena of labor-relations and school law have acquired additional significance to the school administrator in contemporary America.

School administrators should possess at least a general understanding of the broad principles upon which our public school systems function. School administrators are encountering the effects of an ever-increasing number of legal issues and decisions at every judicial level. As non-professional students of law, they have very limited opportunities to study the law as it affects school affairs. Increasingly, school administrators must know school law. This need becomes increasingly important as the number of teacher-board conflicts are being resolved by the judiciary. Indeed, the President of the National Education Association stated that "judges are in the best position to assess the impact of any particular strike on the public interest and to fashion an appropriate remedy to deal with the situation."


School administrators should be ever cognizant that a unique aspect of American life is that courts confront most problems of social change and are thus the source of the first governmental response before the legislation.66

This need to keep abreast of legal principles and the body of school law is even more apparent as one realizes that local grievance settlements, arbitrator's rulings, and court decisions will slowly but surely provide a new body of common law concerning public schools. It is the lack of common law that underlies most current conflicts between teacher and employer.67 Without it, neither teacher association nor school administrator can hope to know the limits of not only their own but the other's jurisdictional rights.

As teacher associations grow in power, group self-interests will make more and more demands upon public school systems. The progressive unionization of educational labor has already pitted public school teachers against the traditional decision makers, local boards of education.68 Unionization, while raising the standard of living, has contributed to standardized, routinized activities with heavy constraints upon individual expression, initiative and personal commitment. The same dehumanizing changes are now taking place in the schools.69 As

69Ibid.
a partial antidote to our scientifically, bureaucratized mass society, the humanistic trend gives full attention to the self and the interrelatedness of intellect and emotion. Unionism with its emphasis upon an impersonal equity for all employees regardless of circumstance can become as bureaucratized as any other institution in contemporary American life.

Lieberman who is an astute observer of the teacher union merger movement believes that if merger should ever become a reality, the potential "muscle" of the merged teacher groups could create a membership of at least 3,524,000 teachers. At the local level, he believes this merger will speed up a phase-out of school boards. He maintains most local school boards will be unable to bargain effectively with teacher associations able to draw upon the resources available to a merged organization. He states:

Teacher organizations are beginning to coordinate legislative and bargaining strategies with other public employee unions. Public management will have to develop a coordinated response in which all public services are administered through an executive with across-the-board responsibility for public employment relations at a given level of public services. Merger will also accelerate regional and/or statewide bargaining, another trend that means fewer local boards of education or none at all. Put in different terms, as the rules concerning school operations are made at higher levels of government, local autonomy in this area will diminish.70

Braun, in his controversial book Teachers and Power: The Story of the American Federation of Teachers, states: "Control of the schools is up for grabs, and the smell of battle makes good people withdraw and demagogues arise, and drives teachers to the false safety of the union."

He further asserts as does Lieberman that the trend of merger of teacher groups will be increasingly toward larger units of educational governance—metropolitan-regional, statewide or even national. He concludes:

The idea of the school as an extension of the people and its hopes, its dreams the chance for producing a nation of people who do not think alike but draw from their diverse background a pluralistic approach to life and learning—this idea, while even now drying up because of the failure of conventional quasi-representative governance to speak to the people and the thrust for power of private interest groups, will certainly wither and die.71

There seems little doubt that teacher strikes and illegal work stoppages question the very essence of the decision making power and authority of local boards of education. Another significant aspect of this dissertation is to consider the economic implications of this relationship. Financially, local boards of education have the responsibility to allocate scarce public tax dollars into the board's fiscal year budget and the calendar year annual appropriations measure. Ohio Statute 5705.3072 expressly provides that the total amount of appropriations from any fund shall not exceed the total of the anticipated revenue available for expenditure as certificated by the budget commission. A fundamental concern of all school administrators is to procure the economic resources from the local school community necessary to operate and manage school systems wisely and efficiently. What effect can unrealistic and possibly unreasonable economic demands by teacher


72Section 5705.30, Ohio Revised Code.
associations and unions have on the limited economic resources of local boards of education when they become crucial concerns, these concerns which have the potential of precipitating a walkout? Can collective bargaining as it is known in the private sector be transplanted successfully to the public sector and what courses of action can local boards of education take when economic demands exceed the school systems' available resources? These questions raise the critical issue of the economic implications of testing and questioning and defying the decision making authority of boards of education.

Willington and Winder analyze the implications of the economic differences between a collective bargaining model for the private sector and the public sector in a most comprehensive fashion. They maintain that collective bargaining as it is known in the private sector can not be transplanted successfully into the public sector as the model currently operates. The writers make four claims for collective bargaining in the private sector. They are: (1) it is a way to achieve industrial peace; (2) it is a way to achieve industrial democracy; (3) it is a way to represent employees in the American political arena; and (4) it is a needed substitute for individual bargaining. The private sector model of collective bargaining works because most labor demands are economic and the social costs resulting from collective bargaining at some point in the employment-benefit relationship are disciplined and limited by market restraints.

In the area of public employment, the authors contend that the public sector is not the private sector. The claims upon public

policy for industrial peace, democracy and effective political repre-
sentation are as legitimate as they are for the private sector.
However, the major issue lies in the concept of social costs. Whereas
the social costs of collective bargaining in the private sector are
principally economic and seem inherently limited by market forces,
social costs in the public sector seem economical in a narrow sense
and are principally political. Collective bargaining and the political
process in the public sector cannot be separated. The social costs
of collective bargaining can not be fully measured without taking into
account the impact on the allocation of political power. Reasons given
for not being able to transplant the private sector into the public
sector, in their opinion, are: (1) governmental services denied over
a long period of time would entail an actual danger to health and
safety; (2) governmental employees provide services—they do not create
products—and such services are relatively inelastic, being relatively
insensitive to changes in price in the open market; and (3) the denial
or withdrawal of public services would inconvenience the public. The
private sector model if adopted into the public sector as it currently
operates would institutionalize the power of public employee unions
in such a way that would leave competing groups at a distinct disadvan-
tage, not only economically but politically. Collective bargaining
would become so effective a pressure so as to skew the results of the
"normal" American political process. And, if the private sector's
ultimate weapon, the strike or the threat of the strike, would be per-
mitted, distortion of the political process is the major, long-run
social cost of strikes in the public employment. It would be a mistake in their judgment to institutionalize through law techniques that have the premise of giving one group disproportional power.

The same writers do believe, however, that there can be as effective a collective bargaining model for the public sector as there is in the private sector. Certain fundamental changes would have to be made which would differ from the private sector. The writers assert that recognition and establishment of collective bargaining for public employees is not unconstitutional within the normal American political process. The danger of the private sector model stems mainly from strikes. They argue for a model which would operate at the state level of government. The state would recognize the legitimacy of the right of private sector unions to be recognized and to bargain collectively through establishing mandatory statutes providing such right. However, in return for such right, state law would make strikes illegal but provide for post-impasse procedures.

Finally, the writers put-forth the premise that professionals such as public school teachers in the public sector ought to be entitled to their own unit for shared decision making responsibility. The public sector professionals are not only interested in monetary issues as are other segments of the public sector labor force. Professionals in the public sector are likely to be interested in policy questions relating to the nature of the services they perform, and any properly managed department welcomes and solicits the judgment of its professional staff as to how its functions should be performed. A separate professional collective bargaining unit for public school teachers seem best suited to that end.
Against this panorama of growing teacher power, the unionization of the teacher merger movement, dehumanization, the lack of common law as it pertains to labor relations in the public sector, the increasing impact of collective bargaining or professional negotiations, and the involvement of the judiciary in resolving teacher-board labor conflicts, forces which seem at the present time to threaten the decision making authority of local boards of education, it becomes increasingly important for school administrators to understand the proper role of the judiciary in the American political process. The school administrator must question whether these forces will jeopardize not only the decision making power of boards of education but their very existence as quasi-legal extensions of state government.

Briefly, the legal status of school boards must be analyzed in relation to their properly conceived role in American political theory as well as within a democratic framework of school administration which maintains that the strength of the American public school systems lies in its ability to be adaptable and flexible to respond to the needs of all people in a pluralistic and diverse culture.

In the Ohio Constitution of 1851, section seven of the Bill of Rights, it is stated that "Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws...to encourage schools and the means of instruction." The Supreme Court of Ohio has said,


\[\textit{Constitution of the State of Ohio. Article VI, Section 3.}\]
"That the system of public education in Ohio is the creature of the Constitution and statutory laws of Ohio." Article VI, paragraph 3 of the Ohio Constitution provides that provision shall be made by law for the organization, administration and control of the public school system of the State supported by public funds.

Since education is a state function under the control of the state legislature, except as may be restricted by the State or United States Constitutions, the legislature may authorize the creation or alteration of school districts as state agencies in such a manner that it deems advisable. It is clear, however, that the legislature cannot directly administer the state educational system. It must create school districts and local boards of education to govern the school systems in order to implement its duties and powers and to delegate to them the authority that it possesses. It is within this area of delegated power which supports the concept and principle of local control and management of school districts. The power, duties, and liabilities of a school district are only such as are prescribed by statute. A board of education in Ohio has no common law powers.76

The public schools and the school system of the State rest under state supervision and control. The legislature has power and authority under the provisions of the Constitution to pass acts providing for a school system and to provide for organization, administration, and control. The whole topic of organizing and regulating schools is properly left to the General Assembly in the exercise of its legislative powers.77

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The power of the state legislative in relation to its public schools is plenary. The power of the Ohio Legislative to determine what laws are suitable to secure the organization and management of the public school system is without express restriction with the exception of Article VI, Section 2. The legislative has given many of the administrative and management functions of education and control of the schools to local communities through the creation of local boards of education, subject to the statutes established by the state.

Campbell, et al., in the fourth edition of the book Introduction to Educational Administration, writes that it should be noted that the states reserve to themselves the authority and power over education. The authors state:

> The school district is a subordinate creation of the state and is established for purposes of local administration. The districts...derive their powers from the legislature. Thus, the people of the state, acting through their state legislature and not in small competing groups representing individual communities, have given their sanction to such a system.

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78 Section 2, Article VI of the Ohio Constitution prohibits any religious sect, or sects to ever have any exclusive right to, or control of, any part of the school funds of the State of Ohio.

Education in the American scheme of government is essentially a matter of state policy. The state is the political unit which has control of education. Authority for education was left to the people of the state when the national Constitution was written. Campbell, et al., asserts that along with this recognition of the authority of the state came its obligation to control the educational program. For purposes of operation, the state delegates most of its power to the local school district which is a quasi-corporation. A quasi-corporation is purely a political or civil division of the state and is created as an instrumentality of the state in order to facilitate the administration of government of the state.

Campbell, et al., feel that the major reason that it seems appropriate to keep the operation of schools at the local level is that this is the best way they remain the people's schools. They write:

When the operation of the school becomes so remote that few people have an opportunity to participate in decision making as to its nature, interest in education withers and the co-operative relationship between the school and other educating agencies of the community diminishes.

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81 Tenth Amendment to the Constitution of the United States.
And finally, the same authors conclude:

The schools belong to the people....While the state is regarded as the legally responsible agency for the development of the school system, the people, through their representatives in government or through the courts, have always limited, and continue to limit, this authority according to their will.85

This concept is further enhanced by Gregg.86 He writes in his article concerning the political dimensions of educational administration that local school districts are legal governmental entities created by the state to carry on the educational functions at the local level and that the schools are public—they belong to the people.

Although local boards of education clearly have the responsibility legally to enact policy affecting the entire school community, there no longer is any question that teachers collectively want some input into creating policy which affects them. The critical issue becomes one of shared decision making whereby local boards of education retain their legal right and responsibility to be able to respond to all the concerns the people have and yet, at the same time, allow for meaningful and relevant input by professional employees who render one of society's most important services, the education of the young. Professional negotiations and/or collective bargaining properly conceived can be the means through which decision making can be shared without local boards of education relinquishing their legal and moral responsibility to represent the needs and concerns of all the people.

85Ibid.
The initial judicial response to collective bargaining by public school teachers was generally hostile. Generally, the courts ruled that public employees could not bargain collectively for two reasons, one being that the sovereign right of the state was in jeopardy and the other that the process itself was an illegal delegation of authority away from the duly constituted body provided by law. Difficulties experienced in resolving these two basic concepts in the public sector have been immense. The concept of sovereignty, while it locates the source of ultimate authority, does not speak to the issue as to how the public employer can exercise that power wisely, particularly on behalf of the professional members of the public sector labor force. Also, often topics which are of vital interest to public employees are subjects that can not be resolved through the collective bargaining process because they may be by law non-delegable. The central issue which must be resolved in the immediate future is whether collective bargaining, shared decision making by professional public employees and their respective employers among the various levels of government, can work without harming the public good. Whether the private sector model for collective bargaining is the correct model to follow certainly seems to be debatable, particularly if the public can be harmed by depriving children of the right to be educated.

A changed judicial treatment of public employment unionism came in the significant 1951 Connecticut Norwalk Teachers' case where the court's decisions swept the arguments argued in earlier days to prevent

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collective bargaining entirely. The court, although it did not state that teachers had the right to strike, did speak to the issue that teachers had the right to organize and that school boards were empowered to bargain with a union and embody a settlement in a collective agreement.

President John F. Kennedy in 1962 issued Executive Order 10988 permitting limited collective bargaining with federal employees. Although it did not permit striking, and had no legal effect on employees at the local and state levels of government, this order has served as the legitimating federal impetus on the principle of collective bargaining by public employees.

Indeed, since few other public employee groups can so profoundly affect the life of a community, such pressures may overwhelm the needs of other community concerns. It is clear today's school administrator faces a new challenge - the need to know and understand industrial personnel relations problems within the labor force of the public sector. This knowledge and understanding can guide him in making intelligent responses in the current struggle between vested interest groups who would desire to control the schools.

88 Norwalk Teachers’ Association v. Board of Education of City of Norwalk 138 Conn. 269, 83 A. 2 d 482 (1951).

LIMITATIONS OF THIS STUDY

All doctoral dissertations by necessity have certain restrictions imposed upon them. This dissertation is no exception. At least six major restraints must be recognized in the development and completion of this study. They are:

1. Even though Ohio has experienced a number of teacher strikes in recent years despite the Ferguson Act banning teacher and other public employee strikes, only six school districts have been analyzed in historical synoptic form. These school systems were selected on the basis of the involvement by the judiciary in some manner in resolving overt conflict. The researcher and the director of Special Services for the Ohio School Boards' Association in reviewing the many school districts which had experienced teacher strikes felt these six school systems had this involvement by the judiciary.

2. Even though the courts and judges have acted in a number of other teacher-board conflicts, this study will limit its attention to the actions and decisions of the judiciary in the matter of teacher strikes in the six selected Ohio school systems mentioned.

3. The studies are those which occurred between the 1972 through 1974 school years. However, should other significant public sector labor relations events add meaning and purpose to this study, they may be incorporated into the body of the study.
4. Judgments and interpretations of judicial actions and decisions must be appraised in terms of Ohio law, both legislation and precedent whenever possible. Major attention will focus in on precedential law or even more precisely, "judge-made law," should that be the case.

5. Although the roles of many people may be studied, i.e., presidents of teacher associations, superintendents of schools, field representatives of the state teachers' association, et cetera, major focus revolves around the actions and decisions of the judges and the courts involved in these school system case studies.

6. There is no single source to obtain the necessary data to construct all the events which led to these overt labor disputes. Sources of data will include legal briefs prepared by opposing counsels. Decisions of the cases, for the most part, will be analyzed from the journal entries in their respective courts. Official minutes of the meetings of boards of education will be reviewed when necessary. Newspaper articles will be studied to help determine the attitudes the general public may have held concerning these labor disputes. Finally, an attempt will be made to interview each judge who was involved in these disputes. It is hoped that from all these sources, a comprehensive picture can be developed which will reveal the dramatic impact these teachers' strikes must have exerted in their respective school districts.
DISSERTATION OVERVIEW

The following chapters of this study will provide insights into public sector labor law and its newly acquired significance within the legal system of American jurisprudence. Before the 1930's, with the exceptions of railway labor legislation in the 1880's and the 1920's, the Clayton Act in 1914, and the Norris-LaGuardia Act of 1932, there was little legislation affecting labor law in the public sector. This was also true in the private sector. The prevailing attitude even before the legislative actions of the New Deal under President Roosevelt was that the law served no useful purpose in labor disputes with the contingency that tangible property and public order must be protected. This attitude was based on the philosophical assumption that the government should not resolve labor disputes or substitute its wage or price determinations for private contracts in a free and open market. "Union organization, strikes, boycotts and picketing were held to be part of the competitive struggle for life, which society tolerated because the freedom was worth more than it costs."90

Chapter two scrutinizes our common law system of jurisprudence. An understanding of the process of judicial review and case law is necessary in order to appreciate how judges have helped to build-up a common law tradition in the field of labor law. Legal principles such as the law of precedent and stare decisis will show that, indeed, the American common law system of jurisprudence is a system of judge-made law, particularly and specifically in the absence of legislative enactment.

90A. Cox, Law and the National Labor Policy (University of Southern California: Institute of Industrial Relations, 1966), pp. 5-8.
Chapter three will provide a brief historical development of labor law, both in the private sector and more recently in the public sector. This chapter will substantiate the fact that the process of collective bargaining is rooted in the National Labor Relations Act which was upheld constitutionally by the United States Supreme Court in 1937. This chapter will also reveal how the collective bargaining model utilized in the private sector has been borrowed practically intact to settle labor disputes in the public sector. Contents of this chapter will provide evidence that collective bargaining or professional negotiations is now a part of the current scene in public sector labor relations and that it is now a reality for school administrators and members of boards of education.

Chapter four contains the six selected studies where teacher strikes occurred during the calendar years of 1972 through 1974. Chapters one, two, and three provide the necessary background in order that these teacher strikes may be perceived in their proper perspective, that perspective being that public employee strikes are simply symptoms of labor unrest as government becomes more and more of an employer in a society which demands more and better services from and through government.

Chapter five will utilize the legal methodology of opinion briefing as each court decision presented in this study will hopefully present an overview of judiciary reaction to the relatively recent emergence of public sector labor strikes, and in particular, teacher strikes.
Finally, the last chapter will provide commentaries and implications for the governance of Ohio's public schools due to the impact of the process of collective bargaining into the public sector. These commentaries and implications will be related to the development of public sector labor law. The trial level court decisions and the eight appellate court decisions also will be scrutinized to determine what commentaries and implications can be derived in terms of the governance of Ohio's public schools.

From the six historical studies of the strike situations presented in this study, it will be noteworthy to observe if the legal principles of precedent and stare decisis have enabled Ohio's courts to exert a greater influence, if not a totally new influence, relative to the governance of Ohio's public school systems. Llewellyn\(^1\) states that when a court speaks to the question before it, it speaks \textit{ex cathedra}, i.e., with authority, with finality, with an almost magical power, and it does announce law....what it announces is new, it legislates, it makes the law."

CHAPTER II
THE COMMON LAW AND THE RESEARCH PROCEDURE

The law never is, but is always about to be.

It is the intent of this chapter to examine the common law tradition in order to provide the context to understand the research methodology employed in the present study. The research procedure of this study can only be understood and valued in terms of the definition and meaning of the common law, the law of precedent and the legal principle of stare decisis, the fact that the common law is basically and foremost judge-made law, and how the legal process of judicial review enables judges within the common law tradition to be determiners of public policy. Since judicial action is the understanding of this study, it must be subjected to a common law research procedure.

The history of American law is a history of the effort to mold legal institutions and doctrines to meet the felt necessities of each period in the nation's development. The effort may not always have succeeded for at times there has been a large gap between the law and public needs. The history of labor law is an excellent


example of such a gap. Schwartz\textsuperscript{3} states the true American contribution to human progress has not been in technology, economics, or culture; it has been the development of the notion of law as a check upon power. He asserts American society has been dominated by law as has no other society in history.

Labor law is an excellent example of an area of growth in the law in contemporary America. When cases concerning organized labor appeared before the courts a century or so ago, the courts sought to solve them without innovation. Murphy and Pritchett\textsuperscript{4} state the courts failed miserably because they attempted to use precedents and analogies from a past which envisioned laborers altogether as individuals, not as a corporate group in any sense. Moving from essentially an agrarian society to a highly industrialized technological society, the essentially corporate character of modern economics demanded that the courts treat laborers collectively. Old decisions relation to business associations and trade restraints representing attitudes characteristic of another economic era fell by the way side.

It is an objective of this study to reveal aspects of the common law tradition as school administrators should realistically expect to be involved in much litigation as a body of common law emerges relative to labor law in the public sector.

\textsuperscript{3}Ibid., p. 8.

The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a great deal more to do than the syllogism in determining the rules by which men should be governed.5

THE COMMON LAW

The American legal system rests upon the common law tradition. The date commonly used to mark the beginning of this tradition is the year 1066 at the Battle of Hastings when the invading Normans defeated the defending natives and conquered England.6 The common law tradition is slightly over nine hundred years old. It was widely distributed throughout the world as the consequence of the development and expansion of the British Empire during the eras of colonialism and empire. Early colonists in this country, despite their religious differences, knew themselves heirs to the Magna Carta and the common law.7 The distinguishing feature of the common law tradition is that it is an unsystematic accretion of statutes, judicial decisions, and customary practices. There is no systematic, hierarchical theory of sources of law. Legislation is law, but so are judicial decisions within the framework of the common law.


In civil law countries such as France and Germany, modern continental law finds its highest expression in a code. The dogma of separation power in European countries must yield to the doctrine of legislative supremacy. Legislative sovereignty tends to render courts an instrument of the administrative machinery of government without making them politically responsible to the political branches of government.

In its broadest sense the common law may be said to be the general Anglo-American system of legal concepts and the traditional technique which forms the basis of the law of the states which have adopted it. The common law of England has been acknowledged by the courts of Ohio as furnishing the rules of their decisions. It is to the common law judges must look for legal definitions and judicial ideas in interpreting the Federal and Ohio Constitutions.

The common law is a legal system of rules and regulations and declarations of principles from which judicial ideas and legal definitions are derived. It is continuously expanding since it is not a codification of exact and inflexible rules. The ultimate, highest source of law within the common law tradition is not a legislative enactment or a collection thereof, but general custom as reflected in the decisions of the common law judges.


10 American Jurisprudence 2d, Volume 15, p. 793.

11 Ohio Jurisprudence 2d, Volume 9, p. 551.
Friedman\textsuperscript{12} writes that common law judges were historically perceived as the depositaries of the laws - the living oracles who had to decide the law in all cases of doubt. They were bound by an oath to decide according to the law of the land. He records that the common law was judge-made law, refined, examined, and changed in the crucible of actual decision, and handed down from one generation to another in the form of reported cases. In reality, the judges relied on their own past actions, which they modified under the pressure of changing times and changing patterns of litigation.

That the common law has within itself the capacity for expansion and adaptation to new circumstances and changing social conditions has been one of its remarkable characteristics. It is observed that public policy is the dominant force in the shaping and reshaping of common law principles. Each time a rule of law is applied by judges, the rule must be analyzed to ascertain that the conditions and needs of the times have not changed so as to make further application of the rule an injustice. Whenever an old rule is no longer adequate and suitable to new circumstances, the old rule must not be used and a new rule must be postulated which is in harmony with the newly perceived demands of justice.

Legal scholars agree that both statutory law and the decisions of judges constitute the common law. Statutory law includes all forms of written law such as constitutions, statutes enacted by legislations, rules and regulations of administrative agencies, executive orders, and

\textsuperscript{12}Friedman, \textit{Op. cit.}, p. 17.
court orders. Nevertheless, even though a case before a court is
governed by legislation or statutory law, courts may still look to
judicial precedents.

In the absence of written or legislative law, the common law
tradition prevails. This tradition for judicial decision making is
based upon precedents. Precedent is generally considered one of the
basic concepts of the common law. The common law is a system in
which judges, whether following or distinguishing precedent, play a
vital role in creating and expounding principles of law. In common
law many basic rules of law are found nowhere but in the recorded
opinions of judges as contrasted to the civil law where, theoretically,
the law is contained in the codes.

Precedents are decisions in individual courts which may serve as
authority for decisions in future cases. Decisions of courts are
named judicial precedents. The theory of Anglo-American law is
stare decisis et non quieta movere, i.e., to adhere to precedent and
not to unsettle things which are settled.13 This doctrine affirms that
the principle underlying the decision in one case will be deemed of
imperative authority, controlling the decisions in the same court and
in lower courts within the same jurisdiction, unless and until the
decision in question is reversed or overruled by a court of competent
authority. A single decision does not necessarily create a precedent
to be followed.

13Miles O. Price and Harry Bitner, Effective Legal Research
As courts review precedents, there is a flexibility to decide each case within a broad continuum ranging from an extremely orthodox view to the extremely loose view. Undoubtedly, it is this flexibility which enables the common law to be molded, shaped, modified, and expanded by judges.

Rombauer\(^1\) writes the courts can view the authority of precedent in two ways. One way is the strict view or the orthodox view, in the extreme form, resulting in what is known as expressly confining the case to its particular facts. When one finds this said of a past case, one probably can determine that in effect the case had been overruled. She writes that this strict view is in practice the dogma which is applied to unwelcome precedents. She asserts it is the recognized, legitimate, and honorable technique for whittling precedents away, for making the lawyer, in his argument, and the court, in its decision, free of them. "It is a surgeon's knife."

The other way to view precedent is known as the loose view of precedent. That is the view that a court has decided, and decided authoratively, on any point or all points on which it chose to rest a case. This view often carries into dicta, and in its extreme form, results in thinking and arguing exclusively from language, wholly without reference to the facts of the case which called the language forth. Rombauer claims this is a device for capitalizing welcome precedents. She states it is obvious that this is a device not for


\(^{15}\)Ibid., p. 45.
cutting past opinions away from judges' feet, but for using them as a springboard when they are found convenient. She asserts both the lawyers and the judges do use it so. Further, she states that judging by the practice of the most respected courts, as of the courts of ordinary stature, this doctrine of precedent is like the other, recognized, legitimate, and honorable.

Ohio Jurisprudence\textsuperscript{16} records that when there appears to be a contravention between some principle of the common law and statutory law, Ohio courts have always upheld the precedence of the statutes enacted by the legislature. It is more than likely that because of this posture, the article on the common law states that in intention of the General Assembly to abrogate common law rules must be manifested by express language. There is no abrogation of the common law by implication. It also reads that though the common law is indispensable to Ohio's system of jurisprudence, that wherever the legislature has covered particular subject matter, the common law can not vary the provisions enacted, for its office is to aid in interpretation, not to supply any other rule and remedy.

Within the common law tradition, decisions relied upon as precedent are generally those of appellate courts, since the decisions of trial courts may be appealed to higher courts and are not the best evidence of the rule of case laid down. Opinions of appellate courts are usually printed, and it is these opinions which represent the influential precedents. Trial courts also write opinions, but unless

\textsuperscript{16}Ohio Jurisprudence, Volume 9, Common Law, pp. 551-561.
the opinions with their decisions are reported, they generally have less precedent values than opinions of appellate courts. Rombauer asserts the legal scholar should not completely ignore trial court opinions simply because they are trial court opinions. A carefully reasoned trial court opinion may carry more weight than secondary authority and it will have obvious value if there is no secondary authority in point.

THE ROLE OF JUDGES AND JUDICIAL REVIEW

In the common law world, the judge is a culture hero, even something of a father figure. The common law tradition was originally created and has grown and developed in the hands of judges, reasoning closely from case to case and building a body of law that binds subsequent judges through the doctrine of *stare decisis*, i.e., to decide similar cases similarly. Even though there may be an abundance of legislative law, the common law ultimately means the law created and formed by judges. In the United States the custom is to accept judicial review and the power of judges to hold legislation invalid if unconstitutional. Merryman states authorities may not like to use such a dramatic phrase as judicial supremacy, but when pushed to it, scholars admit this a fair description of the common law system.

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That the judiciary is a law-making, policy-making body in this country is possible because of the process of judicial review. Dean argues that this process of judicial review is the result of a great usurpation begun by Chief Justice John Marshall in the landmark decision of the *Marbury v. Madison* case in 1803. The process has been expanding ever since. The Chief Justice said that any legislative law repugnant to the Constitution is void. With this decision, judicial review has come to mean that whenever it becomes necessary for the settlement of litigation before a court, the court may scrutinize state and federal legislation, and the acts of state and federal executive officers and courts in order to determine whether or not they are in conflict with the Constitution. If they are, then the court can declare them null and void. In the course of resolving litigation between parties, courts must determine what the law is, and they must decide which of the conflicting rules governs the case. Through the legal device of a case law or controversy, the courts participate in the legislative process. That courts in the exercise of judicial review of legislation and administrative regulations are performing legislative functions is a proposition few legal scholars will deny.

Do judges make law or do they merely find it? And if they make it, have they any right to do so? These two questions penetrate to the heart of the problem of judicial review in a democratic political system. On the question of whether courts make or only find the law,

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20 **Harris, Op. cit., p. 72.**
it is sufficient to say that countless analyses of the judicial processes have made the fact of judicial legislation or judicial policy-making too obvious to be denied. Dean states whether Americans like it or not, judicial policy-making is an inescapable aspect of American constitutional law. He writes:

Judicial review provides a way of testing the exercise of power by the deepest standards of our society. Courts and constitutions are not just idle symbols of government. On the contrary, they are vital parts of American constitutional government precisely because they have helped prevent procedural and substantive guarantees from becoming mere folklore. Our courts render into immanent law our political decencies and aspirations.21

As early as 1820, no less an authority than Thomas Jefferson expressed concern on the matter of judicial review. In a personal letter to a friend, he wrote:

You seem to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. This maxim is "boni judicis est ampliare jurisdictionam," i.e., the task of a good judge is to expand his jurisdiction.22

Schwartz writes that American society in the later part of the twentieth century is in the midst of a tremendous evolutionary development created by the dynamic thrust for equality. All that can be stated


with confidence in his judgment, is this trend will produce changes in the law fully as profound as those it would bring about in the society at large. He declares:

The enlarged judiciary role has been one of the outstanding features of American law since the middle of the twentieth century. Traditional restrictions on the scope of judicial power have been abandoned with the courts assuming an active role in the polity in more and more areas....the penumbra between constitutionality and desirability has progressively widened as the courts have come to assume a virtual Ombudsman function in the society.\(^23\)

In the definitive text on the history of major legal institutions in this country, Professor James Willard Hurst has reviewed the interaction of courts with legislatures as lawmakers. The following exerts present a summary of that interaction and also gives some additional information about modern courts' approaches to statutory construction.

Both trial and appellate courts were major lawmakers in United States history. In the first half of the nineteenth century, within the confines of a "judicial" power limited to disposition of particular disputes, the courts did the vast job of fashioning a body of common law for the main affairs of everyday life. They defined the bases of rights in real property; they laid the foundations for the law of business contracts and commercial instruments; they shaped rudimentary doctrine for such fields of new importance as the law of negligence or of the conflict of laws. From the logic and decisions of John Marshall, in the third quarter of the century the judges made good their title to pass on the constitutionality of legislation; and they used the power to such effect as to make it a material factor in the social balance of power. To 1937 judicial review continued to be a tangible influence on what the legislature did and how it did it....Through the drama of judicial review, the courts made the idea of constitutional limitations one of the most powerful elements in our political thinking.

The interpretation of statutes offered a truly creative job for the judges. But the chances of events long obscured the creative opportunity. The legislature and its works fell far in popular standing in the second quarter of the nineteenth century. But at the same time the newly forming states felt the urgent pressure of practical needs for law to meet their everyday needs and the everyday problems of the people. The response to this pressure afforded the first great manifestation of judicial lawmaking in the United States. Out of this period of policy leadership, the courts learned confidence in their own capacity to decide what was best for the community.

These factors found expressions in the abstract cannons of statutory interpretation which liberally ornamented judicial opinions after the 1870's: strict construction of statutes in derogation of the common law; strict construction of penal statutes, or of legislation that imposed drastic burdens, or of legislation that imposed special damages, or of legislation that could be fitted to one or another of various tags.

The effect was to put a primarily obstructive, if not destructive connotation of the process of statutory interpretation. And insofar as this was not the temper of approach, nineteenth-century lawmen tended to rate legislation or its proper handling as of secondary importance in the law. This depreciation of the statute book was promoted by the preeminence of case-made, judge-made law in the formative first-half of the nineteenth century; and this was reinforced, first, by the office-apprentice system of legal education, and then by the spread of the case method in the law schools. Legislation was in intrusion on a symmetrical system of learning properly found only in the reports. One could to general satisfaction similarly distinguish a cited case if he could brush it aside as merely "turning on the particular statute involved."

The slowness with which courts drew on the full resources of legislative history in the interpretation of statutes was a measure of their lack of interest or sympathy toward the legislative process; or, equally, it measured their failure to understand what was implied in a true effort to carry out their often-announced duty to find "the intention of the legislature." As late as 1897 a leading opinion of the Supreme Court of the United States noted "general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by the body."
But it was in the trend of events that statutory interpretation should form one of the positive contributions of the courts to the making of law. Only the legislature, with its control of the purse, its powers of investigation, and its varied array of benefits and sanctions could begin to cope with the demands made on government after the 1870's.

Between about 1880 and 1920 legislation again became, as it once had been, the main growing point of the law. By 1920 administrative legislation shared this distinction. In either case, after 1880 the leadership in making general policy had passed from the courts; their creative opportunity had become the subordinate, but essential, task of imaginative, firm implementation of legislative policy.

The decisions after 1900 began to reflect a more affirmative and practical, a less negative and literal, approach, in response to the pressure of this shift in the political situation. Tangible witness of the change was in shifting techniques of interpretation.... Where there had been absolutely phrased rules of competency that barred use of hearings, debates, committee reports, there appeared by the 1930's more or less explicit recognition that almost any official source contemporary with the passage of a statute might be used in its interpretation.

In the law at least, mere technique guarantees no one result; there remains inescapably "the sovereign prerogative of choice." In 1940 as well as in 1890 the interpretation of statutes inevitably demanded that the courts share in making policy. One could still find examples—one was the restrictive interpretation of state statutes which curbed the use of the injunction in labor disputes—where judges hostile or distrustful toward the legislative judgment clearly shaped construction to minimize the effect of a statute.
Nonetheless, the new approach lent itself less than the old to manipulation in the interests of the judge's personal values. It was most insistent on a demonstrated basis in fact, for the interpretation given the legislation. And in any case its basic importance was that it showed a shift in the prevailing attitude toward statute law. Late-nineteenth century judges rationalized their interpretations under abstract cannons of construction which had no necessary relation, and required no showing of any specific relation, to the legislation in question. Clearly there was a drastic change in approach, when courts sought to view an act in terms of its own particular genealogy, and in effect to fashion their principle of construction from the materials of the statute's own environment and origins.

The change perhaps reflected the pragmatism which characterized thought in the United States after the turn into a new century. Certainly it evidenced a shift in the climate of opinion affecting the balance of power. Perhaps the judges merely shared the self-doubt of their generation. Perhaps they yielded more or less consciously to the weight of events which had thrust the initiative in policy on the legislative and executive branches. In any case, in the second quarter of the twentieth century judges plainly lacked the serene self-confidence and assurance of wisdom and rightness with which their predecessors had made a native common law and, firmly and sometimes arrogantly, had explicitly or under guise of interpretation wielded a veto over legislative judgment.  

Murphy and Pritchett agree that it is generally understood now that American judges have important responsibilities in creating public policy. They have always had such a role in their judgment. The political importance of American judges is due in part, in their

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thinking, to their special obligation to interpret the Constitution. They assert it is also related to the opportunities judges have for legal creativity available to them under the common law system. They write:

If the hero of the civil law has been the scholar, the hero of the common law has been the judge and his squire, the practicing attorney. Whereas the civil law was formulated in the antiseptic atmosphere of the university and was dependent upon abstraction, deep learning, and cool, taut logic, the common law grew out of the muck and mire of courtroom battles. Its rules were efforts to settle immediate human conflicts, with a resultant emphasis on practical results at the cost of conceptual purity or logical symmetry. At bottom common law is judge-made law.  

Benjamin Cardozo, perhaps one of the most brilliant justices ever to sit on the United States Supreme Court, in his classic book The Nature of the Judicial Process, clearly asserts that judge-made law or the law of precedent prevails over legislative or statutory law, until adopted by the courts. He maintained that even statutes are not law because the courts must first fix their meaning.  

Cardozo felt there were at least two nebulous areas in the process of judicial review which merited serious consideration by judges before legal decision making began. The two areas of quandry which perplex judicial decision making are: (1) when constitution and statute are silent; and (2) ascertaining the intention of legislation when the legislature had no intention.

26Ibid., p. 5.


28Ibid., pp. 18-21.
To the first concern Cardozo wrote:

Our first inquiry should be: Where does the judge find the law which he embodies in his judgment or decision? The rule that fits the case may be supported by the Constitution or by statute. If that is so, the judge looks no further. The correspondence ascertained, his duty is to obey. The Constitution overrides a statute, but a statute, if consistent with the Constitution, overrides the law of judges. In this sense, judge-made law is seconding and subordinate to the law that is made by legislation.

We reach the land of mystery when constitution and statute are silent, and the judge must look to the common law for the rule that fits the case. Stare decisis is at least the everyday working rule of United States law. It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others.

To the second concern the Supreme Court justice addressed himself as follows:

Interpretation is often spoken of as if it were nothing but the search and discovery of meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. The fact is...that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present in its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.29

29 Ibid., pp. 28-30.
THE LEGAL RESEARCH PROCEDURE

The primary research method for this study is opinion briefing. Opinion briefing involves analysis, evaluation, and synthesis of judicial precedents. In analyzing opinions, opinion briefing should contain at least five well-defined parts. They are: (1) a statement of the significant facts of the dispute before the court; (2) a statement of the narrow legal question; (3) a statement of the legal question(s) or issue(s) which the court must decide; (4) a brief statement of the court's decision; and (5) an explanation of the court's reasoning in reaching its decision.

First, a statement of the significant facts of the dispute before the court include those facts which are necessary to an understanding of the dispute and of the court's decision. Significant facts are those which influence the court's reasoning and decision. The significant facts in a decided case are those which simply affect the opinion. One must have in mind a general idea of the issue before the court, and the court's reasoning before even a tentative conclusion can be drawn as to what facts are really significant. An entire opinion must be read before the significant facts can be ascertained. Some facts are not obviously significant; other facts will obviously be significant. Facts which fall between these two extremes will appear in most opinions. One must attempt to decide whether facts mentioned in an opinion were influential in helping the court to arrive at a decision. If so, they are significant.

Second, a statement of the relevant procedural details usually involves three major areas: (a) an explanation of the remedy sought; (b) the legal nature of the controversy; and (c) the contentions of opposing counsel. If the decision is an appellate court's decision, one must know the procedural details which prevailed in the lower court. The nature of the action and the remedy sought will be significant as factors limiting the scope of a particular decision.

Third, a statement of the narrow legal question(s) or issue(s) which the court is asked to solve. The question or issue before the court must offer precise identification of the substantive issue or decision. In analyzing opinions, one must try to identify the hierarchy of issues until the specific question which the court answers appears.

Fourth, a brief statement of the court's decision, both procedural and substantive. In its narrowest meaning, the decision of a court is merely a statement of the procedural action taken or decided with reference to the case before it. In this narrow sense, the decision does not directly answer the specific issue question. "Decision" is also used in a broader sense when it describes the substantive result in a case. Even more broadly, a decision may refer to both the procedural and substantive results.

Fifth, an explanation of the court in reaching its decision (a statement of a general principle or rule assumed found to preexist from which the court reasoned) or a statement of the narrow rule which it applied or developed in reaching its decision. The rule of a case is a precise statement of what one believes an opinion stands for with reference to future cases. It summarizes the controlling
significant facts, the issue question and its answer in the form of a general statement which might be used to determine the outcome of a future case having similar facts. The rule may have been established by prior decisions or stated in a secondary authority. The court may state that the outcome in a case is dictated by a principle. Or the court may simply announce the result without stating or acknowledging it has applied any rule. Or the court may simply cite a prior decided case as justification.

A court is faced with broad alternative possibilities each time it is required to decide a case. It can conclude there is no precedent and develop a new or variant rule. It may rely on social utility, ethical considerations or general standards of justice. It may consider the logical structure of the law and fashion a result with other decisions in the general conflict area. The court may also use precedent justifications by reasoning from a general rule or by analogy and thus justify application of an existing principle or rule.

Finally, then, a precedent is a judicial decision which contains in itself a legal principle. The underlying principle from which it forms its authoritative element is often termed the ratio decidendi. The abstract ratio decidendi alone has the force of law as regards the world at large.

In conclusion, the ratio decidendi, describing the purpose of reasoning by which decision was reached, often develops its true and full meaning slowly and haltingly, and it may take a whole series
of decisions involving variations of the situation presented in the first case until a full-blown rule of law replaces the tentatively and inadequately formulated generalization found in the initial decision.

The following sample of opinion briefing procedure will be applied to all appellate decisions analyzed in this study:

**Opinion Briefing**

1. **Facts:** A statement of the significant facts of the dispute before the court.
   
   a. The facts which are necessary to an understanding of the dispute.
   
   b. The facts which influenced the court's reasoning and decision.
   
   c. The significant facts which simply affect the opinion.

2. **Procedure:** A statement of the relevant procedural details.
   
   a. An explanation of the remedy sought.
   
   b. The legal nature of the controversy.
   
   c. The contentions of opposing counsel.

3. **Issue:** A statement of the narrow legal question the court is asked to resolve.
   
   a. The precise definition of the substantive issue or decision.
   
   b. The hierarch of issues which reveal the question answered.

4. **Decision:** A brief statement of the court's decision.
   
   a. A decision may refer to both procedural and substantive results.

5. **Rule:** A statement of explanation as to how the court reached its decisions.
a. A statement of a general principle or rule assumed or found to pre-exist from which the court reasoned.

b. The rule of a case is a precise statement of what one believes an opinion stands for with reference to future cases.

c. The rule may have been established by prior decisions or stated in a secondary authority.

Llewellyn has developed a comprehensive listing of sixty-four techniques actually used by courts in dealing with precedents. He has created three major groups into which these techniques can be classified. They are: (1) following precedent; (2) avoidance of the undecided; and (3) less usual uses which can direct the court to expansion, redirection or a fresh start. There are thirty-two techniques listed in the first grouping, sixteen techniques in the second grouping, and sixteen techniques in the third. That the common law never is, but is always about to be is reflected by these sixteen techniques in the third grouping. Some sample techniques which expand the common law are: (51) deliberated and important redirection of a rule; (54) introducing or establishing a new concept; (55) unchaining a new principle to substitute order for conflict or confusion; (57) tapping the lower courts and other agencies; (59) establishing the rule's reason to carry the rule into novel territory; (60) basing decision and rule on common knowledge and sense; (61) announcing new principle ex cathedra; (62) introducing rule or principle from the critical literature; (63) the deliberate forward-prophecy; and (64) the deliberate hedge via an alternative which can, on call, render the main ruling "mere dictum."

For purposes of this study, however, Rombauer's classification will be used. She states a court can reach one of at least four possible conclusions: (1) it could conclude that the significant facts are identical and apply the precedent rule; (2) it could conclude that although the significant facts are not identical, they are sufficiently similar to justify the same result. In this event, it would apply and extend the rule to a new type of case by analogy; (3) it could conclude that the significant facts are not identical and are not sufficiently similar to justify the same result, that is, it would distinguish or limit the precedent and refuse to follow it; and (4) it could conclude that the significant facts are identical, but refuse to follow the precedent, stating policy justifications.

This study will undoubtedly identify a group of cases with commonalities. The precedents derived from the cases of this study will be synthesized. In legal synthesis, the process is essentially one of comparing and relating precedents which have common or analogous facts. This procedure should develop a viewpoint as to how the courts in Ohio perceive legal issues arising out of labor disputes between teachers' associations and unions and boards of education.

In addition to the basic research procedure of opinion briefing, the six selected school systems designated for this study will be presented in a historical synoptic form. Sources for obtaining information relevant to these teacher strike situations will be obtained through legal briefs and court opinions as they have been reported and journalized. When possible, it may be necessary to interview judges who were involved in these labor disputes if they

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are willing to be interviewed. Also, newspaper articles reporting the day-by-day events will be reviewed to particularly develop the six case studies.

The Director of Special Services for the Ohio School Boards' Association and the writer have identified six school systems in Ohio which have seen the judiciary playing a vital role in helping opposing parties resolve their differences. All these school systems experienced teacher strikes during the calendar years 1972 through 1974. The school systems are: (1) The Campbell City School District; (2) The Hamilton Local School District; (3) The Elyria City School District; (4) The Vinton County School District; (5) The Wellston City School District; and (6) The Youngstown City School District.

Chapter three will study the development of labor law from the nation's beginning. Both the private sector and the public sector need separate treatment in order to understand the similarities and differences of labor law between the two sectors. Major attention will also be given to the emergence of the collective bargaining process since it is the accepted institutionalized process of communication between employer and employee in the relatively new field of labor relations, both in the private and public sectors.
CHAPTER III

THE LAW OF LABOR RELATIONS

What, then, is this law business about? It is about the fact that our society is honeycombed with disputes. Disputes actual and potential; disputes to be settled and disputes to be prevented; both appealing to law, both making up the business of the law. This doing of something about disputes, this doing of it reasonably, is the business of law. And the people who have the doing in charge, whether they be judges, sheriffs, or attorneys are officials of the law. What these officials do about disputes is, to my mind, the law itself.¹

Llewellyn² reports there are two major sections of law, public law and private law. Public law which is relevant to collective bargaining in the public sector will be discussed in a later section of this chapter. Within the private law section, the law professor states there are four grand divisions of major importance. The first division is that of contracts, of agreements between people and the legal effects of such agreements. The second grand division is the law of property which is based upon the economic theory of values and the fact of scarcity. The third great field of private law is that of associations and the ways in which men can come together in groups to accomplish their purposes, and of the limitations as well as the powers which legal officers place upon the

²Ibid., pp. 18-19.
activities of such groups. At this point, Llewellyn writes, the law plays especially into the phase of economic life known as industrialism, of capital aggregation, and the concomitants thereof, the labor organizations. The fourth division is the law of torts, of private wrongs.

In studying the character of labor relations law, a careful scrutiny must be made of several sources of labor law. Important decisions of the judiciary must be considered. Mason\(^3\) writes it is a striking fact that in America the stupendous problems growing of the disputes between capital and labor have been thrown largely on the courts for solution. Historically, with the exception of the labor laws enacted by Congress in the 1930's, the courts determined the elements of labor law. Mason states that, although the origins of the doctrines that underlie American labor law date far back in the history of English law, the common law, as it has been applied in the states and embodied in the anti-trust acts, is largely a creation of American judges.\(^4\) It was the judiciary who chartered the legal boundaries of union conduct in the absence of legislated or statutory law. It has only been until recently that statutory law has become more important than the common law as the determiner of the content of labor relations law. Even so, the influence of the courts on the character of labor law is still of great importance. The United States Supreme Court, the custodian of the federal Constitution,


\(^4\)Ibid., preface.
possesses the power to review all legislation in the light of the standards of that basic document. The High Court can employ its power of judicial review to strike down legislation designed to strengthen the progress of labor.

Also, action of the legislative branch of government deserves close attention. Labor relations legislation became of supreme importance in the development of organized labor. Since 1932, Congress enacted four major labor relations laws which have become the cornerstone of federal labor policy. These laws are: (1) the Norris-Laguardia Act, the Wagner Act, the Taft-Hartley Act, and the Landrum-Griffin Act. Important decisions of the National Labor Relations Board which was created by the Wagner Act or the National Labor Relations Act must also be noticed even though decisions of that board are reviewable by the courts. Finally, the executive branch of government, through the device of executive order, serves as another source of the developing labor law.

The efforts of Congress and state legislatures to encourage and promote labor's activities have frequently been thwarted by the judiciary. It was not until 1937 that the Supreme Court of the United States sanctioned the constitutionality of the Nation Labor Relations Act in the famous Jones & Laughlin Steel Corporation case, a decision which initiated a more positive approach of the judiciary

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6 Jones & Laughlin Steel Corp. (NLRB v.), 301, U. S. 1 (1937).
toward the labor movement. Certainly, one of the most interesting features of labor relations law is this struggle between the judiciary and the legislative branches of government.

A careful analysis of the law of labor relations is necessary for today's school administrator. Collective bargaining is here to stay for public employees. Of significance to school administrators is the fact that teachers now legally participate in certain areas of school governance which previously were the jurisdiction of boards of education and school administrators.

Whether labor law and its related rules and regulations which have developed within the private sector of the nation's economy are appropriate for the public sector is a point of much controversy. Much of this controversy centers around two major issues, the right to strike and the meaning of the phrase, "terms and conditions of employment." In the private sector, under the protection of federal regulation, the meaning of this phrase has gradually been defined through the National Labor Relations Board and court decisions, since decisions of the Board may be appealed directly to appellate courts within the federal court system.

In the public sector, the process of defining the meaning of the phrase is just beginning since collective bargaining is a relatively recent phenomenon. Weitzman writes:

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It also has been recognized, however, that there are certain matters that should not be considered negotiable; these involve the very functions of government and the administrative power to determine how operations are to be conducted. The scope of bargaining problems thus boils down to the question of how to balance the interests of public employees with the interests of a society that today is relying on government more heavily than ever before to furnish necessary services and bring about broad social improvements.8

The special character of public employment present unique problems in collective bargaining, particularly in the public schools where control of education is supposedly a state function through a local board of education and its administrators.9

It is necessary at this time to present a glossary of terms which will be used throughout this study. These operational definitions are important because the field of labor law and the language of the collective bargaining process have distinct meanings and significance for those who would be reading legal concepts for the first time. All definitions presented in the following glossary have been derived from two principal sources, Black's Law Dictionary10 and Robert's Dictionary of Industrial Relations.11

8Joan Weitzman, Loc. cit., p. 225.


Glossary of Terms

Adequate Remedy at Law:

A solution or remedy which is as practical, efficient, plain, and complete to achieve the ends of justice and its prompt administration as a remedy in equity. One of the conditions which has to be met for the granting of an injunction in a teacher strike is that there is no adequate remedy at law. Ohio's judiciary has ruled that public employers have no adequate remedy at law if there is a strike by employers in the public sector.

Administrative Law:

A body of law established by rules, regulations, and court interpretations of actions by an administrative agency established by the Federal Government or state legislatures.

Affidavit:

A written statement given under oath and accepted as evidence in a court of law when no better proof is available.

Affirm:

In the practice of appellate courts, to affirm a judgment is to declare that it is valid and right, and must stand as rendered by a lower court.

Agency Shop:

A condition in which all employees in a bargaining unit are required to pay dues or service charges to the collective bargaining agent representing them.

Agreement, Collective:

A contract or mutual understanding between labor and management setting forth some of the terms and conditions of employment, usually for a specific period of time.

Agreement, Master:

A collective bargaining agreement which serves as the pattern for practically all major terms and conditions of employment for an entire group of employees. A master agreement helps to establish uniform conditions of employment throughout the entire work force.

American Arbitration Association:

A private non-profit organization formed in 1926 to encourage the use of arbitration in the settlement of labor disputes.
Anti-Injunction Act: (Norris-LaGuardia Act)

The purpose of the Norris-LaGuardia Act was to limit the use of the injunction in labor disputes. This Act sets out a statement of public policy to protect the freedom of association and collective bargaining and limits the use and jurisdiction of the federal courts in labor disputes.

Appeal:

The procedures, normally set out in law, which provide for the review of a decision of a lower court by a higher body. Under the Labor Management Relations Act, appeals may be taken from the district court to the circuit court, to the Supreme Court.

Appellant:

The party who takes an appeal from one court of jurisdiction to another.

Appellate Court:

A court having the jurisdiction of appeal and review of a lower court's order.

Appellee:

The party in a cause against whom an appeal is taken.

Arbitration:

A procedure whereby parties unable to agree on a solution to a problem indicate their willingness to have a third party make a decision for them. Such a decision is usually agreed upon before hand as to whether it will be advisory or binding. Collective bargaining agreements generally provide for arbitration as the final step in the grievance procedure.

Bargaining Agent:

The organization or union certified by a national, state, or territorial labor agency to represent a majority of the employees in an appropriate bargaining unit and to be the exclusive bargaining agent for all employees.

Bilateral Action:

As distinguished from unilateral action, bilateral action involved the joint decision and action of the parties to collective bargaining before a final action is taken. In unilateral action, the employer takes action without discussion or agreement with the bargaining agent.
Borg-Warner Case:

The case in which the United States Supreme Court recognized three categories of bargaining proposals under the Taft-Hartley Act and established three sets of rules for them. The three sets of categories are: illegal subjects which cannot be negotiated; mandatory subjects which must be negotiated; and voluntary subjects which may be negotiated.

Boulwarism:

A collective bargaining approach followed by the General Electric Company which the National Labor Relations Board declared violated the good faith bargaining duty under the Taft-Hartley Act by its overall approach to and conduct of 1960 negotiations with its unions.

Brief:

A written or printed document prepared by legal counsel to serve as a basis for an argument upon a cause in an appellate court and usually filed for the information of the court. It embodies the points of law which legal counsel for either party desires to establish, together with the arguments and the authorities upon which counsels rest their contentions.

Burden of Proof:

The necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a case.

Case:

A question contested before a court of justice.

Case Law:

The aggregate of reported cases as forming a body of jurisprudence in distinction to statutes and other sources of law.

Case System:

A method of teaching or studying the science of law by a study of the cases historically.

Caucus:

A private meeting of negotiating teams to plan strategy or policy prior to meeting together for collective bargaining purposes.

Certiorari:

An appellate proceeding for re-examination of the action of an inferior court.
Circuit Courts of Appeals:
Federal courts which hear appeals from decisions of district courts. There are ten circuits which serve the United States and the Territories. Appeals from the circuit courts go to the United States Supreme Court. Appeals from the National Labor Relations Board go to the appropriate circuit court and then to the Supreme Court, if necessary.

Closed Shop:
A union-security arrangement where the employer is required to employ only employees who are members of the union. Membership in the union is also a condition of continued employment. The closed shop is illegal under federal labor.

Collective Bargaining:
A term used to denote the process whereby representatives of labor and management work out the wages, hours, and other terms and conditions of employment to be embodied in an agreement that is to govern the relations of the parties for a specified period of time.

Collective Negotiation:
A phrase which has received usage in the discussion of procedures in the public sector and which might serve as the counterpart to the term "collective bargaining" in the private sector.

Common Law:
A system of law based on decided cases, as against one based on statutes.

Conciliation:
An extension of collective bargaining whereby the parties seek to reconcile their differences. In this process, a third party acts as the intermediary in bringing the disputing parties together, but acts as a catalytic agent, by being available, but not taking an active part in the settlement process. Conciliation is distinguished from mediation, where the third party actively seeks to assist the parties in reaching a settlement.

Consent Order:
A procedure used by courts and administrative agencies to settle a disputed case by having labor and management enter into an agreement of understanding on the basis of which litigation will be ended.
Contempt of Court:

An act that obstructs or tends to obstruct administration of justice by a court. It is also an act that embarrasses, or detracts from the dignity of a court. In labor disputes, failure to obey an injunction may lead to contempt action that can result in fine or imprisonment or both.

Counter-Proposal:

Offers made by employers and employee in collective bargaining negotiations designed to assist them in finding mutually satisfactory answers to problems.

Court Above, Court Below:

In appellate practice, the court above is the one to which a cause is removed for review while the court below is the one from which the case is removed.

Court of Equity and Law Courts:

Law courts administer justice according to the rules and regulations of the common law. Equity courts rule upon the principle of "natural justice" and generally where there is no adequate remedy at law.

Court of Common Pleas:

The name given to a court of original and general jurisdiction for the trial of issues of fact and law according to the principles of the common law.

Decision:

A conclusion, usually by a court, which involves the interpretation or application of law to the facts of a particular case. In arbitration, decisions usually are awards, and generally are binding on the parties, subject only to the review under limited conditions permitted by law.

Defendant:

The individual or party having the responsibility of defending its position before a tribunal or court.

Discretion:

The nature and the degree of freedom possessed by an employer in the handling of employment problems.
Dicta:
Opinions of a judge which do not embody the resolution or determination of the court.

Due Process of Law:
A legal concept designed to prevent unreasonable and arbitrary legislation or arbitrary application of the laws by public officials. Ultimately, its interpretation rests upon the meaning given to it by the Supreme Court.

Duty to Bargain:
The obligation under the Taft-Hartley Act and some states requiring employers and unions to bargain in good faith with respect to the terms and conditions of employment and to embody the agreements reached in collective bargaining contracts.

Enjoin:
A court action designed to prevent a union from engaging in economic or strike action, or requiring it to take certain action calculated to remedy an inequity. An employer also may be enjoined during a labor dispute.

Erdman Act:
A Federal act of Congress passed in 1898 which replaced the Arbitration Act of 1888. It provided for voluntary arbitration but was held unconstitutional by the Supreme Court in 1908.

Ex Cathedra:
Having the weight of authority.

Executive Order 10988:
Now superseded by Executive Order 11491. Executive Order 10988 was issued by President Kennedy in 1962 dealing with employee-management cooperation in the federal service. It provided the mechanism for determining bargaining mechanism for determining bargaining representation and forms of recognition for employees.

Executive Order 11491:
The successor to Executive Order 10988 which was signed by President Nixon in 1969. It labels relationships in the federal service as being labor-management rather than employee-management. It establishes supervisors as management and with minor exceptions, denies them bargaining rights. In many ways, by establishing unfair labor practices for unions as well as management, this executive order brings the relationship between the federal government and unions into one which closely resembles those existing in private industry under the National Labor Relations Act.
Ex Parte Injunction:
A restraining order issued without notice to the defendant or without an opportunity for the defendant to be heard before its issuance.

Fact-Finding Board:
A special panel, usually of three or five persons, appointed to review the positions of labor and management in a particular dispute, with a view to focusing attention on the major issue in dispute, and resolving differences as to facts.

Federal Mediation And Conciliation Service:
An independent agency created under Title 11 of the Taft-Hartley Act. Title 11 formalized some of the practices of the United States Conciliation Service and gave explicit statutory sanction to this service.

Final Judgment:
The final settling of the rights of the parties to the action beyond all appeal.

Freedom Of Association:
The right of people to assemble in public or private for the purpose of joining for a common cause and to associate with one another to achieve their goal. The right of association is a prerequisite to the right of organization for the purposes of collective bargaining.

Fringe Benefits:
Non-wage benefits or payments received by employees from employers. They include such items as vacation pay, paid sick leave, paid holidays, pensions, and insurance benefits.

Good Faith Bargaining:
Negotiations between representatives of labor and management to reach a mutually satisfactory agreement setting forth the conditions of employment under a collective bargaining contract. The Taft-Hartley Act defines the concept as a mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. Neither side, however, is required to agree to a proposal or to make a concession.

Grievance:
Any complaint by an employee or by a union concerning any aspect of the employment relationship. Arbitrable grievances are usually those which arise out of the interpretation for application of the terms of the collective bargaining agreement.
Impasse:

A deadlock in negotiations between management and labor over the terms and conditions of employment. Many state laws governing labor relations in the public sector generally do not define the term.

Industrial Relations:

This term is defined broadly as dealing with everything that affects the relationship of the individual worker or groups of workers to the employer. It involves anything which affects the employee from the time he is interviewed until he leaves a job. Collective bargaining is only a part of the industrial relations process.

Injunction:

A prohibitory writ issued by a court to restrain an individual, or a group from committing an act that is regarded as inequitable so far as the rights of some other person are concerned. For many years, the usual response to picketing and boycotts by unions was for the employer to go into a court and obtain an injunction.

Judge-Made Law:

A phrase used to indicate judicial decisions which construe away the meaning of statutes, or find meanings in them the legislature never intended. It is sometimes used to mean the law established by judicial precedent.

Labor Law:

A term used to generally cover all federal or state legislation designed to protect or improve the conditions of workers as well as the rights of labor unions, employers, and the public.

Management Clause:

A provision in the collective bargaining agreement which sets out the scope of management rights, functions, and responsibilities. The clause sets forth those functions of management which are not subject to contractual limitations. The union's rights are protected in the grievance machinery and in those particular contract provisions which modify the management rights' clause.

Mediation:

The act of a third person who interferes between two contending parties with a view to reconcile them or persuade them to adjust or settle their disputes.
Mediator:
The person who is a conciliator or mediator. An impartial third party or public official chosen by both parties who meets with the parties, acts as a go-between, and suggests possible avenues for resolving the particular issue in dispute.

Nullity:
An act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.

Negotiator:
A person who has the responsibility to represent an employer or union in reaching a collective bargaining agreement.

Open Shop:
An industry in which, in theory, workers or employers are employed regardless of union affiliation.

Picketing:
The actual patrolling at or near the employer's place of business during a strike or other dispute to give notice of the existence of a labor dispute, to publicize it, or to persuade workers to join the union and to prevent persons from entering or going to work.

Plaintiff:
A person or party who brings an action into court.

Precedent:
An adjudged case or decision of a court of justice, considered as furnishing an example of authority for an identical or similar case afterwards arising or a similar question of law.

Quasi-Judicial:
A term applied to the action or discretion of public administrative officers who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them as a basis for their official action. The actions of the National Labor Relations Board are quasi-judicial in character.

Ratio-Decidendi:
The ground of decision. The point in a case which determines the judgment.
Remand:
The decision of a court to send the cause back to the same court out of which it came for the purpose of having some action taken on it there.

Restraining Order:
An order in the nature of an injunction. Though the term is sometimes used as a synonym of injunction, a restraining order is properly distinguishable from an injunction in that the former is intended only as a restraint upon the defendant until the propriety of granting an injunction, temporary or perpetual, can be determined.

Reverse:
A decision of a superior court to overthrow, vacate, set aside, make void, repeal or revoke as to reverse a judgment, sentence or decree.

Right to Strike:
Generally, the right to strike is available to employees in the private sector under federal and state laws except that in some situations certain procedural steps must be taken before a strike may occur. Public employment strikes are almost uniformly prohibited and laws usually provide for alternative methods of settling disputes.

Scope of Bargaining:
The actual scope or subject matter which management and labor bring within the area of the collective bargaining contract. An examination of the subjects which labor and management have discussed at the bargaining table and which have been incorporated into contracts indicate that the scope of bargaining depends in large part on the kind of problems the economic and social conditions create.

Stare Decisis:
To abide by or to adhere to decided cases.

Strike:
A temporary stoppage of work or a concerted withdrawal from work by a group of employees of an establishment to express a grievance or to enforce demands affecting wages, hours, and working conditions. It is a concerted withdrawal of work, since it is the action of a group, and it is temporary withdrawal, since the employees expect to return to work after the dispute has been resolved. Strikers consider themselves employees of the company with a right to return to the job once the dispute has been resolved.
Unfair Labor Practices:

The actions of employers or unions that are prohibited as unfair labor practices under the federal or state labor relations statutes. Section 8 of the Taft-Hartley Act enumerates the employer and union unfair practices under the federal law. There are five unfair labor practices of employers. They are: (1) interference with employee rights under the act; (2) domination of unions; (3) discrimination against employees for union activities; (4) retaliation against employees for invoking their rights under the act; and (5) refusing to bargain with a majority representative of the employees.

The unfair labor practices for unions are: (1) restraining or coercing employees in the exercise of their statutory rights; (2) causing an employer to unlawfully discriminate against an employer; (3) refusing to bargain with an employer; (4) striking under certain conditions; (5) requiring employees covered by a union-security agreement to pay an excessive initiation fee; (6) featherbedding; and (7) engaging in recognitional picketing where another union is lawfully recognized as the bargaining agent.

Writ of Prohibition:

The name of a writ issued by a superior court, directed to the judge and parties of a suit in an inferior court, commanding them to cease from the prosecution of the same, upon a suggestion that the cause originally, or some matter collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other court.

The Historical Development of Labor Law

It is the primary purpose of this section of the chapter to review the role the courts have placed in the development of labor law prior to the year 1932.

Gregory reports that the ancient struggle between capital and labor now travels under a new name, the conflict between management and organized unions. Laws governing this clash of interests are not the invention of modern times. Centuries ago in England, the

relationship of master and servant was comprehensively defined by statute, before the industrial revolution. The same writer writes that at times there were criminal statutes which placed ceilings on wages and occasionally on prices. American judges in the nation's early history borrowed English law and the legal climate surrounding the collective bargaining process in the period 1806 through 1932 was highly restrictive. judicial reaction to early attempts of labor to organize was highly unfavorable. The judiciary under the doctrine of criminal conspiracy and employing the legal instrument of the labor injunction was a most formidable obstacle to the expansion and implementation of unionism. Court interpretations of labor disputes proved to be a willing friend for management and, as a result, the level of union membership in 1930 amounted to only about three million workers.

Applying the doctrine of criminal conspiracy as established in England in the early eighteenth century, the courts condemned the concerted activities of labor as criminal conspiracy. The English legal system developed common law guidelines and statutory law regarding labor. In Rex v. Journeyman, an English court developed the doctrine of criminal conspiracy. It held that worker combination


was in and of itself criminal, regardless of the consequences of such concerted action. Early American labor law generally paralleled the English experience which maintained labor unions were unlawful.

The doctrine of criminal conspiracy was based upon the economic doctrines of the classical school of economics. Control of wages by labor unions was considered an unnatural, artificial means of raising the price of work beyond its standard. This was unfair to the public. It was believed that the increase of wages by union pressure led to higher prices. This in turn resulted in the reduction of demand for products, causing unemployment. It was believed the ultimate effect of the union was to cause injury to the community, damage to commerce and trade, and prejudice the rights of other workers not belonging to unions.

In early American court trials, judges made much of the fact that labor unions were unlawful in England by both common law and statutory law. Attorneys urged that English law established a precedent for American courts. It was contended that American courts should be bound by the doctrine and laws prevailing in England. The charge was that the combining of workers to force higher wages constituted illegal conduct. The principle of conspiracy law was that what may be lawful in an individual may be criminal in a number of individuals combined.

The first conspiracy case in this country was held in Philadelphia in the year 1806. Employers sought the aid of the courts to deal with

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a shoemakers' union. This procedure, the solicitation of government aid in labor disputes, remains to this day a persistent element in the field of labor law relations. This precedent was established as early as 1806, approximately two decades after the birth of the American nation.

As conspiracies, unions were unlawful combinations. Courts defined a conspiracy as the combination of two or more workers joining together to prejudice the rights of other workers. Before conspiracy could be charged, it must be evident that the group of workers had caused or would have caused an injustice to others. The conspiracy doctrine allowed conspirators to be indicted and found guilty before any overt act was committed. It basically held that an action of one person, though legal, became illegal when conducted by a group of workers.

It was not until the decision in *Commonwealth v. Hunt* in 1842 that the first break in the doctrine of criminal conspiracy occurred.\(^{18}\) Chief Justice Shaw of the Supreme Judicial Court of Massachusetts attacked vigorously at the concept that labor unions were sinister and evil organizations. He opined a labor union could exist for dangerous purposes, but he also affirmed a labor union could exist for laudable purposes. For a union to be convicted under the conspiracy doctrine, the chief justice contended it must be shown that the objectives of the union were unlawful or the means utilized to gain a lawful end were unlawful. Unless this could be ascertained, the Chief Justice ruled a labor organization must be considered a lawful association.

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Commonwealth v. Hunt was a landmark decision in the development of American labor law. Its effect was to dissolve the identity between the conspiracy doctrine and labor unions. Most other courts under the common law tradition of following precedent ruled similarly in other labor disputes. Since this case, American legal history has been a steady accumulation of instances where the line has been drawn between purposes and acts permitted, and purposes and acts forbidden.\(^{19}\)

The year 1886 has been called the period of the great upheaval in the labor movement. It was a period of nationwide strikes set in motion on the least provocation. Most of the strikes ended disastrously for labor. Table 2 reveals:

**TABLE 2**

**LABOR DISPUTES BY SELECTED YEARS SINCE 1881**

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Year</th>
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<td>1881</td>
<td>477</td>
<td>1901</td>
<td>3012</td>
<td>1931</td>
<td>810</td>
<td>1941</td>
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<td>4956</td>
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<tr>
<td>1885</td>
<td>695</td>
<td>1905</td>
<td>720</td>
<td>1936</td>
<td>2014</td>
<td>1945</td>
<td>4750</td>
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<td>1886</td>
<td>1572</td>
<td>1906</td>
<td>1937</td>
<td>2172</td>
<td>1946</td>
<td>4986</td>
<td>1973</td>
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<tr>
<td>1887</td>
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<td>1950</td>
<td>4843</td>
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\(^{19}\)Ibid.
Table 2 reveals the number of strikes since 1881, the year the American Federation of Labor was organized out of fragmented and scattered labor unions throughout the nation. In that year there were only 477 strikes. Five years later, there were 1572 strikes. The year 1886 was the year that saw the beginning of the famous rail strikes and it was not accidental that the first major piece of legislative law was the Arbitration Act of 1888 and the Erdman Act of 1898. The first act provided for voluntary arbitration to settle labor disputes, and the second act inaugurated the policy of government mediation and conciliation.

However, judicial reaction to the emergence of the labor movement remained negative well into the twentieth century. The courts began to use the labor injunction to curb strikes by labor. This form of remedy quickly became a standard to restore peace. In consequence, the development of the common law concerning trade unionism became the work of the equity judges proceeding from the inheritance of the early common law of criminal conspiracy. The use of the labor injunction in labor disputes constitutes one of the most controversial issues in labor law. Many jurists, scholars, and legislators have condemned the labor injunction as unfavorable to labor. However, the most important point is that it is the issuance of the labor injunction which provides the basis for county entry into labor disputes.

A court that issues labor injunctions is termed an equity court. The distinguishing feature of an equity court is that the
judge alone decides the case in dispute. There are no juries in
equity courts. In cases involving the injunction, the judge alone
decides whether or not the legal instrument shall be used.

In injunction cases the judge alone decides all issues of
fact and law. A person who violates an injunction is held in con­
tempt of court. It is important also to note that the judge who
issues the injunction determines whether the court order has been
violated or not. Severe penalties can be inflicted on violators
of the injunction. The power of the judge in a court of equity is of
sweeping character. May he not abuse his power? In resolving labor
disputes, is it proper for the same person to act as judge, jury,
and executioner?

The injunction is a valuable tool within the American judicial
system. An equity court should protect property before injury occurs.
The equity court is preventive while the trial court is remedial.
But, where the judgment of one man is the sole standard in deter­
mining justice, there is always the possibility of abuse. The
injunction gives swift and definite action based squarely upon the
judgment of one person.

Labor injunctions were used frequently around the turn of the
century. The chief reason for this was the United States Supreme
Court upheld the labor injunction as being constitutional in the
famous Debs case. In affirming the use of injunction in labor
disputes, the Court set aside the contention that the proper arm of

20In re Debs, Petitioner, 158 U. S. 564 (1895).
government to suppress or control the action of strikers was the
effective branch, stating: "Is the army the only instrument by
which rights of the public can be enforced and the peace of the nation
preserved?" With the constitutionality of the labor injunction
affirmed, this instrument became a potent factor in labor-management
controversies in the private sector. Professor Witte recorded that prior to 1931 state and federal courts issued a total of 1,845 labor injunctions.

Judicial intervention in labor disputes came under increasing
criticism from those concerned for the prestige of the courts.
Felix Frankfurter, as a member of the faculty of the Harvard Law
School, spelled out seven reasons for reform concerning the labor
injunction. They were: (1) temporary restraining orders against
union conduct in strikes and picketing were usually issued ex parte,
i.e., without a hearing; (2) they were frequently based upon affida-
vits submitted on behalf of the employers by guards or private
detectives; (3) the complaints and accompanying affidavits were in
stereotype form, raising more than a suspicion that conformity to
legal formula rather than accuracy of narrative guides; (4) the
temporary restraining order while in theory providing merely inter-
locutory relief, was actually in many instances the means of breaking
the union's strike; (5) the injunction was often phrased in complex
terminology, so that the ordinary workman would not be able to know
clearly what he had been enjoined from doing; (6) the armed guards

21 Edwin E. Witte, The Government in Labor Disputes (New York:

22 Felix Frankfurter and Nathan Greene, The Labor Injunction
supplied by private detective agencies, who had given the affidavits, were often sworn in as deputy marshalls to enforce the decrees; and (7) if violence or breaches of the peace occurred, the unionists did not have the safeguards of ordinary criminal prosecutions before a jury, but were subject to contempt of court proceedings before the judge who had issued the injunction.

The dissent of Judge Oliver Wendell Holmes, Jr., while he was a judge on the Supreme Judicial Court of Massachusetts in 1900 was also a forerunner of later, more recent developments in labor law. Even though that High Court ruled picketing to be unlawful, the famous judge in dissent said:

One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way.

If it be true that workingmen may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by agreement, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control.23

While the courts were pursuing their unsuccessful quest for an answer to the challenge posed by the labor movement, the other two branches of government were slowly becoming sensitive to the same

challenges. Whereas judicial policy in essence was one of selective suppression of organized labor's activities whenever they encroached too heavily upon other segments of society, the legislative and executive branches began to articulate policy more favorable to labor.

By the 1930's it had been clear for some time that the courts could not be expected to provide answers to the problems presented by the labor movement. They simply were not the appropriate institution to formulate a rational basis for distinguishing between tolerable and intolerable concerted employee activity. They extrapolated from precedent in an attempt to regulate union activity. By the time a controversy or dispute reached the courts, labor strife had already occurred. Remedies available to the judges limited the range of judicial decision to the question union activity should be punished or suppressed. Clearly, the time had come by the early 1930's for the legislative branch to enact statutory guidelines to promote industrial peace within the labor movement. Perhaps it was the abuse of the labor injunction more than any other factor which caused legislators to believe they must act.

MODERN LABOR LAW AND COLLECTIVE BARGAINING

The basic mechanism for local school governance is the board of education. A board of education, functioning under authority of state law, traditionally did not have to worry about making unilateral decisions about local educational issues under many circumstances.
Hazard\textsuperscript{24} writes that to the extent that collective bargaining impinges on this authority to seek bilateral decision making, the school board's control of governance power is altered, if not diminished. He asserts by the very nature of the process of collective bargaining, the once unilateral decision making function has given way to bilateral determination of educational decisions.

Public sector unionization and collective bargaining represent the most important development in labor relations since the post Wagner Act period of the 1930's and 1940's.\textsuperscript{25} Since the year 1965 dramatic changes have taken place in the body of public sector law. These changes have both contributed to, and resulted from public sector labor law. Although labor law in the private sector is federalized, the most important feature of public sector labor law is its dependence for authority upon local and state government statutes. There are wide variations in public sector labor relations contingent upon differing judgmental evaluations. One can only surmise that even though the body of law in the public sector is substantial, it probably is still in the formative stage.

In an effort to determine the possible consequences of collective bargaining upon the governance of public schools, it seems necessary to review the legal basis and the historical development of collective bargaining in the private sector. This review is necessary since the model for collective bargaining in the public sector has been borrowed practically intact from the private sector.


Section 1 (b) (3) of the National Labor Relations Act provides that the National Labor Relations Board shall not decide that any unit is appropriate for the purposes of collective bargaining if such unit includes both professional employees and employees who are not professional employees. A premise underlying this principle is that professional employees should not be automatically included in bargaining units with non-professional employees against their wishes. The rationale is that professional employees usually have distinct professional standards, different working conditions, and are generally reimbursed economically on a different basis than non-professional employees.

Within the context of the act, the term professional employee is:

Any employee engaged in work predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished can not be standardize in relation to a period of time; and requiring knowledge of an advanced type in a field of science of learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or hospital, as distinguished from a general academic education or from an apprentice-ship or from training the performance of routine, mental, manual or physical processes; or, any employee, who has completed the courses of specialized intellectual instruction and study described in clause IV of paragraph a, and is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (2)."\(^{26}\)

\(^{26}\) *The National Labor Relations Act.*
In consequence, although the National Labor Relations Act gave employees in the private sector the right of self-determination in designating collecting bargaining agents, and just as important, to have collective bargaining, public employees, including public school teachers, were not given this right.

As reported earlier in this chapter, the utilization of the conspiracy doctrine and the employment of the labor injunctions by the judiciary presented major obstacles for the evolution of private sector labor law. However, in 1932, the legislative branch of government passed the Norris-LaGuardia Act. This act made major reforms in federal court labor injunction procedure, prohibiting injunctions altogether that would deny peaceful collective action by labor. The preamble of the act recognized the importance of the individual unorganized employee in establishing the terms and conditions of employment in industry. The preamble declared that labor should have full freedom of association, self-organization, and designation of representatives of workers' own choosing, to negotiate the terms and conditions of employment, and that workers should be free from the interference restraint, coercion of employers of labor. This statute remains in force today and constitutes a basic foundation of modern labor law.

The Norris-LaGuardia Act was purely economic in origin. At the depths of the economic depression of the 1930's the act was passed by Congress in order that the workers' bargaining power would be
strengthened and that earning and working conditions would be improved by concerted action. Labor injunctions were obstacles toward accomplishing these goals and the act deprived the courts to issue injunctions in the private sector.

Cox\(^{27}\) maintains the Norris-LaGuardia Act rested upon closely reasoned theory. Its basic assumption was that law served no useful purpose in labor disputes except to protect property and preserve public order. He suggests the philosophical framework of the act was the value the government should not resolve labor disputes or substitute its wage determination for private contracts in a free market. Thus, unionism, strikes, boycotts, and picketing were considered necessary in the competitive struggle for economic freedom. The Norris-LaGuardia Act introduced the only period of unqualified laissez faire in labor relations in modern labor law history.\(^{28}\)

The next legislative enactment by Congress was the ill-fated National Industrial Recovery Act. In 1934 Congress created the first National Labor Relations Board to investigate the facts in labor disputes. Any orders issued by this board were reviewable by the federal circuit courts of appeal. This board functioned until the decision of the United States Supreme Court invalidated the National Industrial Relations Act in May, 1935.\(^{29}\)


\(^{28}\)Ibid.

\(^{29}\)Schecter Poultry Corp. v. United States 295 U. S. 495, (1935).
Interestingly, from 1933, the year in which the labor act was passed, until 1935, the year in which this act was declared unconstitutional, union membership increased from 2,973,000 to 3,890,000, almost a thirty-three percent increase.30 These figures verify the importance of legislation regarding labor relations law for the growth and promotion of the labor movement.

A year later Congress once again enacted another act favorable to the labor movement similar to the National Industrial Recovery Act which was upheld by the United States Supreme Court in 1937. This legislative act, known as the National Labor Relations Act or the Wagner Act, was enacted in 1935. This statute declared it to be the policy of the federal government to encourage the practice of collective bargaining and provided full freedom of worker self-organization as a means of facilitating the free flow of interstate commerce. It is noteworthy that the statute was extremely partisan legislation in so far as restraints were imposed upon employers but not upon unions. The right of self-organization was secured and collective bargaining was made compulsory under section 8 (5) of the act. All employers in the private sector whose labor practices might affect interstate commerce were subject to the act. This statute placed the full power and influence of the federal government behind the labor movement. In addition to forbidding five employer unfair labor practices, this

The fundamental purpose of the Wagner Act was also economic in origin. It attempted to promote self-determination for labor and to improve the overall operation of the nation's economy. The law was to accomplish these goals through the effective implementation of collective bargaining. In retrospect, it seemed necessary to stimulate the growth of labor as a prerequisite for effective collective bargaining. A legal climate was needed to protect the growth and functioning of the labor movement, a legal climate free from unnecessary restraints.

Section 8 (5) is the core of the Wagner Act. This section makes it an unfair labor practice for an employer to refuse to bargain collectively with labor. This provision in reality eliminated the need for the recognition strike, undoubtedly one of the major reasons for strikes by public school teachers in recent years. The intent of this section was enacted to promote the collective bargaining process once a bargaining unit was established.

It is most apparent the Wagner Act stimulated the growth of the union movement. Union membership increased from about four million in 1935 to about sixteen million in 1941. In addition, the Wagner


Act increased greatly the number of collective bargaining agreements. In 1946, the last full year of the Wagner Act before it was amended but not replaced, the Bureau of Labor Statistics reported that the number of contracts exceeded fifty thousand. Authorities of labor law suggest that these figures support the notion that industrial peace and not industrial strife is the result of the collective bargaining process.

In summary, the Wagner Act sought to promote collective bargaining by denying the opportunity by employers and other societal restraints to interfere with the rights of workers to self-organization and collective bargaining. The law did not seek to promote strong unions as an end in itself. In reality, however, it did do just that. Once again, employers attempted to nullify the act by requesting the assistance of the United States Supreme Court. However, by a majority of one, the Court held in the already cited Jones & Laughlin case that the act was constitutional. The Wagner Act remained intact until 1947, the year of the Taft-Hartley Act.

The strike experience in the year 1946 was the worst the American economy ever experienced. In that year, 4,986 strikes occurred. This strike record was perceived as evidence that there were inadequacies in the Wagner Act. As previously stated, the Wagner Act was highly partisan pro labor. The Wagner Act addresses itself primarily to unfair employer practices. The Labor-Management Relations Act or the Taft-Hartley Act which was enacted by Congress in 1947

33See Table 2 on page 95 earlier in this chapter.
modified but did not replace the Wagner Act. The attitude of the nation can be seen in provisions of the Taft-Hartley Act which dealt with union labor practices, the rights of employers as individuals, the rights of employers, national emergency strikes and the closed shop. The act attempted to balance the power between employer and employee and to correct some of the inequities which had occurred during the previous twelve years. This act recognized the concern to protect the rights of individual employees against their own labor organizations. There is a provision which allows any employee the right to present grievances directly to the employer without union intervention. Also, a major restriction was imposed on the dues checkoff process. The checkoff remained legal, but only if the individual employee authorized it in writing.

The Taft-Hartley Act remained in effect for twelve years before controversy over its provisions resulted in further legislative reform. The Labor-Management Reporting and Disclosure Act of 1959, otherwise known as the Landrum-Griffin Act, was designed to amend provisions of the Taft-Hartley Act of 1947. Title VII of the Landrum-Griffin Act dealt with problems arising from the efforts of Congress to solve federal-state jurisdiction disputes in labor cases falling within the interstate commerce when the National Labor Relations Board declined to review such cases. This act provided that states could assert jurisdiction over labor disputes turned down by the National Labor Relations Board. Title VII also added a seventh union unfair labor practice to the existing six contained in the Taft-Hartley Act of 1947. Essentially, this act was two statutes.
One statute provides a code of conduct which guaranteed certain rights to union members within their union and imposed certain obligations upon union officials. In brief, the code did the following: (1) every labor organization is required to have a constitution and by-laws containing certain minimum standards and safeguards. Reports on the union's policies and procedures, as well as annual financial reports, must be filed with the Secretary of Labor and must be disclosed to the union's membership; (2) Union members have a bill of rights to protect their individual rights within the union; (3) standards are established for union trusteeships and union elections. Reports on trusteeships must be submitted to the Secretary of Labor; (4) a fiduciary obligation is imposed on union officers, and they are required to file reports with the Secretary of Labor on conflict of interest transactions; (5) employers and labor relations consultants are required to file reports on expenditures and arrangements that affect employee's organizing and bargaining rights; and (6) the Secretary of Labor is made the guardian of union conduct. He is the custodian of reports from unions and their officers and he is given the power to investigate and prosecute violations of the provisions of the act.\(^3\)

It is evident from this brief survey of private sector labor law enacted by the legislative branch of government that public policy toward organized labor has changed significantly. Public policy was suppressive of labor until the year 1932. It promoted

vigorous encouragement until the year 1947. There was modified encouragement concomitant with regulation until 1959, and up to this time, there is detailed governmental regulation under the auspices of the Secretary of Labor.

Current labor activity and its acceptability by the public will determine future shifts in public policy toward labor. Since 1937 when the constitutionality of the Wagner Act was upheld, the nation's highest Court has permitted the legislative branch of government wide latitude to shape public policy toward labor in the private sector. It appears safe to state that every federal law since Norris-Laguardia has expanded the scope of government regulation within the labor-management arena. Legislative control over collective bargaining started in 1932 when the judiciary was limited in the use of injunctions in dealing with labor disputes in the private sector. In 1935 Congress restricted employer conduct. In 1947 it acted to deal with internal union affairs. It appears that each time Congress has reviewed its enacted labor laws, it has increased the scope of regulation of collective bargaining. It is possible that this increased scope of collective bargaining could occur in the public sector.

COLLECTIVE BARGAINING AND THE SCHOOL BOARD

Collective bargaining by definition is an excercise in pragmatism. It requires an accommodation of potentially conflicting view of two parties who adapt the peculiarities of their own local social and financial environment to their employment relationship. The result is an agreement to which each has contributed and which each voluntarily agrees to support, but it may very well not completely satisfy either.  

The trend toward militancy in public sector relations is most prevalent today in the field of education. Teachers are demanding not only the right to bargain collectively over terms and conditions of their employment, but the right to participate in the decision making process of school board policy. Public school teachers along with other employees of federal, state, and local governments are specifically excluded from federal labor relations at this time. Therefore, as a result of this exclusion, regulation of employment relations in public education is left to the states.

The right of teachers to organize and to associate for purposes of collective bargaining is now fairly well established. During the first half of the twentieth century, this right was generally denied to teachers. The Seventh Circuit Court of Appeals phrased the currently accepted view in clear and precise language regarding teachers being involved in the collective bargaining process: "There is no question that the right of teachers to associate for the purpose of collective bargaining is a right protected by the First and Fourteenth Amendments of the Constitution.

Many legal scholars maintain that teachers must distinguish, however, between the right to join an association and the right to strike. In general, public employees are prohibited by the common


law tradition and state statutes from striking and only the states of Hawaii and Pennsylvania permit strikes by teachers, and Alaska, Vermont, and Michigan have no legal penalties for strikes. 39 Courts have repeatedly upheld tradition and statute which prohibit strikes by teachers and other public employees and such laws have generally been found constitutional. The right to join educational associations and to bargain collectively does not carry with it the private sector's right to employ the strike weapon in labor disputes. Merely because hundreds of strikes by teachers have occurred in recent years does not legalize such strikes.

In the private sector the power concomitant to collective bargaining exercised by employees is the strike. The right of the private employee to strike is upheld by courts and protected by statutes. The opposite is true in public employment in the majority of the states. Unfortunately, the collective bargaining model of the private sector has introduced the strike ultimatum into the public sector as the collective bargaining process has been adopted by boards of education and teacher unions to resolve labor disputes.

Table 3 reveals collective bargaining coverage by each state. It reveals twelve states mandate collective bargaining for all public employees and indicates eleven states require collective bargaining for all education personnel. It shows twenty-one states mandate collective bargaining for its professional employees and that eighteen states dictate collective bargaining with its classified

39 37 ALR 3d.
<table>
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<tr>
<th>All Public Employees</th>
<th>All Education Personnel</th>
<th>Kindergarten-High School Professional</th>
<th>Kindergarten-High School Classified</th>
<th>Postsecondary Professional</th>
<th>Postsecondary Classified</th>
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<td>New Hampshire</td>
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<td>New Jersey</td>
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<td>New Mexico</td>
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<td>North Dakota</td>
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<td>Ohio</td>
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<td>Oklahoma</td>
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<td>Oregon</td>
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<tr>
<td>Pennsylvania</td>
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<tr>
<td>Rhode Island</td>
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<td>South Carolina</td>
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<tr>
<td>Texas</td>
<td>Key</td>
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<tr>
<td>Utah</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>* = Bargaining required by law.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
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<tr>
<td>Washington</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>x = Parties must &quot;meet and confer.&quot;</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wyoming</td>
<td>Research: Doris M. Ross</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

school employees. At the post-secondary level, the table reveals fifteen states demand collective bargaining with no stipulations. Seventeen states mandate collective bargaining with no stipulations with its classified post-secondary personnel.

The public sector has largely ignored its labor relations problems until confronted by crisis conditions. Collective bargaining by its very definition dictates bilateral determination of wages and employments conditions between employees and employers. There is a need for public school administrators to understand the complexities of the process known as collective bargaining. Tables 4 and 5 summarize the actions taken by teacher unions and associations in order to obtain their goals and objectives. Table 4 indicates that within the twenty-one year span of 1940 through June, 1971, there was a total of seven hundred thirty-seven strikes. It also indicates that 623,187 persons were involved in these labor disputes. Six million, one hundred eighty-six thousand, five hundred-fourteen working days were lost by these persons because of these labor disputes.

Table 5 is a year by year accounting of strike activity by teacher unions and associations. It shows that in the 1960-1961 school year there were only three strikes. As late as the school year 1966-1967 there still were only thirty-four teacher strikes. However, in the school year 1967-1968, the number of teacher strikes rose dramatically to one hundred fourteen. In an eleven year period from the 1960-1961 school year to the 1970-1971 school year, there were six hundred thirty-one teacher strikes affecting six hundred
thousand, three hundred seventy-five persons. The number of instructional days denied to students of school-age totaled nearly six million days.

Two major conclusions can be derived from these two tables. The first is that the teacher's position today is reminiscent of labor in the private sector in the period prior to the passage of the Wagner Act. The second one is that machinery has not yet been created to accommodate mature collective bargaining between boards of education and teacher unions and associations.

In the public schools, machinery has not yet been created to accommodate mature collective negotiations to the needs of employees. Procedures must be developed which will eliminate the illegal strike activity. Machinery must be developed which will serve to eliminate the pressure from board members and school administrators, who at present are required to develop their own election and recognition procedures. Undoubtedly, the cause of many of these strikes would have to be a failure upon the part of boards of education and teacher unions and associations to know how to utilize the collective bargaining process meaningfully. One can also surmise that there was little, if any, understanding of the legal definition and meaning of the collective bargaining process.

Experts and authorities in the field of public sector law would agree that creative mechanisms related to the collective bargaining model of the private sector are needed in order to eliminate the

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### TABLE 4

**SUMMARY OF TEACHER STRIKES, WORK STOPPAGES, AND INTERRUPTIONS OF SERVICES, BY TYPE OF ORGANIZATION INVOLVED**  
JANUARY, 1940 THROUGH JUNE, 1971

<table>
<thead>
<tr>
<th>Type of Organization</th>
<th>Number of strikes, work stoppages, and interruptions of service</th>
<th>Percentage of Total</th>
<th>Estimated Number of Personnel involved</th>
<th>Estimated Number of man-days involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Association</td>
<td>460</td>
<td>62.4%</td>
<td>320,735</td>
<td>1,397,952</td>
</tr>
<tr>
<td>Teacher Union</td>
<td>205</td>
<td>27.8%</td>
<td>281,238</td>
<td>4,471,263</td>
</tr>
<tr>
<td>Independent Organization</td>
<td>17</td>
<td>2.3%</td>
<td>3,103</td>
<td>9,158</td>
</tr>
<tr>
<td>No Organization</td>
<td>46</td>
<td>6.2%</td>
<td>2,479</td>
<td>21,400</td>
</tr>
<tr>
<td>Joint Union Association</td>
<td>9</td>
<td>1.2%</td>
<td>16,731</td>
<td>310,741</td>
</tr>
</tbody>
</table>

Total: 737 99.9% 624,187 100.0% 6,186,514 100.0%


### TABLE 5

**SUMMARY OF TEACHER STRIKES, WORK STOPPAGES AND INTERRUPTIONS OF SERVICE, BY SCHOOL YEARS, BY ORGANIZATION, BY MONTH, JULY, 1960 THROUGH JUNE, 1971**

<table>
<thead>
<tr>
<th>School Year</th>
<th>Number</th>
<th>Percentage of Total</th>
<th>Personnel Involved</th>
<th>% of Man Days Involved</th>
</tr>
</thead>
<tbody>
<tr>
<td>1960-61</td>
<td>3</td>
<td>.5%</td>
<td>5,080</td>
<td>.9%</td>
</tr>
<tr>
<td>1961-62</td>
<td>1</td>
<td>.2%</td>
<td>22,000</td>
<td>3.7%</td>
</tr>
<tr>
<td>1962-63</td>
<td>2</td>
<td>.3%</td>
<td>2,200</td>
<td>.4%</td>
</tr>
<tr>
<td>1963-64</td>
<td>5</td>
<td>.8%</td>
<td>11,980</td>
<td>2.0%</td>
</tr>
<tr>
<td>1964-65</td>
<td>12</td>
<td>1.9%</td>
<td>15,083</td>
<td>2.5%</td>
</tr>
<tr>
<td>1965-66</td>
<td>18</td>
<td>2.9%</td>
<td>33,620</td>
<td>5.6%</td>
</tr>
<tr>
<td>1966-67</td>
<td>34</td>
<td>5.4%</td>
<td>10,633</td>
<td>1.8%</td>
</tr>
<tr>
<td>1967-68</td>
<td>114</td>
<td>18.1%</td>
<td>162,604</td>
<td>27.1%</td>
</tr>
<tr>
<td>1968-69</td>
<td>131</td>
<td>20.8%</td>
<td>128,888</td>
<td>21.5%</td>
</tr>
<tr>
<td>1969-70</td>
<td>181</td>
<td>28.7%</td>
<td>118,636</td>
<td>19.7%</td>
</tr>
<tr>
<td>1970-71</td>
<td>130</td>
<td>20.6%</td>
<td>89,651</td>
<td>14.9%</td>
</tr>
<tr>
<td></td>
<td>631</td>
<td>100.2%</td>
<td>600,375</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

strife and ill-will created by hostile and damaging strike activity within the public sector. Engle states:

Those who question the right of public school teachers to negotiate and bargain collectively base their basic objection by contending that negotiation and collective bargaining constitute a serious invasion of school board authority. To understand this objection, it is vitally important to understand that the terms negotiations and collective bargaining have a legal connotation much different than merely providing various groups the opportunity to appear before or, in some other fashion, to present their requests to a school board. School boards have permitted this type of activity for years.\(^1\)

To react to this assertion in a rational manner, one must understand fully what collective bargaining means legally in terms of enforceable standards. The federal courts and the National Labor Relations Board have determined what collective bargaining means in terms of their interpretations of section 8 (d) of the National Labor Relations Act. This section imposes a duty on employers and unions "to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment." It further states that "such obligation does not compel either party to agree to a proposal or require the making of a concession." It is this last condition that may have been overlooked or ignored by neophytes who have been involved in the collective bargaining process between school boards and teacher unions.

\(^1\) Ibid.
Good faith bargaining does require, in rejecting demands, the offering of reasons for rejection and some counter proposals. It requires recognition by boards of education and teacher associations, not merely formal but real, that collective bargaining must be a shared process to the degree each party has a right to play an active role. In 1964, the National Labor Relations Board dealt with an approach familiarly known as the Boulwarism approach which is illustrative of the lack of a shared approach.\(^2\)

The employer listened to and analyzed the demands offered by the union in this case. Then, the company made its best and last offer which included everything the employer found to be of merit. It was a single first proposal with nothing held in reserve for later negotiations. The company clearly stated it would not change its position unless new information was presented. The company asserted it would take a strike rather than to make any adjustments. It was an approach which offered everything in one package with no further opportunity to share the give-and-take process of collective bargaining.

The National Labor Relations Board rejected this type of bargaining on the basis it was a mere formality and changed the role of the employer to that of an adviser. Collective bargaining does not mean that a board of education must ultimately capitulate to teacher demands. It does not mean that there is a necessity to make any degree of a concession as an outgrowth of any demand. However, it

does mean the process must be a shared one in a cooperative and
give-and-take climate. In collective bargaining, school adminis-
trators must be able to address themselves to issues, not person-
alities or other influences having nothing to do with issues being
discussed.

In another decision which has significance for school adminis-
trators, the Supreme Court in a landmark decision in its inter-
pretation of section 8 (a) (5) and 8 (d) recognized three categories
of bargaining subjects. This decision established for the first
time a distinction between mandatory and permissive subjects of
bargaining. These three categories are: (1) statutory or manda-
tory, subjects about which the parties must bargain; (2) nonstatutory
or permissive, subjects about which the parties may bargain; and
(3) illegal subjects about which the parties are legally prohibited
from bargaining. If Ohio's General Assembly ever passes a public
employer's labor relations act, one way to maintain the degree of
decision making a board of education does possess would be to clearly
define appropriate subjects within these three categories.

In yet another decision which has far reaching consequences to
strengthen the local board of education's decision making function,
there was a case involving management's rights. The National Labor

\[\text{\footnotesize Weitzman, Loc. cit., p. 21.}\]
Relations Board ruled a company's management rights clause was per se violative of section 8 (a) (5) of the National Labor Relations Act, regardless of its good or bad faith. The fifth Circuit Court refused to enforce the Labor Board's decision, holding that the employer's position represented neither a per se violation of its bargaining duty nor an indication of bad faith. Any professional negotiations agreement between a board of education and a teachers' union or association should contain a management's right clause that clearly delineates that a board of education in Ohio is required to "make such rules and regulations as are necessary for its government and the government of its employee."\(^{46}\)

Collective bargaining is a tool, a process to produce to compromise. It is a tool which, if used properly, can guarantee that education will remain the cooperative enterprise of teachers, school administrators, and boards of education. An effective professional negotiations agreement should contain a set of procedures, written and officially adopted by the parties to the agreement which provides an orderly method to bargain collectively through professional channels. There should be, also, an appeal procedure in the case of honest disagreement which excludes the fear and threat of strike activity.

Hazard\(^{47}\) charges the development of collective bargaining in the public schools, through legislation, case-law, and administrative

\(^{46}\) Section 3313.20, Ohio Revised Code.

agencies, has profound impact on school governance. The local
board's power to enact unilateral rules, regulations, and procedures
for school governance has been eroded in many school systems and
it is unreal to expect a return to the old ways. He writes there
is some reason to expect bargaining to occur on yet a third party,
the public at large. Parents also want a voice in educational
decisions affecting their children's education.

Hazard concludes there are several implications for school
governance from the development of teacher-board collective bargaining.
First, collective bargaining has significantly modified school
governance. He states the very fact that school systems in prac­
tically every state recognize the legitimate role of organized
teachers in operational decision making constitutes a major change in
school governance. To the extent that teachers must be consulted
in educational decisions, the governance process is altered according
to this writer.

Second, the current interest in educational accountability,
performance contracting of educational services, credentialling by
performance and other management oriented schemes are moving toward
a confrontation with collective bargaining procedures. Teachers,
he charges, may well argue that their accountability must not exceed
their control of the variables in the educative process.

Third, organized teachers may continue their bargaining advan­
tages through refined national strategies. Local school boards
have a related disadvantage. The national school board organization lacks a positive national bargaining strategy due to its stance concerning local control of education.

Finally, Hazard asserts that some sense of national school governance can emerge from the tumult created by the advent of the collective bargaining process into public school governance. He writes that whatever people learn from the teacher-board collective bargaining experience, perhaps the single most useful lesson is that responsible participation by teachers in the governance of public schools will not shake down the school house walls.

This chapter has indicated that there have been dramatic and sweeping changes in public policy regarding the labor movement in the public sector. It has shown that initially the judiciary held a hostile attitude toward the collective action by labor reflecting the classical view of economics. It is demonstrated that today the federal government regulates labor relations in the private sector to maintain industrial harmony. This chapter has substantiated the principle that the collective bargaining process is protected by federal statute and regulation to maintain a balance of power between labor and management in the private sector. It has revealed that there is a rapidly developing body of public sector labor law. The contents of this chapter verify to school administrators and members of boards of education that the collective bargaining process is rooted in labor law which emerged from social legislation and economic concerns the nation faced in the 1930's and 1940's. School governance is now an integral part of public sector labor law.
Collective bargaining is a factor in school governance which is here to stay. Chapter IV contains six studies of teachers' strikes where the judiciary was highly involved in restoring industrial peace and harmony. These studies will be analyzed to determine in which instances and to what degree a lack of expertise in the collective bargaining process has been one of the major factors which precipitated teachers' strikes in these Ohio school districts. It may also be interesting to note whether the right itself to obtain collective bargaining privileges was a precipitating cause for these strikes.
CHAPTER IV

HISTORICAL SYNOPSIS OF SIX TEACHERS' STRIKES IN OHIO

This chapter presents six selected historical synopses of school districts where there were overt conflicts between boards of education and their respective teachers' unions and associations during 1972 through the 1974 calendar years. In chapter two, it was reported that the school districts in which these strikes occurred reflected an extremely high degree of involvement by the judiciary in order to resolve these public sector teacher labor disputes.

It is important to remember that Ohio is still one of approximately twenty states which has no statute authorizing or governing the right of public employees to bargain collectively with their public employers. There is no public relations employment act in Ohio, yet 83.7 percent of Ohio's school boards bargain collectively with their teachers' unions and associations. Therefore, the basic question is not whether collective bargaining is impossible in law or by definition in relation to teacher-board employment practices. Rather, it is: what distinguishes collective bargaining in the public sector from its private sector counterpart; and what problems does it pose for public policy?

\[1\] Data accurate as of January 1, 1976 on file with the Ohio School Boards' Association.
Dunlop and Chamberlain\textsuperscript{2} write there are four main elements which distinguish collective bargaining for government workers from bargaining in the private sector. One is that the right to strike is usually taken away by law or from force of public opinion. A second is that government services are financed indirectly through taxes and public appropriations through such public bodies as boards of education. A third element is that management immediately involved in the collective bargaining process actually lacks the final power to reach agreement. A fourth element is that both at law and by tradition inclination, legislative bodies are ordinarily unaccustomed to reduce any degree of their decision making jurisdiction.

When these four elements are applied to educational systems for comparison, one readily sees the appropriateness of application. It is illegal in Ohio both at common law and by statutory law for public school teachers to strike. Also, Ohio's citizens do not directly reimburse boards of education the costs to educate their children; rather, such costs are borne through public taxation. Further, members of negotiating teams representing boards of education can only recommend the final terms of an agreement to the ultimate decision maker, the board of education. Finally, the tradition and time honored value that the public schools of Ohio belong to all its citizens is a value deeply cherished by Ohio's citizenry. This profile should serve as a basic reference as these six case studies of teachers' strikes are analyzed.

Another suggested frame of reference which is helpful as one reads these case studies is to understand that a set of conditions must exist which make the process of collective bargaining possible. This set of conditions include: (1) the right to organize; (2) the right to obtain official recognition; (3) the opportunity to bargain over at least some substantive matters besides wages and terms and conditions of employment; (4) the opportunity to agree to a written agreement prescribing some rules of the employment relationship; and (5) provisions for resolving questions of interpretation and application of the terms negotiated. These two frames of references are helpful when one summarizes teacher strikes in Ohio during recent years.

Snelgrove completed a comprehensive study of the status of collective bargaining in Ohio during the 1970-1971 school year. His study indicated that the failure of Ohio's General Assembly to implement any public employment labor relations act had not precluded the implementation of local collective bargaining agreements in Ohio. His study revealed that out of 400 school districts represented in his sampling, two hundred seventy-six school districts, or 69 percent of those responding, had stated they had written, formal collective bargaining agreements.

Another interesting and important finding of Snelgrove's study was the nature of strike activity among Ohio's public school teachers.

\(^3\) Ibid.

during the school years 1965 through 1970. One must remember, how­
ever, that the degree of strike activity reported was based on a
sampling of four hundred school districts. Nevertheless, his study
indicated there were at least fifty-six teacher strikes between the
school years 1965 and 1970. Twenty-two strikes were caused by
impasse concerning salaries. Twelve happened because school levies
were defeated. In eight strike situations, school boards refused
to negotiate. Four strikes occurred because four boards of education
refused to entertain the idea of deficit spending in order to
increase expenditures. Ten strikes fell into a miscellaneous category.
This study, based on a sampling of 400 school districts, revealed
that, on the average, there were at least eleven strikes a year.

Even though Table 6 indicates that there was an average number of
twenty-two strikes in Ohio during the four year period, 1972 through
1976, this Table may also indicate that the school years 1972
through 1974 may have been the peak years insofar as teacher strike
activity in Ohio is concerned. Only six teacher strikes occurred
during the first six months of the 1976 calendar year.

TABLE 6

STRIKE ACTIVITY IN OHIO'S SCHOOL DISTRICTS

<table>
<thead>
<tr>
<th>School Year</th>
<th>Number</th>
<th>School Days Lost</th>
<th>Instructional Days Lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1972-1973</td>
<td>28*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1973-1974</td>
<td>28</td>
<td>151</td>
<td>176,635</td>
</tr>
<tr>
<td>1974-1975</td>
<td>18</td>
<td>90</td>
<td>161,086</td>
</tr>
<tr>
<td>1975-1976</td>
<td>14</td>
<td>80</td>
<td>66,617</td>
</tr>
<tr>
<td>January-June, 1976</td>
<td>6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: *Ohio Education Association: all other data obtained through
the Ohio School Boards' Association. Blank spaces indicate date unavailable.
Snelgrove's study on the status of collective bargaining in Ohio in the school year 1970-1971 concluded: (1) Two hundred seventy-six school districts, or 69 percent, of the 400 responding to his questionnaire, had formal collective agreements; (2) One hundred eighty-four school districts, or 46 percent, had some form of negotiated contracts with non-teaching employees; (3) The majority of school districts reporting negotiated agreements with non-teaching employees and administrative groups had had agreements with these groups for not more than two years while the majority of school districts with such agreements with teacher groups had been negotiating with them for not more than three years; (4) Two hundred fifty-four districts, or 92.4 percent, of 276 with agreements with teachers' organizations responding, reported that their teachers had officially requested professional negotiations; (5) The scope of collective bargaining was quite broad, including such issues as hospitalization and surgical insurance, personal leave, life insurance, major medical insurance, evaluation procedure, sick leave, extra-duty pay, transfers, class size, et cetera; and (6) Based on a sampling of 400 school districts, there were at least eleven teacher strikes each year during the five year period 1965 through 1970. Of the forty conclusions in this study, these six seemed the most relevant for purposes of relating those findings to the current study. It would be interesting to update Snelgrove's study to determine the degree of sophistication and expertise which has developed in the past six years in the process of collective bargaining.
However, the pertinent question must now be raised: What forces have been operating within the greater social context to produce those conditions which have made the process of collective bargaining a reality within the public sector for Ohio's public school teachers? Has collective bargaining been introduced into Ohio's public school systems simply through the impact of teachers' strikes? However, since many teacher-board public sector strikes ultimately appear before the judiciary for resolvement, perhaps the most relevant question should be asked at this time: To what degree has Ohio's judiciary been an influence, if any, which may have effected changes in teacher-board labor practices and relations. The research methodology of opinion briefing and a survey of twenty trial level court opinions pertaining to teacher-board strike activity may provide insights as to how the judiciary could have been instrumental, however unknowingly, in introducing the process of collective bargaining into the realm of school governance in Ohio's public school systems.

THE CAMPBELL CITY SCHOOL DISTRICT STRIKES

Within the calendar years 1972 through 1974 this steel city school district in northeastern Ohio experienced two teachers' strikes. In both instances, the question as to whether the Ferguson Act should be utilized to coerce striking teachers to return to their teaching assignments was studied by the chief school administrators and members of the Campbell Board of Education. In the first teachers' strike in May, 1972, after the Board of Education had passed an
enabling resolution authorizing the sending of dismissal notices should a strike occur, the Board of Education reversed its official position and verbally instructed the clerk-treasurer not so send such notices of dismissal under provisions of the Ferguson Act. The school superintendent thereby submitted his letter of resignation stating he doubted whether his services could any longer be effective on behalf of the school district. In the second teachers' strike in September, 1973, the Campbell Board of Education became the first school board in Ohio to invoke the Ferguson Act and send notices of dismissal to its striking teachers and employees.

The first teachers' strike in May, 1972 lasted seven school days and was ultimately settled before a judge of the Mahoning County Common Pleas Court shortly before scheduled hearings were to take place concerning the issuance of a temporary injunction enjoining the teachers not to strike. The Campbell Education Association had also filed another suit enjoining the Board of Education from not reemploying forty-two teachers.

In one of the two suits, the plaintiff Campbell Education Association filed a complaint against the defendant Campbell Board of Education. This suit charged that the defendant Campbell Board of Education had acted to terminate the employment of forty-two teachers.

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7 Campbell Education Association v. Campbell Board of Education, et al., Case No. 72 Cl 752, Mahoning County Court of Common Pleas, Youngstown, Ohio.
teachers and that the Board of Education had arbitrarily reduced the salaries of all teachers. It charged such action by the Board of Education was to interfere with and destroy the Association rights of the district's teachers and was a violation of the Civil Rights Act of 1871. These rights were further established by the First and Fourteenth Amendments of the Constitution of the United States and also protected under provisions of the Constitution of the State of Ohio. Plaintiff Campbell Education Association prayed that the Board of Education be enjoined from placing into effect its planned salary reduction and from terminating the employment of forty-two teachers who were members of the Campbell Education Association.

The second suit, a motion for a temporary restraining order, was filed by the Campbell Board of Education. This suit requested that the Mahoning County Court of Common Pleas grant a temporary injunction ordering teachers to return to their teaching assignments. It also requested a mandatory order against members of the negotiating team of the Campbell Education Association, commanding members to revoke strike instructions given to members of the Campbell Education Association. The suit maintained the Campbell Board of Education had no plain, timely or adequate remedy at law to prevent harm to the school system which would occur if a teachers' strike would happen.

The two suits were resolved at the same time before a judge of the Mahoning County Common Pleas Court. At the time of the

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8Campbell Board of Education v. Campbell Education Association, Case No. 72 Cl 775, Mahoning County Court of Common Pleas, Youngstown, Ohio.
scheduled hearings for both suits, legal counsel for the Campbell Board of Education presented a motion to dismiss. This motion presented ten grounds upon which the first suit by the Association should be sent out of court without any further hearings or consideration. The first ground stated the court was without jurisdiction to hear and decide the case under the Federal Civil Rights Act of 1871. The second ground maintained the Board of Education was not a "person" under the same act. The third ground asserted the Board of Education was protected from liability with respect thereto by the doctrine of sovereign immunity under Ohio Law. The seventh ground declared the Board of Education had already acted in a legal and proper manner under Sections 3319.11 and 3319.12 of the Ohio Revised Code when it passed resolutions to terminate forty-two limited teacher contracts and to apply a uniform reduction in salaries for all teachers. However, it had to be the tenth ground for dismissal which resolved this labor dispute. It said the Board of Education was prepared to rescind its actions not to renew the forty-two limited teacher contracts and to adopt the same salary schedule which was in effect in the 1971-1972 school year. It would seem the Campbell Board of Education was advised by legal counsel in both the public and private sector to settle its differences with the Campbell Education Association before the scheduled hearing and outside the realm of the court.

9MOTION TO DISMISS is on file in case number 72 Cl 752, Mahoning County Court of Common Pleas, Ohio.
In reviewing the ten points upon which the plea to dismiss was postulated, it is apparent agreement was reached out of court and in such a manner that neither party to the suit was unduly shamed. The Board of Education did succeed in reopening the schools. The teachers' Association, although it was not able to obtain a new teachers' salary schedule, agreed to accept the current salary schedule for at least another year. The major issue of significant impact in this settlement, however, was that of job security. The teachers' Association in this settlement was able to force the Board of Education to renew the contracts of forty-two teachers. It never was the intent of the administration nor the Board of Education to eliminate forty-two teaching positions. Fifteen teaching positions needed to be eliminated but in order to apply the principles of fairness and equity to all teachers on limited contracts, the Board of Education voted not to renew the contracts of all teachers who were not on tenure.10

Upon settlement, the journal entry of the court recorded for these two suits read: "The Board of Education may renew the contract of forty-two teachers on limited contracts and that it was not necessary for the clerk-treasurer of the Campbell Board of Education to attach to each contract a certificate as provided under Section 5705.412 of the Ohio Revised Code as said certificate is not applicable to the forty-two limited contracts."11

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11. This section of the Ohio Revised Code states a board of education cannot make any contract unless there is an attached certificate certifying there is money in the appropriate allocation to honor the contract.
The second strike in this school district occurred in September, 1973 when one hundred-nine teachers in the Campbell City School District staged a six day strike to protest the Board of Education's decision not to renew the teaching contracts of six teachers in April, 1973.

This strike started one day after the twenty-two strike in neighboring Youngstown, Ohio. This time difference was a major factor in determining what course of action the superintendent of schools would recommend to the Campbell Board of Education. Realizing that the superintendent of the Youngstown City School District sought and obtained injunctive relief to enjoin the teachers not to strike only to see two court orders openly defied, the Campbell Board of Education became the first school board in Ohio to send notices of dismissal to all its employees under provisions of the Ferguson Act. The city solicitor advised the superintendent of schools that all employees had to be dismissed. The superintendent of schools fully expected this course of action would coerce striking teachers and non-certificated employees to return to their duties. Believing this, the strategy of the chief school administrator was to recess the board meeting in which the resolution was passed to invoke the Ferguson Act. The meeting was not adjourned so that school board members could reconvene at a moment's notice to rescind the resolution in, technically, the same meeting.

After six days of controversy, the strike ended when the priests of the community were able to assist the opposing parties to reach agreement. Whether the Ferguson Act was the key element in resolving
this second strike is debateable since, once again, five of the six positions were restored. One teacher had accepted a teaching position in another state during the summer.

Before an analysis is presented of either teacher strike, it is necessary to review the financial picture of this school district. This school district had a highly industrialized property tax base. The valuation per pupil in September, 1972 was $38,037 ranking the school district twenty-second among Ohio's 621 school districts. State aid per pupil was only $142 ranking the school district 594th among Ohio's 621 school districts. Local tax revenue per pupil was $844 ranking the school district 43rd among all Ohio's school districts. In the 1972-1973 school year the average teacher salary in the school district was $10,627, the highest among thirty-five school districts within the political boundaries of Mahoning and Trumbull counties. For years the Campbell City School District had enjoyed an envious position in terms of financial solvency.

However, the district's largest tax payer, the Youngstown Sheet and Tube Company, had called for a reappraisal of its personal property valuation. The auditor's office of Mahoning County reduced the valuation by approximately nine million dollars. Thus, when the clerk-treasurer received the final tax settlement for the 1972 calendar year, there was a difference of $183,500 between what was actually received and the amount the tax commission had certified.

the school district would receive in January, 1972. To further complicate the financial picture, the Campbell Board of Education was forced to default on a $96,000 note due to a Mahoning County bank on December 31, 1972. Actually, there was a deficit to end the 1972 calendar year since the loss of revenue from the Youngstown Sheet and Tube Company left the Campbell Board of Education with a cash balance of $83.11 and unable to pay the $96,000 note. The loss of revenue from the same source for the 1973 calendar year was approximately $212,000. Within a two year span, the school district had to absorb a loss of revenue amounting to $395,000 due to devaluation of its property tax duplicate.

Under such dire financial circumstances, the school district's chief administrators had to recommend some action for the Campbell Board of Education to pursue in order to operate the school system within its financial means. The school superintendent during the first teachers' strike had proposed a series of resolutions which the Board adopted to curtail expenses. The superintendent during the second teachers' strike, in addition to recommending the submission of operating levies to the general public, wrote a letter of protest to the tax commissioner of the State of Ohio. He requested that the tax commissioner return to the school district the sum of $183,500, the amount the district had lost in the year 1972. He based his plea on the fact that the steel company had called for a reduction of its personal property valuation after April 15, 1972.
The plea became the basis of a suit which was finally settled by
the Supreme Court of Ohio in Youngstown Sheet & Tube Co. v. Kosydar.\(^\text{13}\)
In effect, the school district could not reclaim the amount of
money lost through devaluation.

Returning now to the first teachers' strike in May, 1972, the
superintendent of schools, anticipating a drastic cutback in revenue,
submitted fifteen resolutions to the Campbell Board of Education for
adoption in order for the school system to survive within its means.
Among his proposals were: (1) curtailment of the district's ath-
letic program, particularly in the elementary schools; (2) reduction
of differential payments on supplementary contracts by fifty percent;
(3) elimination of several non-teaching positions; (4) limitations
imposed upon the use of school facilities by community organizations;
(5) reduction in the salaries of all non-certificated employees by
ten percent; (6) termination of the limited contracts of forty-two
teaching positions; (7) termination of the supplementary contracts
of professional staff members; (8) elimination of transportation
for pupils in the elementary schools; (9) reduction in the salaries
of all professionally certificated employees by ten percent; (10)
elimination of two administrative positions in central office;
(11) elimination of programs in the areas of home economics, indus-
trial arts and instrumental music in the elementary schools; and
(12) reduction in the superintendent's salary by ten percent. The

\(^{13}\)Youngstown Sheet & Tube Co., v. Koysdar (1975), 44 Ohio
St. 2d.
Campbell Board of Education adopted each of the fifteen resolutions prepared and recommended by the school superintendent. Board members had been advised by the school superintendent that under Section 5715.141 of the Ohio Revised Code, a board of education cannot "make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer....that the amount of....has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances." The statute further stipulates "every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon."

However, teachers of the Campbell Education Association did not agree with the superintendent and members of the Board of Education that these curtailments of staff and program should take place. The posture of the Campbell Education Association was there should be no cutback in either program and staff and that the schools should be operated until all funds were expended. The administration and the Campbell Board of Education believed that the best course of action to follow was to curb expenditures as much as possible and to resubmit an operating levy for voter approval. The major task of the Board of Education was to live within its means and keep the school system operating as long as possible.

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Consequently, after the Campbell Board of Education had adopted these fifteen resolutions reducing expenditures, the Campbell Education Association filed suit in the Mahoning County Common Pleas Court. The local newspaper reported, "The Campbell Education Association filed a suit to enjoin the Campbell Board of Education from firing 42 teachers and cutting teachers' salaries." The suit also asked for $100,000 in damages. The lawsuit sought a temporary injunction pending a hearing on a permanent one.

As mentioned previously in this analysis, the Campbell Board of Education filed a suit for a motion for a temporary restraining order. It charged the teachers had unlawfully failed to report for duty and had willfully absented themselves from their teaching assignments. It stated the Board of Education had no plain, adequate or timely remedy at law and thus, it was within the power of the court to issue a temporary restraining order. The day of the scheduled hearing was one week later. As it turned out this day was to mark the last day of the teachers' strike.

Interestingly, in the first teachers' strike and its settlement, the demands of the Campbell Education Association were met without a court hearing. The Campbell Board of Education in its petition to dismiss responded on its tenth ground for dismissal that it would be willing to renew the limited contracts of forty-two teaching positions and that it would adopt the same teachers' salary schedule that was in effect in the 1971-1972 school year. The journal entry

in which the resolution of these two suits are recorded reads:

"It is ordered, adjudged, declared and decreed that the Board of Education may renew the limited teaching contracts. The Board may adopt a salary schedule for the 1972-1973 school year which is the same as the 1971-1972 school year. The Board may do this without executing and attaching to said contracts a certificate as provided in Section 5705.4 as such certificate is not applicable to said limited contracts."^{16}

There seems to be little doubt that the second teachers' strike in September, 1973 was still an aftermath of the issues which precipitated the first strike. The new superintendent did employ a different section of the statutes in order to reduce the teaching staff by six positions but to little avail. In the first strike, non-renewals of limited teaching contracts were based upon Section 3319.11 of the Ohio Revised Code. In the second strike situation, staff reduction was based upon that section of the law which stipulates that in a period of declining student enrollment, a board of education may suspend teaching contracts.

Under the new superintendent, negotiations had occurred sporadically throughout his first year in his new assignment. In the Spring of 1973 the Campbell Education Association declared the two parties, the Board and the Association, were at impasse in negotiations over two issues, a new teachers' salary schedule and the best

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^{16}This journal entry officially closing the two cases may be found in Case No. 72 Cl 752 and Case No. 72 Cl 775, Clerk of Courts, Mahoning County Court of Common Pleas, Youngstown, Ohio.

^{17}This section of the statutes permits a board of education not to reemploy a limited teaching contract by simply giving written notice by April 30th of each year.
means to reduce teaching staff. The chief executive officer for the Board of Education calculated that the most efficient means by which board expenditures could be reduced was to reduce staff. Personnel costs for all employees in the school system consumed 89.81 percent of the total school budget.\textsuperscript{18} Thus, he recommended to the Board of Education that the six most recently employed teachers not be reemployed. The Campbell Education Association assumed the posture that the staff should not be reduced except through normal attrition. Once again the school district because of grave financial contingencies was forced to curtail expenditures somehow.

Impasse having been reached in negotiations, each party desired a third neutral person to serve as a chairman of the impasse committee. One requirement of the impasse procedure was that the third neutral party must be a resident of Mahoning County. It was agreed that a Mahoning County Common Pleas judge would probably be the most neutral person to serve as chairman of the impasse panel. As one reads the findings of the impasse panel, it is evident that only one person wrote the opinion for the panel and, indeed, the title of the report clearly indicates this to be true. The report is entitled \textbf{Opinion of Judge Sidney Rigelhaupt, Chairman, Advisory Board.}\textsuperscript{18}\textsuperscript{18}

In early July, 1973, approximately three weeks before another operating levy was submitted to the voters of this school district, the judge released his opinion. The two issues which the advisory arbitration panel was to address itself to were the issues for the

"justification for the nonrenewal of six limited teaching contracts and the adequacy of teachers' salaries with the feasibility of their increase."

The judge as chairman of the panel agreed that five of the six limited contracts should not be renewed. He recorded that the non-renewal of the sixth contract "smacked of political chicanery." He also advised the Campbell Board of Education that any existing or future vacancies should be filled by rehiring the five teachers whose contracts were not renewed.

On the issue of a new teachers' salary schedule, the judge can be quoted as writing that the teaching staff of the Campbell City School District was grossly underpaid. He declared the minimum salary of each teacher should be established at $6700 commencing in September, 1973. He also wrote that after a proper reduction of unnecessary operating expenses, the minimum salary should be raised to $7,000. The report provided no data to substantiate how these new base figures were calculated, nor did the report suggest ways in which additional funds could be obtained. Neither did the report provide a cost analysis of the amount of money it would take to implement the newly proposed teachers' salary schedule. It would be apparent to anyone familiar with preparing teachers' salary schedules that little thought had been given to the newly proposed starting salary base.

In the five page opinion, one and one-half pages were addressed to the two issues at impasse. Three and one-half pages were then devoted to a "general observation concerning the entire school situation in Campbell."
The judge stated the school system was overstaffed with custodians, teachers, matrons, and others. He recommended that one elementary school be closed. He recorded the Board of Education could rent less costly office space. He asserted the cost of transporting students was excessive. He claimed the Board of Education could no longer afford the services of a coach who had no teaching duties. The report suggested the kindergarten program be eliminated and that serious consideration be given to the elimination of special teachers for music and art since such subjects could be looked upon as "frills." He asserted the salary of the superintendent was far too high, especially when compared with the superintendent's salary in neighboring Youngstown, Ohio. Further, the judge accused the members of the Campbell Board of Education for being politically motivated and cited the fact that the clerk-treasurer was an ex-mayor of the city as a case in point. The judge claimed it was quite apparent large sums of money were being wasted and concluded his report by writing "one cannot find fault with the failure of the citizens of Campbell to support an additional levy for school purposes."

The last paragraph of his findings recorded that if the school system could not operate on a financially-sound basis, "then the only cure for the present financial condition of the schools of Campbell is the resignation of the present Board, and the election of a new Board."

The school superintendent and Board members felt the judge had exceeded his duty as the chairman of the impasse panel by not limiting himself to the two issues which were at impasse. Accordingly, a week
later, the superintendent released a position paper entitled, "Rebuttal to Opinion of Judge Sidney Rigelhaupt, Chairman, Impasse Panel, Campbell Board of Education and Campbell Education Association." The rebuttal addressed itself to every issue raised by the judge and asserted many facts and figures in the report were erroneous. The rebuttal asserted "it is our opinion the judge's motive was to discredit the Board of Education and cause the failure of the levy on July 31, 1973."

Voters did not approve the additional operating levy in July, 1973. The present superintendent felt the findings of the impasse panel created an enormous credibility gap between the voters and the Board of Education. He also felt the report had a tremendous impact on creating the motivation necessary for the teachers to strike in September, 1973.

The strike was settled within a six day period. The superintendent, cognizant of the fact Campbell was known as a "city of beautiful churches," and knowing most teachers of the school system lived in the community and were members of the community's churches, requested the priests serve as mediators to bring the opposing parties together. In three meetings the community's priests were successful in helping both parties reach agreement. Indeed, the idea of employing the services of the city's priests was also to become the mechanism by which the teachers' strike in neighboring Youngstown, Ohio was to be resolved.

A memorandum of understanding was signed on September 12, 1973. The following items were contained in the agreement: (1) Teachers
would return to their teaching assignments on September 13, 1973; (2) The Campbell Board of Education would meet on September 13, 1973 and pass a resolution revoking the invocation of the Ferguson Act as of the fifth day of September, 1973; (3) The Board of Education would authorize the issuance of limited contracts for the 1973-1974 school year for five teachers whose contracts were not renewed. Three of the teachers were issued limited contracts for regular classroom teaching service and two of the teachers were issued limited contracts for service as regular or permanent substitute teachers. One teacher had taken a teaching assignment in another state during the summer months; (4) The Board of Education would not increase the salary schedule for its teachers during the 1973-1974 school year and would not increase it for the following school year unless a six mill additional operating levy was passed by the voters of the school district.

On November 18, 1975, the Campbell City School District ceased operations for the 1975 calendar year. Under Section 3313.483 of the Ohio Revised Code, the State of Ohio auditor's office certified the school district did not have sufficient funds to remain open for the remaining period of the calendar year. In January, 1976, the voters of this strife-ridden school community were asked to approve another additional operating levy of 10.6 mills. This time, the voters of the community passed the operating levy by a healthy majority.

It is quite apparent in analyzing these two teachers' strikes in Campbell, Ohio, a city steeped in the traditions of unionism, that one of the major threats to teachers' unions today is the issue of
job security. Two times the Campbell Education Association, in order to prevent the Campbell Board of Education from eliminating teaching positions, struck. In both instances, teachers did not receive salary increases. Teacher unions may be willing, although reluctantly, to forego salary increases in order to protect teaching positions for their members. In a period of declining student enrollment and an overcrowded teachers' market, school administrators can probably expect to see this issue of job security appear at the bargaining table. Related to the issue of job security are such current topics as class size, special-area teachers, teacher conference/planning time, duty-free time within the teachers' work day, and "fair" dismissal. All these issues can be designed to maintain and to increase, if possible, the number of teacher positions within any school system. And, in the final analysis, teaching positions determine the number of teachers who are eligible to become potential members of teachers' unions.

THE ELYRIA SCHOOL DISTRICT STRIKE

Negotiations were initiated between the Elyria Education Association and the Elyria Board of Education on March 20, 1973, in the northern Ohio city of Elyria. Nearly a year later, February 6, 1974, teachers of the Association set up picket lines

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19 Elyria City School District vs. Elyria Education Association ET AL, Case No. 77893 74, in the Court of Common Pleas, Lorain County, Ohio.

20 Chronicle Telegram, February 19, 1974, Elyria, Ohio.
at all twenty-three of the school district's schools. It was the
first teacher's strike in the city's history. The strike began at
midnight on February 6, 1974, after negotiations on working con-
ditions could not be resolved. Throughout the strike, which was
to last eight school days, the schools remained open with one hundred
fifty teachers and administrators managing the instructional program
for students.\textsuperscript{21} Elyria's superintendent of schools stated immediately
after the strike started, "We are going to invoke the full extent
of the law open to us in order to break this illegal work stoppage."\textsuperscript{22}
He further stated attempts would be made to obtain a temporary re-
straining order and, if that should fail, the Board of Education would
ask that the Ferguson Act be invoked. The superintendent remarked,
"Once invoked, the Ferguson Act is irreversible. It is very drastic,
and we certainly hope we don't have to take that action."\textsuperscript{23}

The Monday before the Wednesday teachers' strike started, the
teachers of the Elyria Education Association threatened they would
walk out unless agreement on nineteen items of working conditions
were resolved. In a special meeting, the teachers approved this
course of action by an eighty-six percent majority of its voting
membership.

\textsuperscript{21}\textbf{The Journal}, February 16, 1974, Lorain, Ohio.
\textsuperscript{22}\textbf{Chronicle Telegram}, February 6, 1974, Elyria, Ohio.
\textsuperscript{23}\textit{Ibid.}
The major problem in negotiations which had created the hostile school environment was the issue concerning emergency leave. The state auditor's office had ruled that the existing emergency leave policy was not in conformity with state statutes which demand that reasons must be stated in order to receive personal leave days. The members of the Elyria Board of Education insisted the personal leave day policy for emergencies had to comply with the state auditor's ruling. The officers of the Elyria Education Association asserted the policy had to be negotiated before the Elyria Board of Education could adopt any policy on emergency leave.

On February 4, 1974, the Elyria Board of Education adopted a specific policy requiring reasons for emergency leave. This action was taken after the teachers' Association refused the Board's offer of removing the issue from current negotiations in order to reach complete agreement as quickly as possible. The president of the Elyria Board of Education remarked, "It would appear to me that for the teachers to threaten a work stoppage over a legal matter which could be tested in the courts, for which an opportunity to do so was rejected by their leadership, is misguided. If the association is correct and the auditor is wrong, there is only one way to find out......the E.E.A. should make a test case and go through the legal process to ascertain whether the decision is just."25

25 Ibid.
At the December meeting of the Elyria Board of Education, the Board president gave the E.E.A. president the opportunity to indicate whether the teachers' Association would like to challenge the auditor's rulings in court and the Association's president declined at that time to do so. The Association's president insisted the policy had to be modified at the collective bargaining table before the Board of Education could approve it.

A day after the strike began, a Lorain County common pleas judge granted the Elyria Board of Education a temporary injunction and restraining order against the striking teachers.²⁶ The court order commanded the teachers to cease their picketing and interfering with non-striking teachers. A hearing on a permanent injunction was scheduled for February 19, 1974, which turned out to be the day the strike ended. The school superintendent stated after the court order was issued, "We have held the strike as an illegal work stoppage and the judge agreed with us."²⁷

Five days later, the school superintendent issued an ultimatum to the teachers. He said that unless the teachers reported to work by February 13, 1974, they should be prepared to face the possibility of losing their jobs.²⁸

Negotiations were resumed but the teachers still did not return to duty. School officials, meanwhile, had prepared letters of

²⁶Ibid.
²⁷Cleveland Plain Dealer, February 8, 1974, Cleveland, Ohio.
²⁸Chronicle Telegram, February 12, 1974, Elyria, Ohio.
dismissal and were prepared to send them by registered mail under the provisions of the Ferguson Act. It was reported that, in all probability, the Elyria Board of Education would attempt to go to court and invoke the Ferguson Act. The president of the Elyria Education Association responded to this ultimatum by stating she was very disturbed that school officials would issue such a threat at a time when progress on negotiations was moving.29

School officials and members of the Elyria Board of Education then published an open letter to the residents of the Elyria school district. It charged that the real issue of the strike was simply that of local control of the school district. The open letter further charged that certain demands, if accepted, would be irreconcilable to operate a public school system managed by a local board of education. Board members asserted that certain demands could not be met because the law placed restrictions on a school system and upon the status of teachers. The letter said there was a power struggle between boards of education and teacher unions throughout Ohio, and this strike was only a symptom of that struggle. There was no question the organization and encouragement for this strike was coming directly from the Ohio Education Association in Columbus, Ohio, the paper asserted. Finally, the open letter stated it was the Elyria Education Association who had broken off negotiations, not the Elyria Board of Education.

By February 16, 1974, three days before the strike ended, the original list of demands had been narrowed down to two,30 although

29Ibid.

30The Journal, February 16, 1974, Lorain, Ohio.
final settlement was directly contingent upon teachers being paid for the days they had been on strike. The teachers proposed extending the school year for the period of the strike in order not to lose any salary. The Board's law suit, meanwhile, was asking fifteen thousand dollars a day in damages from the Association. The judge, who was to hear the case three days later and who had issued the temporary injunction on February 7, 1974, admitted he was trying to avoid hearing the lawsuit and was attempting to force the negotiation process itself to settle the strike.  

The beginning of the end of the teachers' walkout came Friday, February 19, 1974, under the shadow of the Board's demand for a court order to compel the teachers to return to their teaching assignments. The judge called attorneys for both parties into his chambers and urged them to "hammer out the remaining issues." The judge urged the two teams to negotiate and both teams agreed. This agreement to reopen negotiations ultimately eliminated the need for a court hearing. Instead of a court hearing, the negotiation teams were moved behind closed doors in the county courthouse, and the judge informed both parties to contact him immediately if discussion were to cease. The teams reached agreement.

Key provisions which brought about the settlement were: (1) the Board of Education agreed to dismiss the law suit against the teachers' Association and a non-reprisal agreement was reached where

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31 Ibid. (In a personal interview, the judge also confirmed this stance).

32 Chronicle Telegram, February 19, 1974, Elyria, Ohio.
the Board agreed not to reprimand striking teachers, and the Association agreed not to harass non-striking teachers; (2) the school calendar was extended four days to recover lost teaching salaries and the other four days would be lost income for the striking teachers; (3) teachers won the right to appeal the non-renewal of contracts which became the basis of a "fair-dismissal" policy; (4) a severance leave policy was established which allowed retiring teachers to receive a final dollar amount equal to one-fourth of their accumulated sick leave up to one-hundred-twenty days; (5) the Elyria Education Association was recognized as the sole bargaining agent for supplementary one-year contracts for teachers' extra curricular activities; (6) the school system's comprehensive major medical plan was improved; (7) a no-strike clause was agreed to by which the teachers' Association agreed not to strike or have study days through August, 1975, and that members of the Association would not carry picket signs for strikes by other school employees; (8) there was to be regular liaison meetings monthly between the school superintendent and the president of the teachers' Association; (9) agreement was concluded that when regular teachers had to assume teaching duties for absent teachers and when such assignment was beyond their normal day, the teachers could apply for a supplementary contract in order to be reimbursed; (10) teachers agreed to participate cooperatively in planning in-service training sessions; (11) after-school meetings for teachers would be limited to four ninety-minute meetings per month; (12) the Board of Education won a
management's right clause which maintained it had the responsibility
and authority to manage and direct the school district as authorized
by Ohio law and an impasse procedure was established which included
mediation and advisory panels; (13) elementary teachers had to
make up cancelled parent conferences; and (14) an emergency leave
policy was developed which granted teachers leave on the basis of
the teacher's written statement of specific need.

Following agreement the school superintendent said, "I think
in the end analysis the Board of Education retained its responsibility
to manage the schools. The Board has retained its policy-making
decision power. The administration has also retained its responsi-
bility for management of school affairs."

The president of the Elyria Education Association remarked, "I
felt the judge made a very decided difference in the way things
went this weekend."

The local newspaper asserted the judge played a major role in
settling the teachers' strike. The newspaper printed a statement
of praise commending the judge for not having to conduct a court
hearing. The judge issued a statement relating the issues were
settled--compromised--and said that was the way he wanted it. The
judge did maintain, however, that the matters involving the Ferguson
Act and the fifteen thousand dollar a day damage suit would have

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33 Ibid.
34 Ibid.
become involved in the court hearing if the strike had not been resolved. Perhaps the remark which best revealed the manner in which the judge approached this dispute was stated by the superintendent of schools. He stated the judge's approach was to have the parties...resolve their own conflict. The judge stressed the imperativeness of reaching resolution outside the court. In summary, this common pleas judge prevented his court from being used as an instrument in the power struggle between the Elyria Board of Education and the Elyria Education Association. It is also of interest that, even though the Ferguson Act was used as a threat to coerce teachers to return to the classroom, its legality and constitutionality was not tested by a court of law. At the last moment there was no hearing as to whether a public school teacher in Ohio would be dismissed for striking.

Another interesting feature of this strike is that legal counsel advised the Elyria Board of Education to direct pecuniary damages against the Elyria Education Association and not against individual striking teachers. It is highly probable that a fine of fifteen thousand dollars a day for each day of the strike played a major role in resolving this labor dispute.

Perhaps the most interesting characteristic of this strike, however, is the fact that the issue of emergency leave, the issue which supposedly precipitated this strike, retained its same substance in the final agreement. A close scrutiny of all the resolved issues clearly indicates far more than economic issues were at stake in

\[36\text{Ibid.}\]
this strike. Issues such as a "fair-dismissal" policy, regular monthly liaison meetings between the president of the Association and the school superintendent, and an impasse procedure indicate the teachers' Association in this school district was strongly motivated to coerce bilateral decision-making upon the Elyria Board of Education.

However, in this writer's judgment, perhaps the major impact from this strike is that the district's teachers now have the right to appeal the non-renewal of teachers' limited contracts. Section 3319.11 of the Ohio Revised Code is silent on the matter of just cause or stated reasons as to why limited contracts are not renewed. The Ohio Supreme Court in Orr vs. Trinter, 444 Fed. 2d 128,37 ruled a board of education, simply has to inform a teacher before April 30 of each year if a probationary limited teacher's contract is not to be renewed. The burden of proof to establish incompetency in the art of teaching now rests with the administration and board of education in this school community. School management in this school system will certainly have to develop strong, reliable appraisal instruments to evaluate teaching performance. This right of teachers in this school system to appeal dismissal with cause and a possible hearing will demand accountability by all parties in order to achieve that which is best for the individual teacher and that which is best for the school district. Industrial human relation principles will assume a new and greater role of importance in the management of the Elyria School District.

37Orr vs. Trinter, No. 20721, United States Court of Appeals, Seventh Circuit, June 16, 1971.
Interview With The Judge

This judge of the Lorain County common pleas court had forty-three years of experience within the judiciary branch of government. Most of his judicial experience was devoted to the juvenile division of the Lorain County court system. He admitted he had little or no specific training in the specialty of labor law. However, he sensed such training would be vital in the training of future attorneys as the surge of collective bargaining in the public sector continues.

When the judge was assigned to hear this case, he commented that he felt his most important objective was to urge the opposing parties to reopen negotiations, "to sit back down and talk it out." The judge asserted that at no time during the interval of the strike itself did he publicly address himself to any of the nineteen issues unresolved between the teachers' Association and the Board of Education. His only method of communication was purposely through the attorneys of the opposing parties. An interesting comment discussed at this point was that "of all people who should obey the law, it must be judges and lawyers." This is why the judge never talked to other public figures during the course of the strike.

The judge also volunteered that he had actually only met the superintendent of schools one time. When asked if the superintendent of schools had requested that he invoke the Ferguson Act, the judge responded that he did not have the authority nor the power to do so. This strikes down the belief that some members of the staff of the Ohio School Board's Association held concerning the strategy the Board of Education had planned to halt the work stoppage by its teachers.
The judge's court did issue a temporary restraining order one day after the strike began. His court found that the actions of defendant members of the Elyria Education Association appeared to be specifically prohibited by the law of the State of Ohio. He remarked his task was "to carry-out the law."

His court further found that the injuries sustained by the Elyria School District were immediate and irreparable and were immeasurable in dollars and the damages of wages sustained by teachers on duty and supporting personnel were immediate and irreparable. The court's temporary restraining order was to be in full force and effect from February 7, 1974, until February 19, 1974, at which time the court would hear evidence as to whether or not permanent injunction should be placed into effect. The judge was pleased that this scheduled hearing was not necessary. He remarked, "I was hopeful throughout that period of time that the remaining issues would be resolved."

Asked whether teaching is a professional activity, the judge responded quickly with a positive response. He stated his daughter was a teacher. He volunteered, however, that he felt the general public may be losing a professional respect for teachers since teacher strikes were increasing throughout the nation.

"Public employees, including teachers, should have the opportunity to bargain collectively," he continued. However, he felt some restraints were in order, such as prohibiting some segments of public employment from utilizing the ultimate weapon of the strike to gain given ends. Workers who perform public services necessary to sustain
the health and welfare of the community should be denied the opportunity to utilize the strike weapon. He asserted teaching, however, was a professional activity or public service which was not absolutely necessary to sustain the general welfare.

"One fact of life teachers will have to learn is that if they do intend to strike, they should not expect to be paid. It should be just like it is in the private sector," the judge related. "I still feel teachers should honor their contracts, however, even though I suspect a short teacher's strike in some instances might be healthy."

"Strikes are the symptoms of labor unrest, not their causes," he commented. School administrators and school board members are going to have to learn to communicate with teachers through the process of collective bargaining. When questioned as to his views regarding the effectiveness of the Ferguson Act to prevent teacher strikes, he responded by saying he never had to study the Ferguson Act itself. He further stated he felt the Ferguson Act did have considerable influence in preventing strikes in the public sector. He felt those sections of the Ohio Revised Code pertaining to strikes by public employees did have considerable influence in upholding the concept of government sovereignty.

This Lorain County common pleas judge impressed the writer as a person who had disciplined himself through the years to maintain a stance of objectivity in handling adversary relationships. That he was considered a fair judge is evidenced throughout the analysis of this study by the remarks of the president of the teachers' association and the comments of the superintendent of schools. The judge seemed pleased that the parties resolved their differences without an official court hearing.
On the last day of November, 1973, nearly eleven months after a two day strike had ended and after a year of extensive collective bargaining in which much litigation was employed to coerce the Hamilton Local Board of Education to yield to certain teacher association demands, agreement had been reached between the Hamilton Local Board of Education and the Hamilton Local Teachers' Association. The superintendent of schools in calling for a special meeting of the Board of Education to adopt the memorandum of agreement reached between the two parties wrote in his communique: "After fifty-three negotiating sessions, and hundreds of man hours, estimated at well over fifteen-hundred hours, negotiations were finalized between the negotiating committees."

The Hamilton Local Board of Education then approved a resolution ratifying the following negotiated policies: (1) working facilities; (2) school calendar; (3) staff appraisal; (4) professional leave; (5) school day; (6) class size; (7) teacher contract; (8) assignment and transfer; (9) salary schedule and fringe benefits; (10) maternity leave; and (11) professional negotiations agreement. Three issues eliminated from the memorandum of agreement were: (1) "fair" dismissal; (2) promotions; and (3) non-teaching duties.

This labor dispute between a board of education and a teacher association was unique in a number of ways. Distinguishing features

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38 Case No. 73 CV-02-550, Hamilton Local Board of Education vs. Mrs. Judith Arthur, et al., in the Court of Common Pleas, Franklin County, Ohio.
were: (1) the policy which had given recognition to the teachers' Association through a professional negotiations agreement was recinded by the Board of Education after terms of the agreement were violated by the teachers' Association during negotiations; (2) the composition of the Board's negotiation team was changed drastically after the two day strike to remove the superintendent and Board members; (3) the Board of Education employed a professional negotiator who was a practicing attorney and a former president of a large city school district board of education; and (4) all fourteen issues which had been proposed for negotiations were resolved after the strike, despite the fact negotiations had taken place for over two months before the strike occurred. The professional negotiator for the Board remarked that this was the first time he had ever been in the situation where the fear of the threat and reality of a strike had already occurred. In many ways, the fear of the threat of a strike should have eased the process of collective bargaining. Nevertheless, because of the extremely high degree of litigation which was involved throughout the length of negotiations, the process was a long, drawn-out affair. Perhaps another interesting element in this labor dispute was the fact that the spouse of the president of the teachers' association was a field representative of the Ohio Education Association.

Certainly, the litigation involving the legal status of the professional negotiations agreement high-lighted the drama which was to unfold in over a year of legal skirmishes between opposing legal counsels for the two parties. Court records and minutes of the
Hamilton Local Board of Education show that on October 4, 1966, the board of education and the teachers' association entered into a professional negotiations agreement, wherein, among other things, the Board of Education recognized the teachers' Association as the sole negotiating agent of all the certified teaching staff employed by the Board of Education. Further, the terms of such an agreement provided that the Board would negotiate with the teachers' Association on matters such as working conditions, personnel policies, programs, salaries, fringe benefits, and grievance procedures.

Such agreement had a specific provision which provided for the procedures to be followed in the event that disagreement emerged between the parties. The provisions are set forth as follows:

"Disagreement:" 39

"1. An advisory committee shall be established by the Board within ten days after written request is received. The association and the Board shall each appoint one member to the committee. These two members shall appoint a third, who shall serve as chairman of the committee. Costs for the services of this advisory committee shall be shared by both parties.

"2. The advisory committee shall promptly study the situation and make a public report of fact, with recommendations and send to the association, the superintendent, and the board, a copy within fifteen days. Both parties are required to act at this next regular meeting on these recommendations or by a date agreed upon by the two parties.

"3. Continuation of negotiation by the association and the board shall resume within ten days of the issuance of the report."

39 Negotiations Agreement Between the Hamilton Local Board of Education and The Hamilton Local Teachers' Association, adopted October 4, 1967.
This agreement, with some rather significant changes, was renewed in November, 1970 for a three-year period, which agreement, pursuant to such renewal, was to run through October, 1973.

The significant changes in this agreement were in the provisions calling for disagreements. The new provisions, as contained in the renewal agreement are as follows:

"Disagreements:

"1. In the event that an agreement cannot be reached on an issue, being negotiated, the following procedure shall exist:

1. An advisory committee shall be established by the board within ten days after written request is received. The association and the board shall each appoint one member to the committee. These two members shall appoint a third, who shall serve as chairman of the committee. Costs for the services of this advisory committee shall be shared by both parties.

2. The advisory committee shall promptly study the situation, make a public report of fact, with recommendations, and send to the association, the superintendent, and the board, a copy within fifteen days. Both parties are required at their next regular meeting on these recommendations or by a date agreed upon by the two parties.

3. Continuation of negotiations by the association and the board shall resume within ten days of the issuance of the report.

4. If after continuation of negotiations an agreement still cannot be reached, either party may petition for arbitration procedures.

5. A list of names shall be requested from the American Arbitration Association. The parties shall select from this list one name which will then serve as fact-finder.

6. Hearing dates shall be set by the fact-finder and facts gathered relevant to the impasse.

7. Upon completion of hearings the fact-finder shall submit written findings for resolution of case. His decision shall be binding on all parties."
"8. Costs of expenses, for arbitration, shall be shared equally by both parties."

Thus, it may be seen that the renewal agreement contained a provision for binding arbitration on any issue where the parties are in disagreement, and had reached an impasse. This is to be distinguished from the procedures of establishing an "advisory committee" under the prior agreement.

On February 11, 1973, the Hamilton Local Board of Education, meeting in special session, adopted a resolution which read, "Be it resolved by this Board of Education of the Hamilton Local School District that the policy of the Hamilton Local Board of Education with regards to professional negotiations be hereby rescinded as of this date." The reason this resolution was adopted was contained within the resolution: "releases to the public newspapers and other recent releases were in violation of the mutuality of press releases." The resolution stated that newspaper releases by the president of the teachers' Association and the mutuality of confidentiality agreed to in the professional negotiations agreement destroyed any basis of the parties to be able to negotiate in good faith bargaining. After each meeting of the negotiating committees, teachers could expect to find in their mailboxes the following morning statements accusing the board and its negotiating team of not bargaining in good faith.

The underlying issue which precipitated this two day teachers' strike was the issue of the effective date of a new teachers' salary
schedule. In March of 1972, the negotiating teams for the Board and the Association had agreed to a new teachers' salary schedule which simply stated in a footnote that the effective date of the new salary schedule would be March 1, 1972. No mention was made as to the termination of this schedule and the effective date of another new salary schedule. What was not clear and never reduced to writing was whether another newly negotiated teachers' salary schedule would become effective as of January 1, 1973. Leaders of the Association assumed the new salary schedule would become effective as of January 1, 1973. The Board of Education and its administration assumed a new salary schedule would not become effective until September 1, 1973. The Board of Education had always negotiated a teachers' salary schedule based upon the school year, that is, September through August.

Another dimension which compounded this issue which was never brought to light in the heat of public debate and court litigation was whether the Board of Education had sufficient monies to implement a new salary schedule commencing with the beginning of the calendar year. The teachers maintained there were sufficient monies to implement a teachers' salary schedule immediately. The Hamilton Local Board of Education in its intent to seek voter approval in November, 1973 to finish the construction of its new middle school intended to allocate one-half of the construction costs from operating monies in the school district's general fund. Board members felt that, if the public could be convinced that prudent management had been able to allocate one-half of the construction costs, the voters
of the school district would be inclined to vote for the remaining costs with a small bond levy. Interestingly, the bond issue to finish construction of the middle school received a healthy majority in the Fall of 1973. It was these issues, the effective date of a new salary schedule and the reasoning of the Board to transfer operating monies into the permanent improvement fund to bear one-half the costs of finishing the construction of the new middle school, which created an atmosphere of distrust and alienation between the Board of Education and the teachers' Association.

Collective bargaining had begun in November, 1972. After nearly two months of fruitless negotiations, in addition to the climate created by the issues raised in the previous paragraph, the climate was ripe for overt conflict. After the Board of Education rescinded its policy which in effect withdrew recognition of the teachers' association as the sole bargaining agent for the teachers, plans were make to meet at 6 o'clock a.m. on the following Monday morning. Teachers were informed by field representatives of the Ohio Education Association that the Ferguson Act had never been successfully enforced by a board of education in Ohio. Teachers were informed they could be fired immediately by the board of education since there is a strict ban forbidding teachers' strikes in Ohio. Nevertheless, the teachers voted overwhelmingly to strike. Ready-made picket signs were quickly distributed to the assembled teachers and picket lines were set up at all the school buildings in the district.

On the first day of the strike, the school board met with a representative of the Ohio School Boards' Association. He spelled
out the ramifications of invoking the Ferguson Act. After four hours of serious debate, the Board of Education decided not to invoke the Ferguson Act, but, rather, to seek legal counsel from the prosecuting attorney's office. The Board desired to seek court action to obtain a restraining order and a temporary injunction to enjoin the teachers from striking.

School was to remain open for the two days the teachers struck. The school bus drivers continued to transport students to and from school. The school cafeterias operated and all students were provided a school lunch. In one school, over one-third of the faculty did not honor the picket line and the principal reported adequate instruction was taking place.

A week later, several days before teachers were to receive their pay checks, the superintendent of schools sent notification to all teachers who had struck that "Ohio law makes no provision for school boards to approve payment to teachers for unauthorized lost time due to strikes or willful absence." The notification continued, "Accordingly, there is no authority permitting payment to a teacher for unauthorized or willful absence, as distinguished from authorized personal leave granted by boards of education under statutory authority." The negotiating team for the teachers' Association was not successful in extending the school year by two days so that striking teachers would not lose any portion of their contracted salaries.

On February 13, 1973, the Board of Education filed a complaint in the Franklin County Court of Common Pleas seeking a temporary
restraining order compelling the teachers to return to their school 
duties, as well as praying for a preliminary and permanent injunc-
tion, such injunctions to prohibit further alleged picketing, 
public advertising of the local differences, and interference with 
the normal operations of the school as set forth by the plaintiff 
board in such complaint.

Upon the hearing for the temporary restraining order as moved 
for by the plaintiff board, in the complaint, the Common Pleas Court 
of Franklin County entered what was entitled, "Consent Order" which 
order contained the following provisions:

"1. The Court requires the individual teacher defendants, 
and each of them, to return to their respective 
positions as teachers and employees of plaintiff 
Hamilton Local Board of Education.

"2. The Court orders the parties hereto to resume 
their negotiations as soon as practicable after the 
entry of this Order, but in no event later than 

"3. The Court further orders that such negotiations 
between the parties are to resume on all questions 
at issue between the parties prior to February 10, 
1973, under the general procedures in use between 
the parties prior to February 10, 1973, and that 
each of the parties are to report to the Court on 
or before March 1, 1973, as to the progress of 
their negotiations.

"4. It is further ordered that the plaintiff and the 
defendant, may have, in addition to their regular 
negotiation committees, one additional representa-
tive of their choice.

On March 1, 1974, both parties appeared in the judge's chambers 
to report on the progress of negotiations after three negotiating
sessions. It was recorded that the Association had submitted proposals relating to class size, working facilities, and a new salary schedule to be effective as of February 1, 1973. A supervisor for field representatives of the Ohio Education Association was the spokesperson for the teachers' association. He stated, "negotiations won't be resolved unless there is a salary increase now" and "we must have a settlement now."

On March 8, 1973, the teachers' Association filed a cross-complaint against the board's negotiating team seeking a mandatory injunction requiring the Board to abide by the Professional Negotiations Agreement seeking specific performance of all of the terms of such agreements. It must be remembered that whether the professional negotiations agreement was a binding contract at this time was still a matter for the court to decide. In retrospect, the position of the teachers' Association and the Ohio Education Association was that if the other party did not capitulate to their demands, that party was not acting in good faith bargaining.

In the last week of April, 1973, after the parties could not honestly agree on all issues to be negotiated, the teachers' association filed a motion in the Common Pleas Court seeking to require the plaintiff Board of Education to show cause why it should not be held in contempt of the Court's order of February 14, 1973. After a hearing on such motion, the trial court found, by order entered April 30, 1973, that the Board had not been in contempt. The Court ruled that significant progress had taken place concerning negotiations on the issues.
However, the Court ordered the parties to proceed to arbitration pursuant to the specific clauses as set forth in the Professional Negotiations Agreement. The specific wording of the Court's decision in this regard is as follows:

"It is further ordered that to further implement the Consent Order of February 14, 1973, the parties proceed to dispose of the issues of salary and fringe benefits by means of the arbitration procedures set forth in paragraphs 5 through 8 under Disagreement Procedures of the Professional Negotiations Agreement, said arbitration to be undertaken within ten days of April 27, 1973."

During the first week in May, the Hamilton Local Board of Education filed its notice of appeal from the trial court's order relative to the arbitration procedure. Legal counsel for the Hamilton Local Board of Education set forth two assignment of error on their appeal upon the merits, and they were:

"1. Whether the order of the Court below of April 27, 1973, entered April 30, 1973, was an appealable order.

"2. Whether the order of the Court below ordering the Hamilton Local Board of Education to proceed to binding arbitration was contrary to law."

On July 24, 1973, the Court of Appeals held that the order of the Common Pleas Court of April 30, 1973, was a final appealable order. In the second assignment of error, asserted by the Hamilton Local Board of Education, the appellate court held that it was contrary to law for a court to force a board of education to proceed to binding arbitration. The decision stated that the authority as
granted by the arbitration clause, as contained in the Professional Negotiations Agreement was an unlawful delegation of the policy-making power of the Hamilton Local Board of Education.

In August, 1973, the Hamilton Local Teachers' Association and the Ohio Education Association filed a notice of appeal to Ohio's Supreme Court and gave notice of appeal from the judgment entered in the Court of Appeals of Franklin County, Ohio. Legal counsel for the teachers' Association asserted the case was one which did not originate in the Court of Appeals; and that the case did not involve a substantial constitutional question but did involve a question of public and great general interest. The case was never argued before Ohio's highest court as its withdrawal was part of the final agreement in the memorandum of agreement between the contesting parties.

In addition to litigation concerning the issue as to whether a board of education under Ohio law can be ordered to proceed to binding arbitration in the absence of specific statute, another major theme of litigation was whether a board of education and its executive officers can be forced to give cause for the non-reemployment of teachers under section 3319.11 of the Ohio Revised Code. On April 24, 1973, the superintendent of the Franklin County schools and the superintendent of the Hamilton Local schools jointly notified the Hamilton Local Board of Education that fifteen teachers whose limited contracts with the Hamilton Local Board of Education which expired at the end of the 1972-73 school year would not be nominated for
On that same date, at a special meeting of the Board of Education of the Hamilton Local Board of Education, the Board, by motion unanimously passed, and directed its clerk to notify the fifteen teachers not nominated for reemployment, "that it is the intention of the Board of Education to not reemploy them at the termination of their current limited contracts."

On May 3, 1973, each of the thirteen intervenors filed a notice of appeal both with the Court of Common Pleas and with the Board of Education of the Hamilton Local School District purporting to appeal from "the findings, decision, and order of the Board of Education made at its meeting on April 24, 1973, not renewing teachers contracts as a teacher." On May 11, 1973, the Board of Education filed motions with the Court of Common Pleas to dismiss the appeals on the ground that the court lacked jurisdiction over the subject matter.

Two days later, the teacher-intervenors filed motions for temporary restraining orders enjoining the Board of Education from hiring and employing new teachers to replace the teacher-intervenors. The motion was supported by an affidavit of the president of the Hamilton Local Teachers' Association, and was sustained, and the Court of Common Pleas, on May 15, 1973, entered what is called a temporary restraining order, enjoining the administration and board not to employ and hire new teachers.

On May 29, 1973, the Court of Common Pleas entered an order overruling the motion to dissolve the temporary restraining order
and also overruling the board's motion to dismiss the appeal but
without setting forth the reasons for the court's action. The
order also set the appeals for hearing on their merits on June 8,

On May 30, 1973, under Ohio law, the teacher-intervenors filed
a notice to take depositions of some thirteen persons. The purpose
of the depositions was to have board members and school administrators
to give reasons as to why the thirteen teachers were not reemployed.
The next day, the Board filed an action in prohibition against the
Common Pleas judge in the court of appeals. On June 4, 1973, the
teacher intervenors filed a motion with the Court of Common Pleas
seeking to compel discovery. On the same day, the trial court
entered an order staying the taking of depositions and the trial
assignment of the appeals until final adjudication of such action
could be determined by the Franklin County Court of Appeals.

The two basic issues which had to be determined by the Franklin
County Court of Appeals in ruling on the writ of prohibition against
the common pleas judge ordering the taking of depositions were:
(1) whether the writ of prohibition was an appropriate, available
remedy under the circumstances, and if so, (2) whether a Court of
Common Pleas had jurisdiction pursuant to R. C. 2506.01, to entertain
an appeal from the action of a board of education pursuant to R. C.
3319.11, in not renewing the contract of a teacher upon the expira-
tion of such teacher's limited contract of employment. The court
reasoned that it was not concerned with a termination of a limited
teaching contract, but, rather, with a decision of a board of education not to enter into a new contract with a teacher upon the expiration of such teacher's limited contract of teaching employment. The appellate court therefore held: (1) Board-relators had no adequate remedy in the ordinary course of law; (2) that writ of prohibition was an appropriate, available remedy under the circumstances of this case; (3) that the action of a board of education pursuant to R. C. 3319.11 in not renewing the contract of a teacher upon the expiration of his limited contract was not an appealable order under the provisions of R.C. 2506.01 since no quasi-judicial proceedings were involved; (4) that the Court of Common Pleas was totally without jurisdiction to entertain the appeals which were the subject of this action purporting to appeal administrative action of a board of education in not renewing the intervenor's teaching contracts which action did not result from quasi-judicial proceedings, and (5) that a writ of prohibition should issue. The temporary restraining order issued by the respondent judge was dissolved.

In yet another spin-off of this litigation, the president of the association attempted to involve the American Arbitration Association after the common pleas judge had ordered the parties to proceed to binding arbitration to settle the issues of a salary schedule and the package of fringe benefits. On April 30, 1973, the president of the teachers' Association wrote a letter to the regional office of that association after the common pleas judge had ordered arbitration. The president included a copy of the judge's decision. The
American Arbitration Association responded by submitting a list of seven arbitrators who would be willing to enter the dispute. Legal counsel for the Board of Education after receiving the list of arbitrators wrote a letter to the regional office stating the Board of Education objected strenuously to any arbitration proceeding going forward at that time. He stated the basis of the objection was that the demand for arbitration was not the desire of the Board of Education but rather that such direction was coming from the decision of a common pleas judge. The letter further stated that there were legal proceedings now pending between the parties and that, within these legal proceedings, there were substantial legal issues, particularly with regard to the arbitration process attempted to be invoked by the ruling of the common pleas judge. Specifically, legal counsel for the Board asserted there was within the State of Ohio a substantial legal issue as to whether any Court has authority to issue an order requiring arbitration or binding arbitration and even further whether a board of education, under the statutory controls now extent in the State of Ohio, can legally participate in and be subject to any arbitration proceeding or award.

A major breaking point developed in this dispute in October, 1973, when the Hamilton Local Board of Education finally agreed to rewrite a professional negotiations agreement recognizing the teachers' Association as the sole bargaining agent for the teachers of the school district. In the new agreement, the document specified that there be no more "open season" for negotiations. A "zipper clause" was added limiting the period of negotiations to a forty-five day period.
Impasse procedures were carefully spelled out denoting that all issues not resolved at the end of the forty-five day period would either be dropped or taken to impasse. Binding arbitration was eliminated altogether and advisory arbitration under the auspices of the American Arbitration Association was substituted in its place.

The present stance of the administration and the Board of Education is that in the collective bargaining process any issue can be discussed. Concerned members of both the administration and the Board and the teachers' Association now realize that good faith bargaining means that either party may say no to a given issue as long as reasons can be given for assuming a negative stance. The Board of Education and its administration believe that it is their obligation under the laws of the State of Ohio to manage and operate the schools according to the wishes and desires of the local electorate. However, at the collective bargaining table, any reasonable issue presented for collective bargaining is carefully analyzed in terms of its overall benefits for the students of the school district.

THE VINTON COUNTY LOCAL SCHOOL DISTRICT STRIKE

This public sector labor dispute between a teachers' association and a local board of education in rural, south-central Ohio received national recognition in the Labor Law Journal. In

40 Case No. 11074, The Vinton Local Teachers' Association vs. The Vinton Local Board of Education, Court of Common Pleas of Vinton County, McArthur, Ohio.

predicting the probability of future impact by the judiciary in public sector labor relations, the writer of the article said it was highly unusual that the first case he was citing was not a federal court decision, nor a state supreme court decision, but a decision by a common pleas court. The writer cited the decision of the common pleas judge as illustrative of the increasing involvement of the judiciary in the mechanics of labor relations in the public sector. Essentially, the court's decision held that even in the absence of express statutory authority, a board of education may lawfully enter into a legally binding and enforceable contract with its teachers' association. The writer commented:

In this case, the court actually designated management's bargaining team and ordered the negotiators to meet three times a week for a five week period. The court defined "negotiate in good faith" to mean not rejecting any offer without first submitting a counter proposal. The court admonished the parties that, if abuse occurred, it would appoint a referee to preside over negotiations. The result may be extreme but it is also reflective of a nation-wide trend.  

The agreement reached, in effect, was a strike settlement in defiance of Ohio's Ferguson Act which prohibits strikes by employees in the public sector.

In retrospect, on Labor Day, September, 1973, teachers of the Vinton County Local Teachers' Association assembled in the high school building in the county seat to discuss the progress of negotiations. Negotiations had been going-on for ten months and settlement did not appear close on four issues. However, agreement had been

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Ibid.
reached on thirty-four issues. Four sensitive issues remained unresolved: a "fair-dismissal" policy; a policy granting more than one-year limited contracts; a grievance procedure with binding arbitration; and the actual dollar amount needed for improving the teachers' salary schedule. At this meeting, the association voted to delay any possible action for a week to provide the negotiating teams time to reach agreement. Seventy percent of the teachers present at the meeting responded positively to a strike vote if these issues were not successfully finalized.

At this meeting, field representatives for the Ohio Education Association informed teachers a board of education under Ohio Law could invoke the Ferguson Act dismissing teachers for striking. However, they also added this act had never been successfully employed by a board of education in Ohio. The school year opened according to the calendar adopted by the school board and remained "technically" opened throughout the longest school strike in Ohio's history. The teachers knew that if a strike were to occur, the school district's chief executive had made plans to operate the system.

On September 21, 1973, the teacher strike began after the negotiating teams could not satisfactorily resolve the four issues. Ohio Schools reported only two unresolved issues precipitated this strike.

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^44 Ibid.
^45 Athens Messenger, September 6, 1973, Athens, Ohio.
strike. The two issues were a "fair-dismissal" policy and a grievance procedure. The Vinton County Board of Education responded immediately to the strike by passing a resolution invoking the Ferguson Act. Notices were sent to all striking teachers stating they were no longer employees of the Vinton County Local Board of Education. Eighty-eight teachers of the school system's one hundred-thirteen teachers received notices.

The Ohio Education Association's executive committee counter-reacted against the Board's action by imposing professional sanctions against the school district for the Board's alleged program of harassment of staff members and its "refusal to deal with the two unresolved issues."¹⁷

The courts became involved in the dispute. A juvenile court judge issued summonses to several teachers urging students to stay away from classrooms. One such summons was issued to the head football coach.⁸ Parents also received summonses from the truant officer that they must send their children to school or be in violation of state law.⁹ The Ohio Education Association sponsored messages through the area via radio stations urging to keep their school-age children home.⁰

¹⁷Ibid.
⁹Columbus Citizen Journal, September 24, 1973, Columbus, Ohio.
⁰Ibid.
Four days after the strike started, the Board of Education obtained a temporary restraining order from the Vinton County common pleas court. The judge of the court specified six directives to the temporary restraining order. They were: (1) picketing would be limited to three teachers at each building site and the pickets were to carry signs and should continually be moving; (2) there was to be no interference with school buses, students, and teachers who were not striking; (3) neither party could publish nor communicate, either oral or written, on any matter related to the strike; (4) there was to be no trespassing on school property; (5) there was to be no intimidation of persons; and (6) there was to be no interference with the functioning of the schools.

The temporary restraining order was to expire within fourteen days after the court entry unless it would be extended for good cause. A hearing was set for October 14, 1973 to consider the granting of a preliminary injunction against the teachers' association.

In the initial stages of this strike, the Vinton County Teachers' Association filed a one million, two-hundred seventy-five thousand dollar damage suit in the United States District federal court in Columbus, Ohio. Defendants were the Board members, the superintendent of schools, the high school principal, and the McArthur Village Police Department. The suit entitled Complaint For Damages, Injunctive Relief, and Other Relief for Violation of Civil Rights.51

51 Case Bi, 73-392, Vinton Local Teachers' Association, et al., vs. Board of Education of Vinton Local School District, United States District Court, Columbus, Ohio.
contended the following: (1) the board was accused of not negotiating in good faith over the terms and conditions of teacher employment; (2) plaintiff teachers were picketing peacefully on the first day of the strike; (3) defendants, members of the Police Department, unlawfully and maliciously assaulted the head football coach, violating his freedoms of speech and association; and (4) the First, Fifth, and Fourteenth Amendments of the Constitution of the United States were violated for all four plaintiff-teachers and one field representative of the Ohio Education Association.

The plaintiffs prayed for the following relief: (1) a temporary restraining order be issued enjoining the McArthur Police Department from physically assaulting or abusing the plaintiffs; (2) a temporary restraining order against the Board enjoining and restraining it from undertaking any further action constituting an infringement or violation of plaintiff's civil or constitutional rights and particularly enjoining and restraining board members from filing criminal complaints against members of the teachers' association; (3) a permanent prohibitory injunction be ordered against the McArthur Village Police Department from physically assaulting or abusing plaintiffs; (4) a permanent prohibitory injunction issue be ordered against board members and school administrators prohibiting any infringement or violation of civil and constitutional rights of the plaintiffs; and (5) a permanent prohibitory injunction be granted enjoining defendants from threatening parents of children with criminal charges if their children failed to attend school during periods of peaceful picketing.
However, what is most significant in this civil action is the Amended Complaint for Damages filed a week later by legal counsel for the teachers' association. This complaint charged that Chapter 4117 of the Ohio Revised Code, the entirety of the Ferguson Act, was unconstitutional and thus void. The same complaint also asserted Section 4117.04 of this Chapter was in violation of due process as guaranteed by the Constitution of the United States. Therefore, the teachers' association prayed: (1) that a temporary restraining order, a preliminary injunction, and a permanent injunction be issued by the district federal court suspending all further hearings pursuant to Chapter 4117 and that all teachers be reinstated in their employment; and (2) that the federal court should declare Chapter 4117 of the Ohio Revised Code unconstitutional and on its face thus void.

The United States district federal judge never ruled on the constitutionality of the Ferguson Act itself, Chapter 4117 of the Ohio Revised Code. The federal judge did, however, address himself to that section of the Ferguson Act which pertains to due process, Section 4117.04. On October 3, 1973, the federal judge issued a court order enjoining the Vinton County Local Board of Education from proceeding under Section 4117.04 of the Ohio Revised Code except as provided in Section 3319.16 and Section 3319.161 of the Ohio Revised Code. 53

52 Case No. 73-392, Ibid., Amended Complaint for Damages, Injunctive Relief and Other Relief for Violation of Civil Rights.
53 Ibid.
Under Ohio school law, there are two types of teachers' contracts. These are limited, probationary contracts and tenured-non-probationary contracts. A teacher's limited contract is governed by Section 3319.11 of the Ohio Revised Code which has been upheld by several appellate court decisions in Ohio. This section simply states a board of education must only give notice of its intent before April 30 of each year not to reemploy a teacher on a limited contract. 54 Teachers protected by Ohio's teacher tenure law can only be dismissed under Section 3319.16 and Section 3319.161 of the Ohio Revised Code.

The United States federal district judge ordered, "insofar as the procedures outlined in Section 4117.04, Section 3319.16, and Section 3319.161 of the Ohio Revised Code, there has been compliance with due process as guaranteed by the Constitution of the United States." The federal judge issued an order of dismissal on this matter on November 16, 1973, several weeks after the strike had ended.

A day after the federal suit had been filed by the teachers' Association, the superintendent of the county-wide school district wrote a position paper regarding the labor dispute. 55

54 See Orr. v. Trinter, 29, Ohio Misc. 149 (1971) and Crabtree v. Board of Education, Wellston City School District, 26, Ohio St. 2d 237. This later case is elaborated upon in the Wellston City School District Teachers' strike. Ohio's Supreme Court in 1973 upheld the Southwest City School District Board of Education in exactly the same light that this analysis is presented.

The paper stated the two negotiating teams had already agreed to a three dollar per student allotment for the district's school libraries, contract procedures, and professional behavior. The professional behavior item was negotiated at the board's meeting in November. The paper postulated the teachers were striking for a different and new issue, a "fair" dismissal policy. Other issues already agreed to were: (1) unlimited accumulation of sick leave days, days for jury duty, three days for professional leave, twenty days of association leave, two days of personal leave, maternity leave provisions, a salary and insurance program, and a one, two, and three year limited teacher contract sequence. The position paper stated that the "teachers were willing to throw all this out the window in order to just usurp the Board of Education control."

Section 4117.04 of the Ohio Revised Code\footnote{Section 4117.04 of the Ohio Revised Code reads an employee has the right to establish the fact he was not absent from duty due to striking activity.} grants a teacher the right to establish the fact that he or she did not violate Section 4117.01 through 4117.05 inclusive. A request for a hearing must be filed in writing, with the officer or body having power to remove such employee, within ten days after regular compensation has ceased. A board of education must establish a procedure for hearings within this ten day period. It has already been established that a federal judge ordered that all hearings for dismissing striking teachers had to follow guidelines pertaining to Section 3319.16 and 3319.161, Ohio Revised Code, regardless of contract status.
Since the federal court had ordered the appointment of referees to conduct the hearings for dismissals, the chief administrative officer of the Board of Education asked the State Superintendent of Public Instruction to appoint referees. Legal counsel for the Ohio Education Association asserted one referee could hear no more than two cases. Thus, it would be necessary to appoint forty-four referees to hear the eighty-eight cases and such expense was to be borne by the Vinton County Board of Education. Consequently, the prosecuting attorney of Vinton County advised the local superintendent of schools to reschedule all hearings according to the federal court's guidelines.

Six days later, on October 10, 1973, the Board of Education, after first meeting with the State Superintendent of Public Instruction, voted to rescind the resolution invoking the Ferguson Act for seventy of the eighty-eight teachers who had left their teaching positions. The teachers' Association rejected this gesture upon the part of the Board of Education to end the strike. The Association's president maintained the Board's list did not list either the seventy teachers who were no longer under suspension nor the eighteen teachers who continued to be dismissed. The Association's president charged the board's action was personal and that the eighteen teachers who were excluded from the offer of reinstatement were excluded solely on the basis of their activity in the teachers' Association.

57 Columbus Evening Dispatch, October 4, 1973, Columbus, Ohio.  
58 Chillicothe Gazette, October 11, 1973, Chillicothe, Ohio.
It was also on this date that the common pleas judge had set a hearing to consider the granting of a temporary injunction. Legal counsel for the teachers' Association requested the temporary restraining order be vacated. The common pleas judge denied the move to vacate but did modify the temporary restraining order by lifting the ban on written and oral communication, ruling the restriction had served its purpose.59

Also, at this meeting, the school superintendent announced he had had three heart seizures because of "around the clock harassment." His physician had ordered absolute rest for two weeks. The Board of Education appointed another school administrator as acting superintendent.

The State Superintendent of Public Instruction, who had met with the Board prior to its official session, stated after the meeting, "The Board would have been required to provide at least forty-four referees for the eighty-eight teachers. Now only nine referees will be required for the hearings to determine if the eighteen teachers violated the Ferguson Act."60 He further stated, "The state has no authority to intervene. Decisions for local school boards can not be made in Columbus, Ohio. The local control of schools is a cherished tradition in Ohio and that is how it should be."61

Attorneys for the teachers' Association contended the Board of Education could rescind its resolution involving the Ferguson Act and

59 Ibid.
60 Ibid.
61 Ibid.
rehire teachers without the restrictions of the Ferguson Act at any time. Legal counsel for the Board argued the Board of Education could not legally rescind its resolution and that in districts which had tried to withdraw the Act, employees were still on a two-year probation. The teachers remained on strike.

On October 11, 1973, the federal judge in Columbus, Ohio issued a court order dismissing the McArthur Village Police Department as a party to the action of the contesting parties.

On October 19, 1973, the Ohio Industrial Commission held a brief hearing with representatives from the Association and the Board of Education. The Association wanted negotiations to begin immediately under the auspices of the Ohio Industrial Commission. The Association's president said the teachers wanted reinstatement of the eighteen fired teachers, all of whom he asserted were leaders in the association and the negotiating team. Legal counsel for the Board of Education objected to the meeting stating the Ohio Industrial Commission had no jurisdiction over the matter. The Association's president then contended the present grievance procedure stopped with the school board and that teachers wanted a third party arbitrator brought in with the power of binding arbitration. He stipulated further the teachers wanted a "fair-dismissal" policy which would require written notification of reasons for dismissal or non-renewal of limited contracts. The Board's legal counsel claimed such a "fair-dismissal"

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63 Columbus Citizen Journal, October 20, 1973, Columbus, Ohio.
policy would give tenure to non-tenured teachers and that binding arbitration was illegal for a school board in Ohio. A hearing was scheduled for the morning of November 2, 1973. The strike ended approximately one week before the scheduled hearing.

Another unique aspect of this labor dispute was the fact that school foundation funds through the state treasurer's office played a crucial factor in resolving this dispute. It had been stated earlier that schools had "technically" remained opened throughout the strike. The auditor for the State of Ohio made a personal visit to the school district to determine whether pupil and teacher attendance figures justified the claim of the Board of Education that schools were operating. Payment of state funds through the school foundation formula were halted pending an inquiry. A hearing was scheduled before Franklin County Court of Common Pleas seeking an injunction to withhold state funds. This hearing never occurred. The state auditor acted a week in advance of this scheduled court hearing to restore payments to the school district, once the strike ended. This suit had been filed by the teachers' Association.

Finally, in late October, 1973, parents of a student filed a suit naming both the Board of Education and the teachers' Association as defendants in the Common Pleas Court of Vinton County. The suit ordered the Board to provide a suitable educational program and facilities and the teachers' Association to honor their contracts of teaching. One can only conjecture what influence this act had upon the controversy as later in the evening of the same day, the suit between the Board of Education and the teachers' Association was dropped as strike settlement was reached.
After the longest school strike in Ohio's history, an agreement was reached shortly before midnight. A Board member and the State Superintendent of Public Instruction were instrumental in helping the parties reach agreement. Several secret meetings had been held in a private home in the county prior to the announced settlement.  

Of the thirty-seven issues in the final contract settlement, thirty-four had been agreed to before the strike. The salary issue had been resolved. All suits and legal actions were dropped and a request by the Association that the State Board of Education revoke the school district's charter was withdrawn. There was to be no form of recrimination against the other by either party or against teachers who elected not to strike. Teachers agreed to make-up thirteen of the twenty-five instructional school days lost. Classes would be held on Saturdays for thirteen weeks. Under the terms of the agreement all staff members were reinstated under the same contract status that existed prior to the strike. The parties did not agree to binding arbitration in the grievance procedure. Teacher evaluation was the only new item added to the "fair-dismissal" policy. Ohio Schools maintained the strike was marked by a series of firsts. The Ohio Industrial Commission subpoenaed Board members and

64 Columbus Citizen Journal, October 30, 1973, Columbus, Ohio.
65 Chillicothe Gazette, October 26, 1973, Chillicothe, Ohio.
68 Ibid.


Association members to a hearing in the state's capital city and ordered the Board to give reasons why Association leaders had been omitted in the rescinding of the Ferguson Act. This was the first time the Ohio Industrial Commission had even entered a school dispute according to Ohio Schools. The reader should be aware, however, that the Ohio Education Association was unsuccessful in involving this commission in the teachers' strike between the Hamilton Local Teachers' Association and the Hamilton Local Board of Education in Franklin County, Ohio, eight months earlier.

It was also the first time that school foundation monies from the state auditor's office had been withheld from a school district as a result of a teacher strike. The state auditor released a state-aid check of $81,278.95 as soon as work of settlement was announced. More than sixty percent of the school district's revenue came from state financial assistance.

Again, the official organ for the Ohio Education Association reported that "once again the anti-teacher strike law, the Ferguson Act, was demonstrated to be unworkable" and asserted most observers believed it actually contributed to the problems which prevented an earlier settlement of this labor dispute.69

Perhaps the most significant aspect of this teachers' strike, however, was the fact legal counsel for the teachers' Association actually filed suit in a federal district court demanding Ohio's Ferguson Act banning public employees' strikes be declared

69 Ibid.
unconstitutional and in violation of the due process clause guaranteed to all citizens under the Fourteenth Amendment. This aspect of the strike was never published in *Ohio Schools*, the official organ of the Ohio Education Association. Indeed, this suit never received much publicity. The federal case, *Vinton Local Teachers' Association, et al., v. Board of Vinton Local School District*, was closed by federal court order on November 16, 1973.

However, although the strike itself had ended, litigation was to continue over the matter of a professional negotiations agreement after an eight month interim. The parties had agreed to a new master agreement which was to be effective from October 1, 1973 through June 30, 1974. The contract was to continue in effect from year to year thereafter until either party would notify the other in writing of its desire to terminate or modify the terms of the agreement.

On March 11, 1974, the Board of Education took action to terminate the master agreement effective as of June 30, 1974. The day after the board's action, a letter of notification dated March 12, 1974 was hand-delivered to the president of the teachers' Association.

Even though the parties continued to meet to reach agreement on proposed changes in the master agreement, the parties were unable to reach complete agreement during several negotiating sessions. Thereafter, on May 30, 1974, a law suit was initiated by the teachers' Association alleging the Board of Education was obligated under the master agreement to enter into good faith negotiations regarding bargaining for a new agreement, and that they had failed to do so.
On August 7, 1974, despite the language of the master contract which read that either party could terminate or modify portions of the contract, the Common Pleas Court of Vinton County determined that the Board of Education and the teachers' Association entered into a legally binding and enforceable collective bargaining contract. The Court ruled the Board of Education accordingly be ordered to comply with their contractual obligations to negotiate any modification in the contract in good faith.

The judge reasoned that the Board of Education would not be permitted to frustrate the legal process or to deprive and usurp his court of jurisdiction in this matter under the subterfuge of terminating the contract under which the parties had operated.

The judgment entry read:

"It will accordingly be the orders of this Court that the Board's action in terminating rather than modifying the contract is an abuse of discretion and a nullity and negotiations on all issues existing between the parties herein will continue in accordance with this contract and with both the board and the teachers complying with their contractual obligations to negotiate in good faith.

The Court will continue to exercise jurisdiction over this matter to insure, and, if necessary, compel by court processes and disciplinary methods, that all parties or persons involved negotiate in good faith to resolve their difficulties."

On September 5, 1974, the Vinton County Local Board of Education filed a notice of Appeal to the Court of Appeals of Vinton County, Ohio, from the order entered on August 7, 1974, by the Common Pleas Court.
The appeals court ruled:

"We do not in this appeal pass upon how the contract should be construed or interpreted or the rights of the parties thereunder. Neither do we foreclose the issuance, upon proper hearing, of preliminary injunctive relief shaped to maintain the status quo. We do hold that the order here appealed, other than with respect to disposition of the motion to dismiss, is prejudicial to the Board and contrary to law for the reasons above stated.

The assignments of error to the extent they allege error in the grant of the injunction below, is sustained and the order is reversed and the cause remanded for further proceedings according to law."

Since the appellate court remanded the cause back to the common pleas court for further proceedings according to law, the Board of Education and the teachers' Association had to rewrite a collective bargaining agreement due to the appellate's court decision that a board of education had broad discretioning powers to enter into a master agreement with its teachers' association.

THE WELLSTON CITY SCHOOL DISTRICT STRIKE

In 1970, a classroom teacher was denied continuing contract status by the Wellston City School District's board of education. This teacher filed a four million dollar suit in the trial court of Jackson County, Ohio. The teacher named the Board of Education, twenty-one teachers, and the school district's administrators as defendants in the suit. The teacher based his claim for continuing...
contract status upon the premise the Board of Education did not comply to the proceedings as outlined in Section 3313.23 of the Ohio Revised Code. It was the contention of the teacher that since the requirements of the section were not met, minutes of the board meeting not being recorded by the clerk of the board or a board member appointed by the others present, his notice of intent not to reemploy him and grant him tenure, was a nullity and under related sections of the law, the plaintiff-teacher was entitled to continuing contract status. The trial court did not agree with the teacher but upheld the Board of Education. The suit was appealed to the appellate level in Ohio and ultimately to the United States Supreme Court through the legal mechanism of certiorari. In ruling for the Board of Education, the Jackson County Court of Appeals ruled:

The gist of petitioner's argument is that he is asking this court to permit him to secure a continuing contract by default. The criterion for the award of a continuing contract to him would be the alleged failure of the regular clerk to be present at a stated meeting of the board of education and the failure to elect a clerk pro tempore from the membership of the board. Certainly the General Assembly never intended such to be the standard of the employment of a teacher on a continuing contract.  

Dictum of one judge in the appellate ruling who concurred in part and who dissented in part is highly relevant today in relationship to

71Section 3313.23, Ohio Revised Code reads: "If a clerk ....is absent from any meeting of the board, the members present shall choose one....in his place pro tempore."

72Crabtree vs. Board of Education, Wellston City School District, 26 Ohio App. 2d 237.
the concept of due process and fair dismissal under Section 3319.11 of the Ohio Revised Code.

Almost every case which has considered the question supports the view that, unless there is a statute to the contrary, probationary teachers' contracts may be terminated by the school authorities at the end of any contract year prior to the time tenure is gained, with or without cause and without a hearing. 73

This judge stated he also was of the view that the statutes under which the Board of Education acted were constitutional and were not in violation of due process. 74

Legal counsel for the former classroom teacher then filed a petition of certiorari to the Supreme Court of the United States. The petition was filed in December, 1971. In June, 1972, Justice Brennan speaking for the Court denied judicial review. Such a specific petition is an appellate proceeding for reexamination of an inferior tribunal or as auxiliary process to enable an appellate court to obtain further information. The petition would have brought into the nation's highest court the record of the administrative or inferior judicial tribunal for review. Usually, such a petition for certiorari is utilized when legal counsel feels circumstances are so exceptional that an immediate review is in the interest of justice. This petition performs the office of the common-law writ of error. The Supreme Court did not agree that this case merited judicial review.

73 Section 3319.11 of the Ohio Revised Code states a board of education must send notice of its intent not to reemploy a teacher before April 30 of the year a limited teacher's contract expires.

A year later, this former teacher and two other citizens of the school district were three candidates running with four other citizens for three seats on the Wellston Board of Education. The three candidates ran on an anti-administration and austerity program. In January, 1974, these three new board members became a majority voting block on the newly reorganized board of education. Several weeks later, the Board of Education voted to employ legal counsel from Ohio's capital city. During the same meeting, the Board voted itself a committee of the whole so that any Board member could enter any school building in the school district to inspect the schools and to evaluate teachers without having to state a specific purpose to a building principal.75

At this same meeting, the former classroom teacher resigned as a duly elected member of the Board of Education. The remaining board members immediately passed a resolution naming him the school district's business manager. He was rendered a four year contract with a salary of fifteen thousand four-hundred ninety-three dollars. The contract was already prepared and the new business official was to be directly responsible to the Board of Education itself, not the school district's chief administrative officer.

The next day, one hundred nine of the school district's one hundred eleven teachers and six administrators initiated strike activity on behalf of the non-reemployed school administrators. An area

75 Chillicothe Gazette, February 5, 1974, Chillicothe, Ohio.
newspaper suggested that this strike activity, where school administrators and classroom teachers were united in their stand against a board of education, could prove to be unique in Ohio school history. The strike lasted nine school days before settlement was reached.

A field representative for the Ohio Education Association charged the newly elected majority of the Board of Education wanted to administer the school district through the office of business manager.

Two days later, after the strike began, the president of the Board of Education resigned after an explosion destroyed property in his place of residence. Soon after, the board's vice-president also resigned. Throughout this dispute, three board members acted as a full board. The two vacancies were not filled throughout the duration of the strike. The board's school physician for twenty-five years also resigned, having rendered his services freely on behalf of the athletic teams. He said, "I see a situation arising that will make the climate for a good education process impossible in our high school. The members of the school board should resign."

Three days after the dramatic first meeting in February, a highly partisan screaming crowd of three hundred parents agreed with another field representative of the Ohio Education Association who alleged the business manager was making a "power grab" to control the schools. The one minority board member moved all three board members to resign.

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77 Ibid.
78 Ibid.
79 *Athens Messenger*, February 8, 1974, Athens, Ohio.
members should resign and requested the Probate Court name five new members to the Board of Education. He reminded the audience the city's renowned physician had made the recommendation several days before. The motion died for lack of a second.

At this same meeting, the Board members voted two to one to give the city solicitor three days to take the necessary legal steps to reopen the schools. The city solicitor was to file suit in the court of common pleas to request a temporary and a permanent injunction restraining order commanding teachers and administrators from striking and to return to their teaching and administrative duties. The three member Board also stated if this action could not be done, the Ferguson Act would be invoked. After this meeting ended, representatives for the teachers' Association and the Ohio Education Association met with the three member board for several hours. No public announcement concerning the meeting was made.

Two days later, negotiations were held in the office of a local attorney. The meeting started at nine o'clock in the morning and lasted some eight hours. Legal counsel for the Board of Education was represented by the city solicitor's office, not the law firm in Columbus, Ohio. Everyone thought agreement had been reached at the end of the meeting. Later that same evening, two of the three board members said there was no final agreement because they had made too many concessions. At this point, the city solicitor disassociated himself from the board's activities, charging the board had violated an agreement which was made in good faith.80

80Columbus Evening Dispatch, February 11, 1974, Columbus, Ohio.
The negotiations process had broken-down. A suit was filed by the Board against the teachers' Association, the Ohio Education Association, and the administrators' Association. Legal counsel from Columbus, Ohio asked the court to halt picketing, order defendants to refrain from interfering with board members going to and from school on their work assignments, and order the superintendent to turn over a full set of keys to all school buildings. The judge declined to grant a temporary injunction without a hearing. He set a later date for a hearing.

At this time, the Jackson County Common Pleas Judge strongly urged the two parties to resume negotiations. The judge said that if the parties did not resume negotiations, he might find it necessary to refer the entire school problem over to a grand jury probe if a good faith compromise could not be reached. He further stated it might also be necessary to investigate possible violation of conspiracy or fraud laws in connection with the election of board members of the previous November. The matter of creating new and expensive and unnecessary administrative offices would also be included in the grand jury probe.

An attempt was now made to fill the vacancies existing on the Board. The Ohio Education Association field representative recommended that teachers and administrators present five names and that the board submit five names and that one member from each group be selected to fill the two vacant seats. The two-member majority of the Board suggested they submit one name and that the other board

81 Ibid.
member submit a name and these two persons be appointed to restore
the board of education to full strength. No action was taken. The
Ohio School Boards' Association speaking through its executive
director offered its services and volunteered to help both parties
work out a solution. No action was taken.

Legal counsel for the Board now filed an Affadavit of Prejudice 82
accusing the judge of being prejudiced by reason of the statements
he made regarding a grand jury investigation. The petition read a
fair and impartial trial could not be held in Jackson County, Ohio.
The suit maintained there was extensive pre-trial publicity and a
high level of emotional tension. The petition further asserted such
a hearing could not be held in the county because serious threats of
violence had been directed toward the clients the law firm represented.
The judge reacted by stating the hearing would open as scheduled on
issuing a temporary injunction and he would announce his decision
regarding the Affadavit of Prejudice at that time. Representatives
for both parties announced they would be present for the scheduled
hearing on February 18, 1974. 83

The adversaries met at the scheduled time in the court house.
The judge never formally opened hearings on the suit brought by the
Board of Education. Instead, the judge ordered the two parties into
separate rooms. He spoke to the parties only through their attorneys.

82 The Affadavit of Prejudice contained a motion for change of
venue to Chillicothe, Ohio.

83 Legal counsel for the Board of Education at this time agreed
to withdraw the petition charging the judge was prejudicial to hear
a case.
Negotiations continued for four continuous hours in the court house rooms. In the middle of the afternoon, the judge announced settlement of the nine day old strike. He stated the settlement would be incorporated into the court's journal with either party subject to contempt citation for failure to abide by the terms of the agreement.

The settlement statement contained the following resolved issues: (1) the reopening of schools; (2) negotiations; (3) a recrimination clause; (4) an extension of the school calendar to help make-up lost school days; (5) the process to follow to fill the board vacancies; (6) the superintendent's contract; (7) teacher absence records; (8) principals' contracts were to be renewed; (9) all other non-certificated personnel contracts were to be renewed; and (10) a job description for the business manager.

The Wellston Board of Education refused to release the business manager from a contract as it maintained there was a legal contractual restraint. Restraints which were placed upon the business manager through developing a job description were: (1) he had to receive permission from building principals to enter buildings; (2) he could only visit classrooms during school hours and then only with permission of the building principals; (3) he was not to be involved in the selection of educational related supplies, materials and equipment; (4) he was not to be involved in any instructional program or extracurricular activities; (5) he would be able to volunteer any response

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at a board meeting only if called upon; (6) he was not to participate
in the evaluation of certificated persons; and (7) he was not to
have access to school records. The strike settlement also called
for the make-up of the nine lost school days by extending the
school year.

The court's judgment entry journalized February 18, 1974 reads:

"This cause came on for hearing before the court on
February 18, 1974, and the Court being fully advised
in the premises finds that the parties to this action
have settled all matters of dispute and that said
agreement has been reduced to writing and executed
between the parties and being satisfied with said
agreement does hereby approve the agreement."

"It is, therefore, ordered, adjudged, and decreed that
said agreement shall be made a part of the final order
of this Court."

"The Court further orders that it will retain jurisdic-
tion of this cause to assure the parties continuing
compliance with their obligations under this agree-
ment."

Shortly, after the strike, a newly formed citizens' committee
calling itself the Citizens' Committee for Better Education launched
a campaign to raise two thousand dollars to finance the costs of
legal counsel for a private citizen. The citizen's suit sought a
temporary and permanent injunction to prevent the clerk-treasurer
of the Board of Education from paying the business manager's salary;
the Board from honoring the contract as valid; and to deny the business
manager access to any school related supplies, records, or buildings.
The suit also asked repayment of any wages the business manager had
already received. The suit claimed mandatory provisions of Section
5705.41 of the Ohio Revised Code were not complied with, there being
no certificate of the financial officer offered. The suit was filed by the same legal firm which provided legal counsel for the Wellston Education Association during the strike. 85

The suit also charged the motion to employ a business manager was vague, uncertain, and not in conformity with law. The contract that the business manager entered into was void because his compensation was not fixed before his election to office.

Even though the business manager had already resigned, the judge still felt the suit should be heard. In issuing his opinion, the judge recorded the following principles in this decision: (1) there was no right nor need for a jury trial; (2) his court had no jurisdiction to enjoin a board of education from doing what the law permits or allows it to do; (3) his court could not permanently or temporarily enjoin the Board of Education, no matter how much the court might question the wisdom of any certain actions of the Board; and (4) his court did have the power and obligation to examine the legality of this particular contract between the Board and the business manager.

The judge noted in his decision that the precise procedure for the business manager's resignation as a board member and his new employment occurred considerably before the January 12, 1974 board meeting, and before his resignation; (2) the meeting in Columbus, Ohio two days before the resignation to discuss with legal counsel the proper legal steps to pursue was highly significant to his

85 Athens Messenger, February 24, 1974, Athens, Ohio.
decision; and (3) there was too great a coincidence that the business manager's replacement was present at the board meeting when the resignation occurred. The judge recorded, however, these matters in and of themselves did not constitute the contract illegal.

Then, the judge ruled as follows: (1) the business manager was, in fact, at the date of the signed contract, a de-jure member of the school board and was so until such time as his successor was appointed and qualified; (2) this was an entirely new position, thus the original resolution should have created the position first. Then a resolution should have been passed containing the exact financial terms of any proposed contract. In this case, the business manager himself prepared his own contract and it included several items of compensation and provisions never officially agreed to by the board of education at an official meeting prior to the signing of the contract. Such action also did not take place in an open public meeting. These procedures violated the spirit and the letter of law relating to school contracts for the expenditures of school monies and constituted, in the court's opinion, a violation of Section 3319.05 of the Ohio Revised Code.

In recording his opinion, the judge wrote it was interesting to note three members of the board of education who were newly elected only took office on January 1, 1974, had no prior experience, and ran on a platform of austerity and yet, one of the first official

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86Section 3319.05, Ohio Revised Code, states that a business manager shall receive such compensation as is fixed by the board of education before his election.
acts was to add eighteen thousand dollars of expenditures to a small school district which already had one of the highest tax rates in Jackson County, Ohio. The judge wrote this did not appear to be an example of fiscal responsibility.

Finally, the judge ruled Section 5705.41 of the Ohio Revised Code did apply to a contract involving a substantial amount of money which is entered into in the middle of the school year. There was, otherwise, no way for a board of education to know if funds were available to be expended.

The judge ordered that an entry be prepared accordingly and costs were assessed against the former business manager. The judgment entry read that the contract was void and was of no effect, and any monies paid out pursuant to such alleged contract had to be repaid to the general fund of the Board of Education.

Related dictum in the court's journal entry stated that as previously indicated, if in the exercise of its wisdom and after careful consideration of all circumstances, including the size of the school district and its financial position, the Board of Education decided that if the position of business manager was necessary, the Court's opinion would not purport to prevent the Board from establishing the position.

The judge concluded the journal entry with the following statement: "This opinion and decision is limited to the alleged contract of January 12, 1974, between the business manager and the Board of Education."
This Jackson County common pleas judge was on assignment in the Hall of Justice, Columbus, Ohio, when he consented to be interviewed by this writer. The judge appeared at ease and discussed factors of this situation openly and freely.

When asked the question whether he was the original trial judge in the four million dollar damage suit in which the business manager was denied continuing contract status in 1970, the judge responded he was. The judge volunteered that the issue at law was whether a judge possessed the power of judicial review in a board of education denying tenure status to a probationary teacher, provided no constitutional rights of a probationary teacher were violated. The judge felt this matter was not subject to judicial review.

When he was questioned as to the incredibility of three board members obviously running for seats on a board of education with revenge as their motive, the judge responded community apathy permitted this situation to happen. "No one wants to become involved," he replied.

The judge admitted he felt the election of the three board members was not "rigged" as it may have been inferred in local newspapers. He sensed the citizens of Wellston, Ohio, were "up in arms" concerning the creation of the position of business manager. The judge issued his threat of a grand jury probe concerning the entire school situation to settle down the irate citizens of the community.
The judge grinned and admitted "that remark was eight-tenths bluff." He justified his remark once more based upon the grounds he "really feared violence could have erupted at any time, and I felt my statements would help to cool things down."

The judge revealed the business manager actually resigned before the citizen's suit was filed. The judge, nevertheless, felt it was his judicial duty to hear the case. He personally felt the members of the Board of Education did not proceed legally nor in the proper manner in creating the position of business manager. He sensed the Board of Education did not "have that kind of money to throw around."

He also volunteered that legal counsel for the Wellston Board of Education still had not been reimbursed for professional legal services rendered.

The judge further volunteered, "The judiciary, of the three branches of government, is the most impartial and disinterested in a case in court. The judiciary is the great stabilizer in our form of government. The judge is the great compromiser; otherwise, I have been fooled all these years."

The judge admitted negotiations between the opposing parties took place in his chambers. He said he knew all along he probably would not hear the case filed by the Board of Education and end the strike with an injunction. "It is an art of the judge to be able to bring adversaries together to resolve their own differences," he reminded the researcher of this study. Opposing parties were placed in separate rooms and the judge admitted he essentially served
as a mediator in resolving this conflict. He never entered either room of opposing parties but had attorneys for the opposing parties communicate with him the progress of negotiations in his private office.

When questioned relative to the effectiveness of the Ferguson Act, the judge stated the act was unenforceable. "The act itself doesn't get to the heart of the problem," he said. He continued, "The judge has become the arbitrator, the third party for collective bargaining in the public sector today."

"Teachers do not have the absolute right to strike," the judge asserted. He further elaborated his views by revealing the teacher's image has been tarnished by labor oriented activity. He favored advisory arbitration when impasse is reached in negotiations. Then he suggested binding arbitration was better than striking in order to resolve labor-management conflict. The judge as the third party to a public sector labor dispute would essentially create the impact of binding arbitration. Then, the judge expressed a feeling of community pride for the small towns of Jackson County, Ohio. "I did not want to see the community harmed, and I sensed fear was evidenced everywhere. I did not want to lose sight of the real issue in this dispute. The court had to affect a settlement to relieve the intense tension in the town," he exclaimed. He said that people should try to solve their own problems, but in this particular instance, the results of the dispute had to come through the court. "The Wellston Board of Education itself felt relieved I had intervened
in this matter, although I recognize the law is not the perfect answer to all problems," he said. The judge's final comment was that once a case is dismissed, a judge is no longer involved in the dispute. "In this situation, however, I retained jurisdiction to prevent either party from not living by the terms of the agreement," the judge replied.

THE YOUNGSTOWN CITY SCHOOL DISTRICT STRIKE

The twenty-two day strike by the Youngstown Education Association against the Youngstown School District ended on September 26, 1973, one day before scheduled hearings on contempt of court charges against officers of the Youngstown Education Association. This strike received national coverage and assumed national significance due to the leadership roles of state and national educational officers. The executive secretary of the Ohio Education Association, its president, and the president-elect of the National Educational Association delivered stirring and eloquent speeches to over one thousand teachers and other interested citizens in the Phillip Murray Union Hall to support the position of the teachers' Association. Locals 1143 and 1144-A of the American Federation of State, County, and Municipal Employees also entered into the labor dispute.

87Case No. 73 - CI - 1234, The Youngstown Board of Education vs. The Youngstown Education Association, et al., In the Court of Common Pleas, Mahoning County, Ohio.

The day before school was scheduled to open for the 1973-1974 school year, a Mahoning County common pleas judge had issued a court order commanding classroom teachers and other school employees to report for duty or face the charge of contempt of court. Employees of the school district did not report for duty nor did they obey a second "clear and direct court" order issued three days later by the same judge. The judge issued a second order because legal counsel for the teachers' Association argued the first court order was not legally served. Sheriff's deputies were unable to personally serve the first court order, a temporary injunction to restrain the strike, as officers of the teachers' Association played a successful game of "hide and seek." When court order were finally served on the Association's officers, an angry judge said, "So there is no question about it. I am continuing the temporary restraining order which means that all of you who are parties to these cases will cease this strike, and as the order provides, stop interfering with the operation of the schools." The judge stated the teachers' Association was now under the direct order of his court and its members were to do what they were instructed to do.

Legal counsel for the teachers' Association stated the reason the first court order was not followed was because it was "not at

90 Ibid.
91 Ibid.
all clear precisely what the court wanted."\textsuperscript{92} The perturbed judge responded, "Are you taking the position that a man has to be handed a piece of paper by a sheriff in order to know the teachers had been ordered to end their strike?"\textsuperscript{93}

The strike continued as teachers and leaders of the Association refused to obey either court offer. Four days later the common pleas judge ordered the negotiating teams for the Board of Education and the teachers' Association to resume negotiations. The parties complied. Even though the judge's orders had been openly defied, he stated the matter of possible contempt of court citations had not been forgotten. "The most important thing is to get the schools open first."\textsuperscript{94}

What were the precipitating factors in this heavily-oriented labor-union steel town which could cause employees of the Youngstown City School District to openly defy two court-directed restraining orders and to violate Ohio's Ferguson Act which prohibits public employees to strike?

It would appear the collective bargaining process had gone on too long. Negotiations between the Association and the Board of Education had officially started in January, 1973 and had continued sporadically for eight months. A total of twenty-three sessions had been held prior to Labor Day and no sessions had been conducted during the months of April, May, and July. The Association did not

\textsuperscript{92}\textit{Ibid.} \\
\textsuperscript{93}\textit{Ibid.} \\
\textsuperscript{94}\textit{Ibid.}
request a negotiating session from June 25, 1973 until August 20, 1973. Finally, in late August, the secrecy of the issues was revealed when the president of the Association mailed letters to its membership stating there was a five hundred thirty dollar difference in agreement of a new base for the teachers' salary schedule. At that point in time the Association was asking for a seven thousand-seven hundred dollar beginning base and the Board of Education asserted it could raise the base to seven thousand-one hundred seventy dollars. The president of the Association wrote in his letter that if teachers had "to go to the streets" to have their demands met, mass picketing would occur on the first day of school.95

It was open knowledge that teachers were seriously considering a strike might be necessary and had publicized their position throughout this steel town community. Several days before the strike began, the Superintendent of Schools issued a strong appeal requesting school employees not to strike. He urged both parties to continue negotiations until all differences could be resolved.96

On the last day of August the Youngstown Chamber of Commerce urged the Board of Education and the Association to avoid a strike asking teachers to perform their regular duties and for the Board to make any future financial contract increases retroactive to the beginning of the school year. The Chamber of Commerce advertised its position in the local newspaper and concluded, "No one would gain....teachers would lose, schools would lose, but most of all, students would lose."97

It seemed inevitable that the parties had assumed positions would only lead to open confrontation.

The specific demands placed on the bargaining table were:
(1) to employ special teachers for instruction in music, art, and physical education in the elementary schools; (2) to grant extended service to guidance counselors and visiting teachers; (3) to grant severance pay of seven hundred dollars for retiring teachers who had accumulated sick leave of one-hundred fifty days; (4) to receive three personal leave days a year with pay; (5) to eliminate the last Monday of the school calendar; (6) to reimburse teachers who had to substitute in another classroom a proportionate amount of substitute teacher's daily rate; (7) to list on teachers' contracts the subject and building in a teaching assignment; (8) to give teachers permission to bid on all positions for which they were qualified for during any time of the school year; (9) to improve salaries of all types such as advisors and coaches; and (10) to receive payment for the cost of tuition for any teacher who had to seek additional college credit to keep their present assignment or to meet requirements for any new assignment.98

The school superintendent remarked the Board of Education would be willing to enter a three year agreement on working conditions, but the Board of Education could not agree to any salary increase beyond the previously stated position of a two percent increase from September through December and another two percent increase from January through August, 1974.

It was reported on the first day of September that the president of the teachers' Association was stunned that the Board of Education had authorized the superintendent to approve only a four percent salary adjustment. He then stated the Association could not accept a three year agreement but would agree to a two year agreement. The Saturday before the school year was scheduled to begin, the president of the teachers' Association maintained the major stumbling block to settlement was an unwillingness by the Board of Education to accept any proposal by the Association. He also reported to a Cleveland newspaper reporter that the strike by the Youngstown Education Association must be prolonged to bring the Board of Education to honest negotiations.99

Meantime, the president of the Youngstown Board of Education publicly praised the performance of its chief officer. He declared it was the superintendent's responsibility to conduct a successful opening of schools and not to devote his valuable time to labor negotiations. He asserted the assistant superintendent had been delegated the same negotiating power that the superintendent had. He revealed that eighty-five percent of the school district's total budget was allocated for personnel salaries, nine percent for fixed charges, and six percent for other operational costs. In the past five years, the president of the Board of Education claimed the school district had suffered a thirty million dollar reduction in assessed valuation of property taxes. The Board of Education

could not authorize a seven thousand-seven hundred dollar beginning base. The Board's best offer had to be seven thousand-one hundred seventy dollars.

In the early stage of this labor dispute between the Board of Education and the teachers' Association, the school superintendent was authorized to use his discretion in determining whether it would be wise to utilize the Ferguson Act to force the strike to end. The school superintendent remarked he would not advise the use of the act until after a scheduled hearing on whether the court would grant a permanent injunction enjoining the teachers not to strike. The act was never invoked throughout the twenty-two day strike.

As the strike continued, it seemed inevitable that fault-finding would appear. The executive secretary of the Ohio Education Association declared that it was the Association's opinion the superintendent of schools should "quit acting like an irresponsible child and seek to resolve issues rather than to continue to do everything possible to make the situation worse." He also stated it would appear the executive director of the Ohio School Board's Association was attempting to make the situation worse by issuing ill-founded and inflammatory statements concerning teachers and he wondered about the integrity of the leaders of that association. The state-wide teachers' association director further asserted the school superintendent was using teachers and pupils as pawns in a game to show the public and other colleagues just how tough he could be. He hoped

members of the Youngstown Board of Education would not be taken-in by "this power play" and would take steps to end the work stop-page.

A school board member remarked that the Ohio Education Association was using Youngstown schools as a battleground to attain its goals in its unquenchable thirst for power over the educational system in the State of Ohio.

The school board's president stated "there is an internal grab for power between the Association and the Board."102

The executive director of the Ohio School Board's Association responded by stating teachers in Ohio had no more right to strike than citizens have the right to rob a bank and that under no conditions should striking teachers be paid for the period they were on strike.103

Interestingly, no fault-finding through the strike was ever directed against the common pleas judge.

After approximately a week of no school for students, both parties entered the county court house for the scheduled hearing on the Board of Education's request for a permanent injunction against the strike. Rather than opening hearings on the issue of a permanent injunction, the judge ordered both parties to resume negotiations. The judge did not assume an active role in the collective bargaining process other than issuing this directive.

101 Ibid.
102 Ibid.
103 Ibid.
After the conclusion of the first resumed negotiating session, the judge reported that both parties only had disagreement on one issue. However, a new issue had arisen, the concern of teachers in losing salaries for days lost in striking. The teachers’ Association asked that the school year be extended to make-up for the lost days or that the lost payroll be added to the negotiated money. Another delay to opening the schools had occurred. At this time, the three major issues preventing agreement were salary, specialized teachers and the school calendar.104

Community groups became involved in the dispute. The Board of Education turned down demands by a group of black citizens led by the Urban League president for helping to resolve the issues. A group composed of the community’s ministers was formed and its leader was successful in returning the two parties back to the bargaining table.

The teachers’ Association conducted another rallying meeting at this time. The president of the Youngstown University chapter of the Ohio Education Association presided. At this meeting he stated that public employees are trying to gain the same rights steel workers fought for back in the thirties. "Youngstown will serve as an example to the nation."105 The Second Assistant Secretary of the National Education Association claimed the more militant teachers were better trained than their less militant counterparts

104 Collective Bargaining or Collective Demanding? An open letter to the taxpayers of the Youngstown schools was published and signed by all board members of the Youngstown Board of Education.

and are more career oriented. This officer of the National Education Association continued by asserting the strike was not against the public but was one against the representatives of the people who were not working in the people's best interest. Another speaker at the meeting, the wife of the representative of Ohio's 71st district, called for repeal of the Ferguson Act because of its demonstrated ineffectiveness.

Finally, on September 22, 1973, the ministerial group achieved its purpose. The Youngstown Board of Education first agreed to a one year wage settlement with the two chapters of the American Federation of State, County, and Municipal Employees. However, the presidents of the two chapters stated they would not recommend their memberships return to work until the teachers' strike was settled. The next day, the Youngstown Education Association set a meeting for its membership to vote on whether to accept the agreement between the negotiating teams. A member of the Board of Education predicted this meeting would be a ratification session and that the teachers would vote approval of the package.

On Tuesday, September 25, 1973, with contempt of court hearings pending the next day for officers of all striking organizations, the Board of Education and the teachers' Association reached tentative agreement. One can only conjecture what influence, if any, pending contempt of court hearings had upon the two parties reaching agreement one day before the scheduled hearings.

106 Ibid.
107 Ibid.
Eighty-five percent of the teachers present at the ratification meeting voted to accept the new agreement. The new beginning base salary on the teachers' salary schedule was seven thousand-two hundred seventy-five dollars through the end of December. It was to advance to seven thousand-four hundred dollars from January through August. The agreement also called for twelve special area teachers in music to be employed in January, 1974.

Regarding the issue of contempt of court charges, the Board's attorney stated, "We owe it to the dignity of the court, of the law, and of the citizens of Youngstown to see that this defiance of court orders does not go unchallenged." The attorney for the teachers' Association called the Board's action to proceed on contempt charges vindictive. He stated, "A long tradition in labor-management against this kind of vindictiveness by either side after a settlement is recrimination and reprisal."

Interview With The Judge

On December 12, 1975, this writer met with the common pleas judge who had ordered the adversaries in this board of education-teacher association labor dispute to resume negotiations and resolve

109 Ibid.
110 Contents of this section were obtained in a personal interview on December 12, 1975.
their own differences. In a personal letter to the writer, the judge wrote that he actually did very little in-so-far as playing the role of "peace advocate" in the school strike. He wrote he had stayed out of negotiations. In fact, he refused to enter into the negotiations, feeling it was not the proper business of the trial judge.

At first, discussion in the interview with the judge centered around the topic of contempt of court. The judge revealed there are two kinds of contempt of court charges, direct and indirect. Direct contempt is based upon Section 2705.01 of the Ohio Revised Code. This statute declares a court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of, or so near, the court or judge as to obstruct the administration of justice. Courts have the power within their sound discretion to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, the judge elaborated that courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.

Indirect contempt is governed by Section 2705.02 of the Ohio Revised Code. A person guilty of any of the following may be punished as for a contempt: disobedience of, or resistance to, a lawful writ, process, order, rule, judgment, or command of a court or its officer.
This common pleas judge asserted that disobedience of his temporary restraining order was generally looked upon as an indirect contempt, since failure to obey his order occurred outside the courtroom. The question of whether service must be made upon the defendants to hold them in contempt is governed by Rule 65 Ohio Civil Procedure. Actual knowledge of a court's order is all that is required to be held in contempt. The judge stated the law is clear that such knowledge of a court order can be established by evidence, e.g. radio, television, newspapers, conversation with other teachers. The judge noted that the refusal to be served with his order or "ducking" service of process by officers of the Youngstown Education Association was a tactic that constituted interference with his attempt to execute court processes.

The judge ruled that it was the order of his court that the teachers' Association and its president, its first vice-president, its second vice-president, its corresponding secretary, and its secretary, as representatives of the members of the Association, pay a fine in the sum of fifty thousand dollars. The judge snapped he really wanted to fine each striking teacher fifty dollars, but he knew that was impossible since he would have to schedule court hearings for over one thousand teachers. "I wanted to get the schools open as quickly as possible," the judge said, "and the best way to achieve that and still maintain the dignity of this court was to have one hearing and assess the penalty against the officers of the teachers' Association, representing the Association."
When pressed for a response as to whether he would issue another temporary restraining order against striking teachers in view of even more militant actions of public employees, the judge asserted he most certainly would since strikes by public employees was contrary to law. He admitted, however, the Ferguson Act is not a good act since it really is unenforceable, and that was the reason he did not hesitate to issue his two orders.

As to the role he played during the strike, the judge felt he did not allow himself or his court to be used as the public arena for the power struggle between the Board of Education and the teachers' Association. This researcher informed the judge that settlement of the issues involved in this strike did not appear in the court's journal as was the case in several other Ohio teachers' strikes. His response was, "That's not the function of a judge."

The judge revealed he had ordered the two parties to resume negotiations and that he sat in his office while negotiations continued. "I communicated only with the attorneys for the two parties and no one else," was his remark.

The judge stated that two months later, in December, 1973, rumor had it the Youngstown Education Association would attempt to stage a retrial based upon the charge that the fine of fifty thousand dollars was too excessive. There was no official filing to accomplish this end, but the judge said he did reduce the fine by fifty percent, from fifty thousand dollars to twenty-five thousand dollars. The judge felt the officers of the teachers' Association ultimately did show the court their respect.
When asked what alternatives there were for school boards and teachers' associations to resolve labor disputes without striking, the judge saw advisory arbitration as a viable means. He further volunteered, however, that binding arbitration was preferrable to utilizing the strike weapon.

Addressing himself to the issue of which takes precedence under provisions of contract law, a master contract with a teachers' association or the individual teacher contract in regard to employment conditions, the judge quickly responded it was the individual teacher contract that carried the weight of the law.

This judge admitted he had little specialized training in public sector labor law, although he conceded he had been a union officer before he entered law school. He felt it was now imperative that law schools require some formal instruction in public sector labor relations, and this judge felt that legal counsel for the teachers' association was an outstanding example of newly trained attorneys. At this point, he suggested that there be an interview with the Association's attorney who writes prolifically for the School Labor Law Journal. He said, "I'll call and ask him right now for you." Unfortunately, time restraints did not permit such an arrangement.

Finally, the judge conceded Ohio should have a collective bargaining bill for public employees, including teachers. "The teaching profession has a right to be treated with equality under the law the same as employees in the private sector do."
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In another interview with the president of the Youngstown Education Association, the question was posed as to whether the judge had treated the teachers fairly. His response was both negative and positive. The Association's president felt the judge was not fair in issuing a temporary restraining order without a hearing. "It's just fair play to hear both sides of a dispute before a decision is rendered," replied the president. However, the Association's president did feel that the judge conducted himself fairly and objectively throughout the length of the strike.

The leader of the teachers' Association confirmed the fact their Association had considered requesting a new trial to reduce the fine but the Association's legal counsel advised against it. "The judge was most fair when he reduced the fine by fifty percent," replied the president. When asked how the Association was able to bear the expense of a twenty-five thousand dollar fine, the president replied that each member of the Youngstown Association was assessed twenty-five dollars. Ironically, this judge who had wanted to fine each teacher for disobeying his court orders did accomplish his purpose.

When asked whether the right to strike or binding arbitration was the best means to settle boards of education-teacher associations labor disputes, the president quickly responded, "The right to strike." However, he did volunteer, "Perhaps the cleanest way to resolve differences is to have an arbitrator select the last best offer of either one party or the other."
CHAPTER V

RELEVANT OHIO TRIAL LEVEL COURT DECISIONS

AND

OPINION BRIEFING OF APPELLATE COURT DECISIONS

Since the major purpose of this study is to review the role Ohio's judiciary has played in the resolution of teacher-board labor disputes in the public sector, chapter five is divided into major sections in order to survey court decisions at various levels of the judicial hierarchy. The first section will present judgment entries of nineteen trial level court actions, seventeen which address themselves directly to teacher-board disputes. The other two court entries are significant because they represent relevant judgments concerning labor relations between public employees and public employers in the public sector other than school board-teacher association conflicts. The second section will subject eight appellate court decisions to the legal procedure of opinion briefing, five of which were derived from the case studies presented in chapter four. Two of the three other appellate court decisions are presented to determine the nature of the evolutionary process of how Ohio's judiciary has modified its posture regarding the process of collective bargaining between boards of education and teachers' associations and unions.
Court decisions made at various levels of the judicial hierarchy are significant, not only because of the large number of cases involved, but also because it can not be assumed that only important cases are appealed.¹ Often, the decision to appeal a case depends to a great degree upon the financial resources of the litigants. It could be possible that too many boards of education have not appealed adverse decisions because of economic restraints. In consequence, decisions made at the lowest level of the judicial hierarchy stand as law. In many instances, the decision not to appeal a trial level court decision may not be in the best interest of litigants, particularly if there has not been much judiciary interpretation of a given issue.

A word of explanation is needed regarding the matter of a court of equity as it functions under the jurisprudence system of this country. The reader may recall that in chapter three, a court of equity represents a system of jurisprudence of remedial justice, administered by a single judge and distinct from the common law courts. Courts of equity are empowered to decree judgments of fairness as old rules of law become too narrow to be applicable in new situations. Equitable relief, by way of injunction, is warranted where the remedy at law is inadequate.² Defuniak³ writes that the

³Ibid., Chapters 1 and 2 of this book provide an analysis of how courts of equity evolved to correct the flaws inherent in the common law system.
remedy at law is considered inadequate where the injury being cause or which is threatened with reasonable probability will be substantial, permanent, and irreparable. In Ohio, it has been held that public employers have no adequate remedy at law when public employees strike. Consequently, when public employees such as teachers strike, public employers such as boards of education have no other recourse under the law than to seek injunctive relief through the courts if the intent is to keep the schools open. Courts of equity co-exist with courts of common law to create two separate systems of jurisprudence.

DeFuniak writes:

Only in England, and with concomitant results in this country, do we find the peculiarity of two separate systems of jurisprudence, with separate courts and separate systems of procedure, one highly developed to make a just application of the law because of the deficiencies of the other system.

Therefore, decisions rendered by the judges in Table 7 represent the decisions of judges sitting in courts of equity. In other words, trials were by the judges without a jury. DeFuniak states that courts of equity, in order not to infringe upon or interfere with the established courts of law, have always refused to take jurisdiction of a cause and award relief except upon evidence that there is no remedy at law.


5 William Q. DeFuniak, Op. cit., p. 6

6 Ibid., p. 9.
Table 7 presents an analysis of the thirteen instances in which boards of education and teachers' associations in the six case studies of this study resorted to the judiciary to resolve labor disputes. It should be noted that in only four instances were there actual court hearings. Two of these hearings without a jury involved contempt of court charges. A third hearing involved the matter of whether a board of education could terminate its master contract with a teachers' association, and the fourth hearing was a citizen's suit contesting the legality of a contract for a business manager. Ten temporary restraining orders were sought and the judges issued ten such orders. A pattern which emerged which Table 7 does not show is that teacher strike activity occurred within the time span between the issuance of the temporary restraining order and the scheduled hearing to determine whether injunctive relief should be granted. In only one instance did a judge sitting in equity order teachers to stop their strike activity, and in that instance, the judge issued two temporary restraining orders which were not obeyed. All the other judges prescribed conditions to protect the public safety in their restraining orders, but they did not enjoin the teachers not to strike.

The reader may also note in Table 7 that in the contempt of court charge against the teachers' association in Youngstown, Ohio, it was the Board of Education which filed the suit against the Youngstown Education Association. In a civil court procedure as opposed to a criminal court procedure, failure to obey a court order is not an offense directed toward the court. 7

7Black, Op. cit., "A civil contempt is not an offense against the dignity of the court, but against the party in whose behalf the mandate of the court was issued." p. 390.
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*Both parties agreed to a Court Consent Order which had the same effect as a temporary restraining order.*
RELEVANT OHIO TRIAL LEVEL COURT DECISIONS

Although the nineteen trial level court cases presented in Figure 1 are not subjected to opinion briefing, nevertheless, the judgment entries of the courts' journals in the courts of common pleas in various Ohio counties indicated there has been a statewide effort by teacher associations and boards of education to involve the judiciary in settling their disputes. These nineteen court decisions reflect the judgments of thirteen various courts of common pleas in Ohio's eighty-eight counties. Fourteen of the nineteen cases were heard in the highly industrialized counties in Northeastern Ohio. One county, Mahoning County, contained four of the cases cited.

Figure 1 presents nineteen trial level cases, seventeen of which were derived from legal briefs and court decisions arising from these six studies. Even though these nineteen trial level court judgments have less precedent value than opinions of appellate courts, and for reasons stated previously in this chapter, the reader may recall it was stated in chapter two that a carefully reasoned trial level court opinion generally is more valued than a secondary authority.

It has been found that in the majority of these legal briefs and judgment entries of the courts' journals, the issue which predominated the language of the proceedings was not the issue of the legality or illegality of the right of public school teachers to strike. Rather, the issue which dominated the language of the legal proceedings was the topic of collective bargaining.
FIGURE 1

RELATED TRIAL LEVEL COURT CASES IN OHIO


3. Case No. 23841, Board of Education of the Martins Ferry City School District v. Ohio Education Association, et. al., Court of Common Pleas, Belmont County, Ohio.


5. Case No. 20934, Board of Education, Wellston City v. Wellston Teachers' Association, Court of Common Pleas, Jackson County, Ohio.


7. Case No. 72 CL 752, Campbell Education Association v. Campbell Board of Education, et. al., Court of Common Pleas, Mahoning County, Ohio.

8. Case No. 72 CL 775, Campbell Board of Education v. Campbell Education Association, Court of Common Pleas, Mahoning County, Ohio.

9. Case No. 609819, Cleveland City, etc., v. Division 268, et. al., Court of Common Pleas, Cuyahoga County, Ohio.


13. Case Bi, 73 ClV 0187, Painesville Township Education Association v. Painesville Township School District Board of Education, Court of Common Pleas, Lake County, Ohio.

14. Case No. 73 Cl 544, Newton Falls Classroom Teachers' Association v. Board of Education, Court of Common Pleas, Trumbull County, Ohio.

15. Case No. 11394, Plain Local School District, et. al., v. Judith Woodcock, et. al., Court of Common Pleas, Stark County, Ohio.


17. Case No. 11074, The Vinton Local Teachers' Association, v. The Vinton Local Board of Education et. al., Court of Common Pleas, Vinton County, Ohio.

18. Case No. 73 Cl 021, Wooster Education Association v. Wooster City School District Board of Education, et. al., Court of Common Pleas, Wayne County, Ohio.

19. Case No. 73, Cl 124, The Youngstown Board of Education v. The Youngstown Educational Association, et. al., Court of Common Pleas, Mahoning County, Ohio.

In chapter four, the reader will recall that a certain set of operatives was necessary in order for the collective bargaining process to occur. At the core of these labor disputes between board of education and teacher unions which is contained in the following narrative, five basic tenets created the foundations for the collective bargaining process. They were: (1) an agreement to bargain collectively must exist between a board of education and its bargaining agent for its professional personnel; (2) the exclusive right of the teachers' unions to be the sole bargaining agent for the unions had to be determined; (3) the scope of collective bargaining should be
delineated; (4) the board of education had to recognize the teacher's union; and (5) procedures to overcome impasse had to be defined. The following related suits in one way or another have a direct bearing on these basic tenets.

The vast majority of the cases in Figure 1 deal directly with the issue of the legally contractual status of a collective bargaining agreement between a board of education and a teacher's union.

Section 3313.17 of the Ohio Revised Code reads:

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing, and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or request of money or other personal property.

Boards of education in Ohio are also required by statute to contract with teachers for employment services. Section 3319.08 of the Ohio Revised Code provides:

The board of education of each city, exempted village, local and joint vocational school district shall enter into written contracts for the employment and reemployment of all teachers.

The basic issue in the majority of the cases cited in Figure 1 involve the matter of whether boards of education and teachers' associations can legally enter into collective bargaining agreements or master contracts. In most instances, these cases represent the

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8 Section 3313.17, Ohio Revised Code.
9 Section 3319.08, Ohio Revised Code.
principle that boards of education have been instructed that they must bargain collectively with their respective teacher associations by common pleas judges.

Even though the sixth case cited in Figure 1 does not pertain to a board of education, it is most relevant to the legal status of collective bargaining in Ohio in the public sector. Greene\textsuperscript{10} maintains that Ohio's view concerning the legal status of collective bargaining in the public sector is reflected in this case. The legal scholar argues that this case reflects the fact that no court had held or found that a public employer was under a common law duty to bargain. Green's interpretation and understanding of this common law principle is reflected in the following citation:

\begin{quote}
If the hospital does not voluntarily wish to bargain collectively with the union, can a court compel it to do so—and we face it in the light of the rule book requirement that the plaintiff union must show a clear duty on the part of the hospital to bargain collectively when the plaintiff requests it.\textsuperscript{11}
\end{quote}

Once again we have cast a dragnet and, even with the aid of counsel, have failed to net from the vast sea of labor law in Ohio, or elsewhere, a single, reported case at common law (apart from, and prior to, some constitutional or statutory provision) in which, where the issue was raised, any court ever "held" that any employer was under a duty, or could be compelled, to bargain collectively if he did not voluntarily wish to do so.


\textsuperscript{11} Building Service & Maintenance Union v. St. Luke's Hospital, Case No. 843188, C1, Court of Common Pleas, Cuyahoga County, Ohio.
We must remember, too, that generally in the field of labor relations Ohio is a common-law jurisdiction, and that we have no comprehensive labor relations act as do the federal and some state governments. There is not a word in Ohio's common-law rule book that says an employer must, against his will, bargain collectively.

Because the plaintiff has failed to show a clear right to compel the hospital involuntarily to bargain collectively with it, this court is duty-bound to deny an injunction compelling it to do so.12

Then, the judge speaking in dictum stated:

The court's decision does not solve the many basic problems....It would not have solved them had the decision gone either way....But in good conscience, the writer, who took an oath, had to face the fact that he was elected a judge and not a legislator. The basic problems are many and they are for the Legislature.13

In another case, this time involving a board of education and a teachers' union, a Belmont County common pleas court granted the plaintiff, Martins Ferry Board of Education, a temporary restraining order enjoining teachers not to strike. The court held that the specific issue in this case was the right of the teachers of the Martins Ferry City School District to strike. The journal entry in 1967 reads:

12Ibid.
13Ibid.
I think it is clear that in our system of government, the government is a servant of all of the people. And a strike against the public, a strike of public employees has been denominated in the decisions cited above, as a rebellion against government. The right to strike, if accorded to public employees, I say, is one means of destroying governments. And if they destroy government, we have anarchy, we have chaos.\(^{14}\)

Since 1967, the following Ohio court decisions have ordered negotiations and have enforced agreements between boards of education and teachers' unions. In the Struthers City School District, the court in its journal entry ordered the following:

It is ordered that the Struthers Board of Education immediately undertake collective bargaining negotiations with representatives of the Struthers Education Association, which is the sole bargaining agent for the teachers in the Struthers School District.... that said bargaining continue with each employee group represented by a negotiating committee of not more than three in number; that said negotiations concerning all issues existing between the parties be continued until such time as they are resolved and in the event any issue remains unresolved a report shall be submitted to the court after which time all parties shall proceed to follow the procedure identified as Article VI of the 1968 Memorandum.\(^{15}\)

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\(^{14}\)Case No. 23841, Board of Education of the Martins Ferry City School District v. Ohio Education Association et. al., Court of Common Pleas, Belmont County, Ohio.

\(^{15}\)Case No. 18893, Struthers Education Association v. The Board of Education of the Struthers City School District, et. al., Common Pleas Court of Mahoning County, Ohio.
In a case decided in the Perry Local School District in Lake County, 1970, the Lake County common pleas court recorded in its journal entry deciding the case:

It is further ordered that the plaintiff through its negotiating personnel, continue good faith negotiations with the P.C.T.A., through regular negotiating sessions a minimum of three times weekly in an effort to arrive at a fair and equitable settlement of all disputes between the parties.16

A similar order was also decreed by the Stark County Common Pleas Court.17

In the case of the Hamilton Local Board of Education in Franklin County, Ohio, the court ordered that "The parties hereto....resume their negotiations as soon as practicable after the entry of this order, but in no event later than February 20, 1973." Furthermore, the Court ordered that such negotiations between the parties are to resume on all questions and issues between the parties prior to February 10, 1973.18

The Summit County Court of Common Pleas enforced an agreement between the Green Education Association and the Green Local School District requiring the board of education to comply with its contractual obligation and to provide full hospitalization benefits for members of the teachers' association.19

16Board of Education, Perry Local School District v. The Perry Classroom Teachers' Association, Common Pleas Court of Lake County, Ohio.

17Plain Local School District, et. al., v. Judith Woodcock, et. al., Court of Common Pleas of Stark County, Ohio.

18Case No. 73 CV - 02 - 550, Hamilton Local Board of Education v. Mrs. Judith R. Arthur, et. al., Court of Common Pleas of Franklin

19Case No. 286281, Green Education Association v. Board of Education, Green Local School District, Court of Common Pleas of Summit County, Ohio.
The Ashtabula County Court of Common Pleas specifically ordered the board of education to implement the negotiated salary schedule, duly adopted by the board. However, the primary issue of this case was whether a negotiated and adopted teacher salary schedule calling for retroactive implementation was legal and binding under the law of the State of Ohio. The court definitely ruled that a negotiated retroactive salary schedule was legal and binding and ordered the board of education to make the salary payments in accord with the agreement with the teachers' association.  

A very similar result was reached by the Trumbull County Court of Common Pleas in a dispute between the Newton Falls Classroom Teachers' Association and the Newton Falls Board of Education.  

In another case in Lake County, Ohio, the Painesville Township Education Association sought an injunction compelling the Painesville Local School District Board of Education to comply with its contractual obligation to negotiate in good faith. The board of education filed a motion to dismiss upon the basis that the negotiations agreement was unenforceable. In the journal entry, the judge concluded after denying the motion to dismiss by the board of education:  

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20 Case No. 59406, Ashtabula Area Board of Education v. Ashtabula Area City School Board of Education, Court of Common Pleas of Ashtabula County, Ohio.  

21 Case No. 73, Cl 544, Newton Falls Classroom Teachers' Association v. Board of Education, Court of Common Pleas of Trumbull County, Ohio.
It is the Court's opinion that under the power contracting and being contracted with exists the authority to negotiate a contract and make the best arrangements the Board can in the sound exercise of its discretion for the employment of teaching personnel, so that their purpose as expressed in the contract...is implemented.

The only limitation on their power is that they exercise it with the use of sound discretion. In this case, the Court can not find that the board of education was guilty of any abuse of discretion.22

A common pleas judge concluded in another case in the city of Wooster, Ohio that the agreement between the teachers' association and the board of education was binding and enforceable. The judge noted:

This Court can find nothing which provides that the board of education shall solely and unilaterally decide these matters as a matter of policy or which prohibits them from negotiating time with an association of its professional personnel.

This court finds the law to be that boards of education cannot contract either their duties or authority but can find no basis for holding that an agreement as to the procedures under which they are collectively negotiating and resolving problems affecting their teachers is a delegation of duty or authority. It is the opinion of the Court that this is a reasonable process for the identification and resolving of problems affecting the operating of any school system in relation to the certificated professional personnel who work for it.

22 Case No. 73 C V 0187, Painesville Township Education Association v. Painesville Township Local School District Board of Education, Court of Common Pleas, Lake County, Ohio.
This court therefore concludes and holds that Exhibit C, executed and delivered by both parties hereto and still in full force and effect when this action was filed is not unlawful and is in fact and in law a binding collective bargaining agreement between the parties thereto the extent of the provisions and terms thereof.²³

Another interesting observation that may be just more than coincidence is that two of these trial level court cases involved the same identical fourteen issues. The two districts involved with fourteen identical issues were the Hamilton Local School District and the Geneva Area City School District.²⁴

In addition to the legal status of the precise and definite limits of a professional negotiations agreement between a board of education and a teacher's association, at least two other issues have been raised in this study. They are the meaning and interpretations given to Sections 3319.11, 3319.16 and 5705.412 of the Ohio Revised Code. Section 3319.11 is the applicable statute which a board of education in Ohio is mandated to follow if its intent is not reemployment of teachers on limited, non-tenured contracts. Section 3319.16 is that section of the Ohio Revised Code which a board of education in Ohio is mandated to follow if its intent is to dismiss or terminate a contract of a teacher who is a tenured, non-probationary teacher. The difference between the intent of these two sections of the Ohio Revised Code involves the delicate matter of procedural due process.

²³Case No. 73 Cl 021, Wooster Education Association v. Wooster City School District Board of Education, et. al., Court of Common Pleas of Wayne County, Ohio.

Section 5705.412 of the Ohio Revised Code pertains to the economic issue of financial accountability and the restraint by the Ohio Constitution that no public agency can engage in deficit spending. This section of law was involved in the labor disputes in the Campbell City School District and the Wellston City School District. Fortunately, there is an Ohio appellate court decision on this matter which will be discussed in the second section of this chapter. In the Campbell City School District strike, the common pleas judge said the issue was not applicable to the reemployment of teachers. In the Wellston court case, the common pleas judge said the interpretation of this section enabled a board of education to know what its financial status was at any time.

Even though Ohio law and federal law may not be in complete agreement as to the precise and definite meaning of the difference between a probationary teacher's contract and a tenured professional teacher's contract, due process rights of teachers have not been violated. However, in the Vinton County Teachers' strike, in a federal suit which was never formally heard due to settlement, a federal judge distinguished little difference between a limited contract and a tenured contract insofar as procedural due process was concerned. The judge held that even teachers on a probationary status who fall under the provisions of the Ferguson Act in dismissal proceedings have certain rights of due process. Section 4117.05 of the Ohio Revised Code states a teacher who has been involved in a teachers' strike shall be entitled to establish that Sections 4117.01 through Sections 4117.05 inclusive were not violated.
Judgment entries have been cited on all cases listed in Figure 1 with the following exception. This judgment entry is reported last to reveal the degree of change which has taken place among Ohio's judges in their rulings on public sector labor disputes. In December, 1939, the common pleas court of Cuyahoga County held that under the common law, public employees had no right to strike. The court's entry of judgment declared that the question in issue was whether or not public employees did have the right to strike. The court said:

Under the common law—and there is no question about it so far as this court is concerned—there is no right to strike on behalf of public employees, for many reasons, some at least, might be paraphrased in the language of several of the decisions, that it is a means of coercing the delegation of the discretion which a public board or public body must exercise in its fulfillment of its duties.

The judge further declared:

I must point out also, the power of the court to enjoin an unlawful act does not stem alone from the so-called Ferguson Act. There is an inherent right in the Court of Equity at all times to enjoin any wrong-doing where there is no adequate remedy at law.25

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25 Case No. 609819, Cleveland City, etc., v. Division 268, et. al., Court of Common Pleas, Cuyahoga County, Ohio.
collection thereof, but general customs as reflected in the decisions of the common law judges. Common law judges rely on their own past actions which they modify under the pressures of changing times and changing patterns of litigation.

Chapter II also indicated that the common law tradition has within itself the capacity for expansion and adaptation to new circumstances and changing social conditions. It was stated that public policy was the dominant force in shaping and reshaping common law principles. Chapter II revealed that whenever an old rule was no longer adequate nor suitable to new circumstances, the old rule must not be used and a new rule must be postulated which is in harmony with newly perceived demands of justice.

Within the common law tradition, decisions relied upon as precedent are generally those of appellated courts, since the decisions of trial courts may be appealed to higher courts. Because these opinions are appealed and usually printed, these opinions represent influential precedents.

The second chapter of this study reported that a precedent is a judicial decision which contains in itself a legal principle. The underlying principle from which it forms its authorative element is often termed the ratio decidendi. The ratio decidendi, describing the purpose of reasoning by which decision was reached, often develops its true and full meaning slowly and haltingly, and it may take a whole series of decisions involving variations of the situation presented in the first case until a full-blown rule of law replaces the tentatively and inadequately formulated generalization.
found in the initial decision. In order to envision the evolution of the ratio deciden di pertaining to the process of collective bargaining, one of the most basic issues inherent in these six case studies and in most teacher-board strike activity, two related appellate court decisions will be subjected to the legal procedure of opinion briefing. These two court decisions involved the Martins Ferry City School District and the Dayton City School District.

Nineteen Ohio trial court opinions were reported in the first section of the chapter. Even though these opinions have less precedent value than opinions of appellate courts, the reader may recall it was stated that a carefully reasoned trial court opinion generally is more valued than a secondary authority. Chapter six will refer back to some of these opinions since these decisions also stand as law since they were not appealed and each court speaks *ex cathedra*, i.e., with authority.

From the six case studies involving teacher-board labor disputes, five opinions were appealed to higher courts. In one instance, a brief was prepared for litigation to Ohio's Supreme Court regarding the issue of binding arbitration. However, litigation regarding this brief ceased as further litigation became part of a memorandum of understanding between the Hamilton Local Board of Education and the Hamilton Local Teachers' Association.

The following paragraphs summarize most of the conflict which occurred. Two issues were appealed in the labor dispute between the Board and the Association in the Hamilton Local School District.
One issue pertained to the binding arbitration clause in the disagreement procedure of the professional negotiations agreement and the second issue involved the matter of whether a common pleas judge in Ohio had the proper jurisdiction to hear the legal issue in point in the given case.

In April, 1973, defendants-appellees-teachers' association filed a motion in the Franklin County Common Pleas Court seeking to require the plaintiff-appellant board of education to show cause why it should not be held in contempt of the court's order in February, 1973, ordering the parties to resume their negotiations. After a hearing of the motion, the trial court found that the plaintiff-appellant board of education had not been in contempt of court.

However, the lower court had ordered the parties to proceed to binding arbitration pursuant to the specific clauses in the professional negotiations agreement. The specific wording of the trial court's decision in this regard is as follows:

It is further ordered that to further implement the Consent Order of February 14, 1973, the parties proceed to dispose of the issues of salary and fringe benefits by means of the arbitration procedures set forth in paragraphs 5 through 8 under Disagreement Procedures of the Professional Negotiations Agreement, said arbitration to be undertaken within ten days of April 27, 1973.26

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A second issue which was appealed in the teacher-board dispute in the Hamilton Local School District regarded the matter as to whether a judge in a common pleas court could hear the issue regarding a motion filed by the teachers' association seeking to compel discovery as to why some teachers were not reemployed for the succeeding year.\textsuperscript{27}

In the labor dispute between the Vinton County Local Teachers' Association and the Vinton County Local Board of Education,\textsuperscript{28} the issue which was appealed was the opinion of the judge of the trial court who entered a judgment entry finding that the collective bargaining agreement was a contractual obligation on the part of the Vinton Local Board of Education. The agreement between the parties contained language to the effect that the agreement was effective from October 1, 1973 through June 30, 1974. It was to continue in effect from year to year thereafter until either party would notify the other in writing of a desire to terminate or modify the agreement after March 15 of each year. On March 11, 1974, the Vinton County Local Board of Education passed a resolution to terminate the master contract effective as of June 30, 1974.

\textsuperscript{27}\textit{State of Ohio, ex rel., Hamilton Local School District Board of Education and Roger O. Hoffman, Superintendent v. The Honorable George E. Tyack, Judge of the Common Pleas Court of Franklin County, Ohio. Decision rendered: July 24, 1973.}

\textsuperscript{28}\textit{The Vinton Local Teachers' Association, Plaintiff-Appellee v. The Vinton Local Board of Education, Defendant-Appellants, in the Court of Appeals of Ohio, Fourth Appellate District, Vinton County, Ohio, No. 349.}
Perhaps the most important legal manifestation in the labor dispute in the Wellston City School District was the denial of the Supreme Court of the United States to grant certiorari to the former business manager of the Wellston City School District. Black's law dictionary defines certiorari as a legal procedure that originally in old English practice was an original writ or order commanding judges or officers of inferior courts to certify or to return records or proceedings in a cause for judicial review of their action to a higher tribunal. Campbell, et al., claim that more than ninety percent of the cases heard before the United States Supreme Court come before it through the process of certiorari. These authors state at least four justices must agree to such an order before it is issued. However, what is most significant is that this process gives the Supreme Court the power to select those cases it will hear and enables the nation's highest court to allow a body of law to develop on a subject in the lower courts. This process presents the Supreme Court the opportunity to correlate decisions to public interests.

On June 29, 1972, the Supreme Court entered the following order:

"The petition for a writ of certiorari is denied. Mr. Justice


Douglas is of the opinion that certiorari should be granted." In refusing to grant certiorari, the Court in effect upheld the constitutionality of Section 3319.11 of the Ohio Revised Code.\(^{31}\)

It was written in the narrative of the case study concerning the Wellston City School District strike that the newly-appointed business manager had been denied tenure as a classroom teacher in 1970 with the Wellston City Board of Education. The Jackson County Common Pleas Court upheld the position of the Board of Education in a legal suit. The former business manager appealed the lower court's opinion to the Jackson County Court of Appeals.\(^{32}\)

A fourth appellate court opinion arising from this set of six case studies involved the Youngstown Education Association, the Youngstown Board of Education, and a citizens' group called Concerned Citizens.\(^{33}\) Within the same case, there were two issues presented for judicial review. One issue regarded whether the Board of Education could unilaterally adopt policies regarding the operation and management of the school district. The Teachers' Association claimed the newly adopted policies contravened the express language of the master agreement between the parties in many respects. The other issue concerned the denial by the same common pleas judge to permit

\(^{31}\)Section 3319.11, Ohio Revised Code.

\(^{32}\)Crabtree v. Board of Education, 260 App. (2d) 237.

\(^{33}\)Youngstown Education Association v. Youngstown City Board of Education et al., 36 Ohio App. (2d) 35.
the Concerted Parents to intervene as a party litigant in the dispute existing in the Common Pleas Court between the Teachers' Association and the Board of Education.

In order to envision the evolution of the ratio decidendi pertaining to the process of collective bargaining, one of the most basic issues inherent in these six case studies and in most teacher-board strike activity, two related court decisions will be subjected to the legal procedure of opinion briefing. These two court decisions involve the Martins Ferry City School District and the Dayton City School District.

The appellate court decision between the Teachers' Association and the Board of Education in the Maple Heights City School District completes the coverage of decisions listed in Figure 11. This appellate court decision is included in this study because it was a basic issue at the trial court level in the Campbell City School District and the Wellston City School District.

Figure 11 lists the eight appellate court decisions.

FIGURE 11

APPELLATE COURT DECISIONS

1. Board of Education v. Maple Heights Teachers' Association (1973), 41 Ohio Misc. 27.


7. Vinton Local Teachers' Association v. Vinton Local Board of Education. Case No. 349, Court of Appeals, Vinton County, Ohio.


The process of opinion briefing which was outlined in chapter II is presented again for purposes of clarity and understanding as these eight appellate court opinions are analyzed.

**Opinion Briefing**

1. **Facts:** A statement of the significant facts of the dispute before a court.
   
   a. The facts which are necessary to an understanding of the dispute.
   
   b. The facts which influenced the court's reasoning and decision.
   
   c. The significant facts which simply affect the opinion.

2. **Procedure:** A statement of the relevant procedural details.
   
   a. An explanation of the remedy sought.
   
   b. The legal nature of the controversy.
   
   c. The contentions of opposing counsel.
Issue: A statement of the narrow legal question the court is asked to resolve.
   a. The precise definition of the substantive issue or decision.
   b. The hierarch of issues which reveal the question answered.

Decision: A brief statement of the court's decision.
   a. A decision may refer to both procedural and substantive results.

Rule: A statement of explanation as to how the court reached its decisions.
   a. A statement of a general principle or rule assumed or found to pre-exist from which the court reasoned.
   b. The rule of a case is a precise statement of what one believes an opinion stands for with reference to future cases.
   c. The rule may have been established by prior decisions or stated in a secondary authority.

BOARD OF EDUCATION V. MAPLE HEIGHTS TEACHERS' ASSOCIATION

Facts: Two successive operating levies were defeated by the electors of the school district in November, 1972, and March, 1973. The Board of Education determined to reduce its expenditures to keep the schools open without deficit spending beyond that permitted by law. The Board of Education passed a resolution not to renew the limited teaching contracts of twenty-two non-tenured teachers. The Board

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34 Board of Education v. Maple Heights Teachers' Association (1973), 41 Ohio Misc. 27.
complied with R. C. 3319.11. The Teachers' Association staged an eight day strike. The Teachers' Association demanded a portion of teachings be reinstated as part of the strike settlement. The parties formulated a memorandum of agreement which stipulated that up to twelve of twenty-two teaching positions would be reinstated if the Court of Common Pleas would hold that Section 5705.412, Ohio Revised Code, did not apply to the issuance of such contracts.

The Board of Education believed that up to twelve of the previously discontinued teaching positions could not be reinstated without the execution of the certificate of financial resources required under Section 5705.412, Ohio Revised Code. It also believed its members and other responsible officials who knowingly authorized the expenditures of funds without such certificate were personally liable for the full amount paid on any such contract. The Teachers' Association contended that R. C. 5705.412 expressly excluded teachers' contracts from its requirements. It argued that it was the intention of the Legislature that the term "contract" did not apply to the contract of employment of teachers.

Can a board of education make valid contracts of employment with its teachers without first receiving a fiscal certificate of adequate revenue pursuant to Section 5705.412, Ohio Revised Code?
Decision: No. The provisions of R. C. 5705.412 take precedence over any contained in R. C. 5705.41.

Rule: The provisions of R. C. 5705.412 are mandatory and controlling over R. C. 5705.41. Section 5705.412 applies to all contracts for the school year next ensuing. The association's contention that R. C. 5705.412 was not applicable to teachers' contracts would nullify the purpose of the statute shown by its title as appearing in Page's Ohio Revised Code, to wit: Restriction Upon School District Expenditures, Certification of Adequate Revenues: Penalty. The controlling precedent in this case was State ex rel. Morse v. Christianson (1952) 262 Wis. 55 N.W. 2d 20 and State, ex rel. v. Board of Education 170 OS 415.

BOARD OF EDUCATION V. OHIO EDUCATION ASSOCIATION

Facts: The Board of Education filed a petition in a lower court seeking an injunction against its teachers' Association. On October 25, 1967, defendants—teachers, without the approval of the Board, failed to report for duty. The defendants failed to abide by the rules and regulations adopted by the Board of government of the school system. Defendants urged students not to attend school on the threat they might be ignored. The trial court granted a temporary

restraining order. The Association filed a motion to dismiss the temporary restraining order. A hearing on both motions was heard on November 16, 1967.

The Board charged defendants' actions were in violation of Sections 4117.01 to 4117.05, Ohio Revised Code. It also charged the Association attempted to force, coerce and control the adoption of a salary schedule contrary to the salary schedule adopted by the Board. The Board also asserted the Association attempted to coerce the Board to reemploy two elementary principals. A final charge made by the Board was to the effect that the Association attempted to coerce the Board into recognizing the teachers' Association as the sole bargaining agent for collective bargaining.

The Association filed its motion for dismissing the temporary restraining order because the Board did not conduct a legal meeting authorizing such action. The Association further claimed the temporary restraining order violated their rights of free speech and assembly under the Constitutions of the United States and the State of Ohio.

The specific issue in this case was whether an association of teachers of the school district had the right to strike.

The appellate court held that the motion to dismiss the temporary restraining order was overruled and that it was to continue.
Rule: There is an inherent right in the Court of Equity at all times to enjoin any wrong-doing where there is no adequate remedy at law. The appellate court held that a local board of education may obtain an injunction against its local and state-wide teachers' organizations enjoining them not to strike and that such a court order did not violate constitutional rights of free speech and assemblage. In dicta, the court stated all government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into public service. The controlling precedent in this case was City of Cleveland v. Division 268, 57 Ohio Law Abs. 173.

CRABTREE V. BOARD OF EDUCATION

Facts: Plaintiff-Appellant teacher was employed under a limited teacher's contract for a three year period commencing in 1967 and ending June 30, 1970. The superintendent did not recommend the teacher be reemployed. Notice was given to the teacher of the Board's intent not to reemploy on April 14, 1970. The regular clerk of the Board was absent at the meeting in which the action took place, and the Board did not choose one of its members to serve as an acting clerk as required by Section 3313.23, R. C. A person in the

audience recorded minutes. The cause was in the appellate court on appeal because judgment of the lower court did not grant the plaintiff-appellant an injunction.

Plaintiff-appellant teacher sought the court of appeals to overrule lower court's decision under Section 3313.23, R. C. This section states that in the absence of the clerk, a board should choose one of its members to serve in the clerk's capacity pro tempore. The contention of the teacher was that since the requirements of the law were not met, minutes of the board of education were not properly prepared and his notice of the Board's intent not to reemploy was a nullity and that he was entitled to a continuing contract.

Plaintiff-Appellant's claim was that only the regular clerk of a board of education or one regularly elected under Section 3313.23, R. C., had the authority to record minutes of the board. Teacher's intent notice not to reemploy was a nullity.

Judgment of the trial court affirmed.

As a general rule, resort should be had to remedies provided by statute before other remedies are sought. The right of appeal provided by Chapter 2506, R. C., is a plain and adequate remedy in the ordinary course of the law, while the injunctive relief provided in Section 2731.01, and the mandamus relief provided in Section 2731.01 are extraordinary remedies not in the ordinary course of law.
The court's opinion was that a decision otherwise valid by a board of education can not be rendered invalid because its clerk was absent from a board meeting and the board failed to choose one of its members to serve in that capacity. The appellate court found that the Legislature did not fix any penalty in cases where a board did not appoint one of its members acting clerk. The court ruled that carrying plaintiff's contention to its logical conclusion, a board of education could never rectify an error in its minutes by later action if it failed to appoint a clerk. The court decided that the real gist of petitioner's argument was that he was asking the court to permit him to secure a continuing contract by default. The controlling precedent in this case was Perkins v. Village of Quaker City, 165 Ohio St. 120.

HAMILTON LOCAL BOARD OF EDUCATION V. MRS. JUDITH ARTHUR

Facts: Plaintiff-Appellant Board recognized professional negotiations agreement with defendants-Appellees-teachers' Association in 1967. The Association was recognized as the sole bargaining agent for the professional employees of the Board. A binding arbitration clause was contained in the disagreement clause of the agreement. On February 11,
1973, the Board rescinded its agreement. On February 12 and 13, 1973, defendants-appellees refused to report for their teaching duties. The Board sought a temporary restraining order, but both parties agreed to a consent order ending the strike. The lower court ordered the parties to resume negotiations on all issues prior to the strike. In April, the Association filed a motion to require the Board to show cause why it should not be held in contempt of court. The trial court found the Board was not in contempt but ordered both parties to binding arbitration on the two issues of salary and fringe benefits.

Procedure: Plaintiff-Appellant Board asserted the order of the court below was not an appealable order and that the order to proceed to binding arbitration in the disagreement clause was contrary to law. The Association argued binding arbitration in the disagreement clause was enforceable and sought equitable relief. The association maintained Section 2711.01, R. C., was the arbitration law of Ohio.

Issue: Appellate court stated the lower court had predetermined the central issue by requiring the parties to adhere to the terms of the agreement relating to binding arbitration. The main contention was the enforceability of the binding arbitration clause. Can a board of education delegate away its authority to determine policy on such issues as salary, fringe benefits, programs, and personnel policies?
The question is whether Ohio has a specific statute permitting contracts providing for binding arbitration between school boards and teachers' associations.

*Decision:* Appellate court concluded that the authority as granted by the arbitration clause as contained in the agreement between the parties was an unlawful delegation of the policy making power of the Board. Such delegation of power must be declared null and void and of no effect. The order of the lower court was reversed.

*Rule:* Appellate court stated Ohio has no law providing for recognition of public employee organizations nor any laws authorizing governmental entities to negotiate with employees' representatives. Policy decisions have been placed by law within the jurisdiction of boards of education in Ohio. Legal authority for such a rule lies in Article 6, Section 3 of the Ohio Constitution and Sections 3313.47, 3313.18, 3317.13, 3317.14 and 3319.17 of the O.R.C. This rule was also paralleled to the precedent established in the case, *Youngstown Education Association v. Youngstown City Board of Education*, in which the appellate court reasoned that whether or not there was a master agreement, the city's Board of Education was charged by statute to manage and control the schools. The controlling precedent in this case was *Board of Education v. Education Association* (1972).
Facts: On April 24, 1973, the superintendents of the Hamilton Local School District and the Franklin County School system jointly notified the Hamilton Local Board of Education that fifteen teachers whose limited contracts expired at the end of the school year would not be nominated for re-employment. The Hamilton Local Board directed its clerk to notify the respondents-intervenors of its intentions and actions and such notice was delivered on or before April 30, 1973. On May 3, 1973, each of the intervenors filed a notice of appeal both with the Court of Common Pleas and the Board purporting to appeal from the findings, decision, and order of the Board. On May 11, 1973, the Board filed a motion with the Court of Common Pleas to dismiss the appeals on the ground that the court lacked jurisdiction over the subject matter. Two days later, the intervenors filed motions for temporary restraining orders.

enjoining the Board from hiring and employing new teachers to replace intervenors. The Court of Common Pleas on May 15, 1973, issued a temporary restraining order in support of the intervenors. Thereafter, the Board filed a motion to dissolve the temporary restraining order. On May 29, 1973, the lower court entered an order overruling the Board's motion to dismiss the appeal and the motion to dissolve the temporary restraining order. The order set the appeals for hearing on their merits on June 8, 1973. On May 30, intervenors filed a notice to take depositions of some thirteen persons. The next day, the Board filed a motion for a protective order staying the taking of depositions. On June 1, 1973, the Board filed a motion requesting a writ of prohibition. On June 4, 1973, the intervenors filed a motion with the Court of Common Pleas seeking to compel discovery. On the same day, the trial court entered an order staying the taking of depositions and the trial assignment of the appeals until final adjudication of this action by the appellate court.

This was an original action filed in the appellate court seeking a writ of prohibition, prohibiting the respondent judge of the Court of Common Pleas of Franklin County from hearing the thirteen appeals pending before him filed by thirteen teachers of the school district. Respondent and intervenors contended that prohibition was not an available remedy to relators because they would have
available a right to appeal any judgment adverse to them which might be entered by the Court of Common Pleas in the administrative appeals pending before it. Intervenors attempted to appeal to the Court of Common Pleas pursuant to Section 2506.01, R. C., which provides that "every final order....may be reviewed by the Common Pleas Court of the county in which the principal office of the political subdivision is located."

Issue: Two basic issues had to be determined by the appellate court: (1) whether prohibition was an appropriate, available remedy under the circumstances, and if so, (2) whether a Court of Common Pleas had jurisdiction pursuant to Section 2506.01, R. C., to entertain an appeal from the action of a board of education pursuant to Section 3319.11, R. C., in not renewing the contract of a teacher upon the expiration of such teacher's limited contract of employment. Another dimension of this issue was whether the administrative action of the Board constituted a quasi-judicial proceeding. The appellate court stated it was not concerned with a termination of a limited teaching contract but, rather, with a decision of a board of education not to enter into a new contract with a teacher upon the expiration of such teacher's limited contract of teaching employment.

Decision: The writ of prohibition was granted prohibiting the respondent judge from entertaining the appeals which were
the subject of the action and from taking any further action in such appeals. The temporary restraining order issued by the respondent judge was dissolved.

Rule: Prohibition may not be utilized as a substitute for appeal. Prohibition is a preventive writ rather than a corrective remedy and was designed to prevent a tribunal from proceeding in a matter which it was not authorized to hear and to determine. The appellate court ruled that in a prior Ohio Supreme Court decision, three conditions must be present to justify the issuance of a writ of prohibition.

"The conditions which warrant the granting of a writ of prohibition are: (1) the court or officer against whom it is sought must be about to exercise judicial or quasi-judicial power; (2) it must appear that the refusal of the writ would result in injury for which there is no adequate remedy; and (3) the exercise of such power must amount to an unauthorized usurpation of judicial power."

The appellate court concluded that: (1) relators had no adequate remedy in the ordinary course of law; (2) that prohibition was an appropriate, available remedy under the circumstances of the case; (3) that the action of a board of education pursuant to Section 3319.11, R. C., in not renewing the contract of a teacher upon the expiration of the limited contract of employment was not an appealable order under the provisions of Section 2506.01, R. C., since no quasi-judicial proceedings were involved; (4) that the
Court of Common Pleas was totally without jurisdiction to entertain the appeals which was the subject of the action; and (5) that a writ of prohibition must be issued. The controlling precedent in this case was M. J. Kelley Company v. Cleveland (1972) 32 Ohio St. 2d 150.

VINTON LOCAL TEACHERS' ASSOCIATION v.
VINTON LOCAL BOARD OF EDUCATION

Facts: On March 11, 1974, the Defendant-Appellants Board took action to terminate the master contract between the parties. On May 30, 1974, Plaintiff-Appellee Association sought a temporary restraining order and a permanent injunction against the Board in the Vinton County Court of Common Pleas. The Complaint averred a master contract was effective from October 1, 1973 to June 30, 1974. The Board gave notice of its intention to terminate the agreement under the provisions of the master contract. It was also averred that by the terms of the previous master agreement, the Board was required to enter into good faith negotiations with respect to a new contract. The Board failed to enter into such good faith negotiations and would, unless restrained, not abide by the terms of the contract and enter into such

39 Vinton Local Teachers' Association, Plaintiff-Appellee vs. The Vinton Local Board of Education, Defendant-Appellants, Opinion No. 349 in the Court of Appeals, Fourth Appellate District, Vinton County, Ohio.
negotiations. On June 17, 1974, the Association requested a hearing for a temporary restraining order and the Board interposed a motion and memorandum based upon the ground the complaint did not state a claim upon which relief could be granted and argued that the master agreement in question was unauthorized by law. On August 7, 1974, the lower court overruled the motion to dismiss and held the Board was authorized by law to enter into a collective bargaining master agreement.

Procedure: Defendant-Appellant Board of Education appealed the lower court's decision governing the rules and regulations which were laid down regarding the negotiating process. The Board filed a complaint in prohibition against the defendant-respondent common pleas judge.

Issue: Two issues were involved. One issue was related to the proper function of a preliminary injunction and the other issue was whether a board of education was authorized by law to enter into a collective bargaining agreement with a group of public employees. The trial court judge had laid down six stipulations regarding the collective bargaining process.

Decision: The order of the lower court was reversed and the cause remanded for further procedure. The appellate court ruled the validity of the issue of collective bargaining had been settled by the Ohio Supreme Court in the Dayton
Classroom Teachers' Association case. The appellate court ruled the court below misconceived the function of a preliminary injunction by granting final injunctive relief.

Rule: A board of education has the right and authority to enter into a collective bargaining agreement with its employee groups. The Dayton case settled by the Ohio Supreme Court on February 19, 1975, had established precedent. The lower court granted final injunctive relief without the issues being drawn by the pleadings. The trial court considered its ruling to constitute more than a preliminary injunction order by assessing costs against the Board. The appellate court cited precedent in another case by stating that the purpose of a temporary injunction is to preserve and protect the ability of the court to provide an effective judgment on the merits of the case. It was not intended as a means of preserving the court's ability to grant effective, meaningful relief after a determination of the merits. The trial court misconceived the function of the preliminary injunction which was reflected in the scope of the factual conclusions and the thrust of his orders. The controlling precedent for the validity of the master contract was Dayton Teachers' Association v. Board of Education 410 S 2d 127. The controlling precedent for the Writ of Prohibition was May Company v. Bailey Company, 81 Ohio St. 471 (1910).

Facts: The plaintiff-appellant Association took exception to a lower court's opinion favoring the Board and its superintendent claiming such a decision to be adverse to its members. The lower court has dissolved a temporary injunction order it had previously issued in a dispute over the master agreement and newly adopted policies enacted by the Board. The Board maintained such policies were necessary to manage and operate the schools. A group called Concerned Parents was denied permission by the lower court to enter the dispute as a party litigant in the controversy existing in the common pleas court between the board of education and the teachers' Association.

Procedure: The Concerned Parents had appealed the lower court's order denying them permission to intervene as a litigant. In order to be permitted to intervene, the Concerned Parents would only do so pursuant to Rule 2(b) of the Ohio Rules of Civil Procedure. Civil Rule 2(b) sets out two bases for intervention; one is that there would be an intervention by right and the other that the court would grant such permission. As to the intervention of right, Civil Rule 2(b)
sets out two bases; one is when an Ohio statute specifically
confers an unconditional right to intervene, and the other
is when an applicant can claim an interest relating to the
property or transaction which would be the subject of court
action. In the dispute with the teachers' Association, the
Association claimed that newly adopted policies contravened
the express language of the master agreement in many respects.
These policies directly related to the management of the
schools. The Association claimed the Board in adopting
such policies breached conditions of the master agreement.
Therefore, the Board of Education and its superintendent
should be enjoined from enforcing the substance of the newly
adopted policies. The Board of Education assumed the posi­
tion the master agreement had no legal effect as collective
bargaining was not sanctioned by law in Ohio. The Board
of Education claimed that, even if it was wrong, legisla­
ture enactment specifically enjoined them to enact rules
and regulations concerning the management and operation of
the school system. The Association assumed the stance that
the Legislature had contemplated collective bargaining for
many years. The Board of Education could not accept this
particular reasoning.

Issue: This appellate court had two issues before it. One
issue was whether or not a common pleas judge abused his
discretion in not permitting the group of Concerned Parents
to intervene as a party litigant in the dispute between the Board of Education and the Teachers' Association. The second issue concerned the ability of a master contract between a board of education and a teachers' association to hold up in a court of law, i.e., is a master contract sanctioned by law. Another dimension regarding the issue of the validity of the master contract raised the question: Were the Board's proceedings legal in the meeting when it adopted new policies governing the school system, and if so, were the board's policies, as adopted, an abuse of the Board's discretion?

Judgment affirmed. Appellate court upheld both decisions of the lower court.

No collective bargaining agreement between a board of education and an association of school teachers can compromise the authority of a board of education given by Sections 3313.20 and 3313.47 of the Ohio Revised Code. Even though Section 9.41 of the Ohio Revised Code authorizes a board of education to enter into a binding collective bargaining agreement with an association of school teachers, such collective bargaining agreement is limited by applicable statutes. Further, a board of education can enter into a collective bargaining agreement with an association of school teachers to the same extent that such board of education can enter into a contract with an individual
teacher. The court ruled that frankly, Ohio courts were divided on these issues and that even the Ohio Supreme Court had not addressed itself to the precise issue as to whether the law upholds collective bargaining between a board of education and a group of teachers. The Court stated that the judge in the lower court had not passed judgment upon the issue of the right of collective bargaining and that he was right in this regard for the reason that, master agreement or not, the board was charged by Ohio statute to manage and control the schools. The Court stated that since provisions of the master agreement between the parties in this case were in conflict with either R. C. 3313.20 or R. C. 3313.47, according to the interpretation given such provisions by the teachers' association, such provisions were invalid to the extent that they conflicted with such statutes. Insofar as the Concerned Parents' issue was concerned, the rule was that neither the public interest nor the furtherance of justice would be advanced by permitting a third party litigant to enter the dispute. The Board of Education in a representative form of government already represented the group of Concerned Parents. The precedents controlling the validity of the master contract were State ex rel. Idle v. Chamberlain 39 O.0. 262 and State ex rel. Evans v. Fry, 40 O.0. Concerning the issue of judicial abuse, Ohio Civil Rule 24(b) decided the case.
DAYTON CLASSROOM TEACHERS' ASSOCIATION V. BOARD OF EDUCATION

Facts: The teachers' Association was a labor organization and was recognized by the Board of Education as the sole bargaining agent for its professional employees. The first agreement was finalized in 1967. The agreement contained provisions relating to teaching environment, salaries, payroll deduction, leaves of absence, promotions, teacher evaluation, transfers, paydays, and academic freedom. In addition, there was a four step grievance procedure within the master agreement. The grievance procedure provided for binding arbitration for grievances which could not be resolved by the parties. The master agreement stated that at the last step, the arbitrator did not have any power to alter, add to, or subtract from the terms of the master agreement or to change official board policies.

Procedure: The present controversy arose when Association members filed grievances concerning allegedly inadequate parking facilities, allegedly unsuitable working conditions, and a failure upon the part of the board to post job vacancies. The Board took the position from the outset that such grievances were not proper grievances and refused to allow the matter to go to arbitration. The Board contended the matter was extra legal and more of an understanding than a contractual obligation. The Association instituted legal action to the Court of Common Pleas requesting that the

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42 Dayton Classroom Teachers' Association v. Board of Education, 41 OS 0 Misc. 308.
The Board be enjoined to honor the agreement's grievance procedure and to proceed to arbitration. The Board also felt that an implicit defect in the binding arbitration procedure was the possible restraint it could impose upon the Board in policy making. The trial court entered summary judgment for the Board finding that neither the Board nor its superintendent could delegate the responsibilities of operating the school system. It held such an act was contrary to law and that the agreement was unlawful and unenforceable. The Court of Appeals modified the trial court's opinion by holding the master agreement was valid in principle, but affirmed the lower court's judgment to the extent that the agreement's arbitration clause unlawfully delegated the Board's responsibilities and was therefore invalid. The matter was then moved to the Supreme Court of Ohio.

The issue in this litigation was whether a board of education may validly enter into a collective bargaining agreement and whether a binding grievance arbitration clause in a master agreement was valid and enforceable. The Supreme Court stated the question became one of whether a board of education's attempt to bind itself to a written collective bargaining agreement exceeded statutory limitations placed upon its contractual power.

Ohio's Supreme Court affirmed that part of the lower court's judgment which held the master contract was valid.
The Court reversed that part of the lower court's judgment which held the binding grievance arbitration clause was invalid and remanded the cause back to the Court of Common Pleas for further proceedings.

Rule: A board of education is vested with discretionary authority to negotiate and to enter into a collective bargaining agreement with its employees. A binding arbitration clause contained in a collective bargaining agreement is valid where the grievance involves the application or interpretation of a valid term of the agreement and the arbitrator is specifically prohibited from making any decision which is inconsistent with the terms of the agreement or contrary to law. The Court agreed that the issues presented in the case were whether a school board may authorize entry into a pact, and whether decisions made by tribunals that administered the pact were binding on entities of the board of education. It held that the controlling precedent could not be distinguished from the case, State ex rel. Ohio H. S. Athletic Association v. Judges of the Court of Common Pleas. The Supreme Court held in that case a board of education was vested with discretionary authority to authorize one of its schools to join a private association wherein member schools were bound to....abide by and conform

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to the constitution and rules and decisions of the association. Ohio's Supreme Court declared that:

"Neither reason nor authority prohibits a board of education from manifesting its policy decisions in written form and calling the writing an agreement or contract. It cannot be seriously argued that entering into such agreement is a departure from, or surrender of, independent exercise of a board's policy-making power."

Regarding the issue of whether a binding grievance arbitration clause in a master agreement was valid and enforceable, Ohio's Supreme Court reversed that part of the lower court's judgment which held the binding grievance arbitration clause was invalid and remanded the cause back to the Court of Common Pleas for further proceedings. Controlling precedent for the issue of the binding grievance arbitration clause was cited from the case, Campbell v. Automatic Die and Products Company, 162 Ohio St. 321 (1954). Quoting from this case, Ohio's Supreme Court said:

It is the policy of the law to favor and encourage arbitration and every reasonable intendment will be indulged to give effect to such proceedings and to favor the regularity and integrity of the arbitrator's acts.\footnote{Campbell v. Automatic Die and Products Company, 162 Ohio St. 321 (1954).}

The controlling precedent concerning the issue of the validity of a master contract was State ex rel. Ohio H. S.
Athletic Association v. Judges of Court of Common Pleas, 173 Ohio St. 239 241. The controlling precedent for the enforceability of a binding arbitration clause was Campbell v. Automatic Die & Products, 162 Ohio St. 321 329. The Ohio Supreme Court also decided to select the precedent from a Wisconsin Supreme Court case Local 1226 v. Rhinelander, 35 Wis. (2d) 209.
CHAPTER VI

SUMMARY, FINDINGS, AND IMPLICATIONS

Summary

The purpose of this study was to ascertain in what ways and to what degree, if any, has Ohio's Judiciary affected the decision making policy and function of boards of education where teacher strikes have occurred. The Director of Special Services for the Ohio School Boards' Association and the researcher identified a population of six Ohio school districts in which there was judicial involvement in order to resolve teacher-board strikes during the period 1972 through 1974.

Since Ohio had no public sector labor law employment act, the researcher surveyed the general field of law to seek a legal research method and conceptual framework to examine the function, the nature, and the operation of the judiciary branch of government. Rombauer\(^1\) classifies America's system of jurisprudence into two categories, legislation and precedents. Garber and Reutter\(^2\) agree in a similar manner that school law is of two major types, statutory law and common law, or even more precisely, judge-made law.

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The terms legislation and statutory law are used to include all forms of written law such as constitutions, statutes, executive orders, and court rules. Precedents and the common law refer to court decisions made by common law judges in individual cases which may serve as authority for decision in future cases. The aggregate of reported cases make-up the case law system which is the core of the common law.

The common law was originally created and has grown and developed in the hands of judges, reasoning closely from case to case and building a body of law that binds subsequent judges through the doctrine of stare decisis, i.e., to decide similar cases similarly. Even though there may be an abundance of legislative law, the common law ultimately means the law created and formed by judges to hold legislation invalid if unconstitutional.

This legislation-precedent dichotomy was suited for this study since teacher-board strikes in Ohio have been resolved by judicial precedents under the common law in the absence of a body of public sector legislative labor law.

The primary research method of opinion briefing was utilized to study and analyze the decisions of eight appellate court decisions: the judicial precedents, the judge-made law. Opinion briefing contains five well-defined parts. They are: (1) a statement of the significant facts of the dispute before the courts; (2) a statement of the relevant procedural details; (3) a statement of the legal question(s) or issue(s) which the court is asked to solve; (4) a brief statement of the court's decision, both procedural and
This study addressed itself to the following research questions:

(1) In what ways and to what extent has the decision making power and authority of local boards of education changed due to the influence of the judiciary in the resolution of teacher-board disputes associated with teacher strikes in six Ohio school systems?; (2) If there has been a change in the decision making power and authority of local boards of education, can discrete trends be observed and predicted?; (3) Is the judiciary perceiving the teaching activity as a public service rendered in an employer-employee relationship or whether the teacher activity is gaining a new image or status as a professional activity within the labor force of the public sector?; and (4) As the courts and judges rule on school issues, thereby
creating a new body of common law in school management labor relations, what implications relative to public policy can be derived in creating new legislation for the governance of Ohio's public school systems?

Specific findings related to each of the research questions are presented in order.

IN WHAT WAYS AND TO WHAT EXTENT HAS THE DECISION MAKING POWER AND AUTHORITY OF LOCAL BOARDS OF EDUCATION CHANGED DUE TO THE INFLUENCE OF THE JUDICIARY IN THE RESOLUTION OF TEACHER-BOARD LABOR DISPUTES ASSOCIATED WITH TEACHER STRIKES IN SIX OHIO SCHOOL SYSTEMS?

Five discrete patterns have emerged from this study in answering the question as to the extent and in what ways, if any, has the decision making powers of boards of education changed due to the influence of the judiciary. (1) In all six cases, judges retained jurisdiction over the teacher-board dispute until the strike settlement was reached; (2) In all six cases, judges ordered boards of education to enter into or to resume collective bargaining whether boards of education desired to do so or not; (3) In all six cases, judges exercised their judicial function of judicial review and judicial decision making; (4) In all six cases, judges issued temporary restraining orders and exercised their judicial function in scheduling future hearings. In all six cases, strike activity continued from the issuance of court orders right up to the time the court hearings were scheduled; and (5) In two cases, judges extended
the scope and jurisdiction of court authority beyond the parameters of the particular level of the judicial hierarchy. In these two cases, superior courts granted writs of prohibition restraining the judicial actions of lower courts.

IF THERE HAS BEEN A CHANGE IN THE DECISION MAKING POWER AND AUTHORITY OF LOCAL BOARDS OF EDUCATION, CAN DISCRETE TRENDS BE OBSERVED AND PREDICTED?

Results of this study indicate there may be at least three discrete trends emerging. (1) There is now a body of public sector labor law distinct and separate from the body of private sector law, although there are many similarities; (2) A trend which seems to be appearing is that teacher strike activity in Ohio and the nation may be on the decline; (3) In the Dayton case, it was found that Ohio's judiciary has assumed a posture that collective bargaining and its related appendage, arbitration, should be a matter of public policy to settle teacher-board labor disputes.

IS THE JUDICIARY PERCEIVING THE TEACHING ACTIVITY AS A PUBLIC SERVICE RENDERED IN AN EMPLOYER-EMPLOYEE RELATIONSHIP OR WHETHER THE TEACHING ACTIVITY IS GAINING A NEW IMAGE?

This question, unfortunately, cannot be answered by the data contained in this study. In several interviews the researcher of this study conducted with judges in these six strike situations, they expressed

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their opinions that teaching was a professional activity. All were concerned with the tactics employed by teachers' associations as they felt union methods did not enhance the image of the teacher as a professional person. In reviewing the judgment entries of the various courts and in analyzing the briefs of opposing counsels, there was no reference made to the idea that the teacher activity is being perceived in a different light than it ever has been before. Therefore, no generalization can be made to answer this question.

**Related Finding**

In addition to the major findings generated from the first three research questions, the researcher found that courts of equity have the power to correct the deficiency of the common law where there is no adequate remedy at law. The judiciary has held that public employers such as boards of education have no adequate remedy at law when public school teachers strike. An adequate remedy at law means that there is a legal solution for a dispute which is practical, efficient, plain, and complete to achieve the ends of justice. Consequently, school administrators and boards of education must seek equitable relief in courts of equity if they desire to stop teacher strike activity. Courts of equity grant relief through the issuance of injunctions or restraining orders. Courts of equity, in order not to infringe upon or to interfere with the established courts of law, have always refused to take jurisdiction of a cause and award judicial relief except upon evidence that there is no adequate remedy at law.
Table 8 presents an overview of the issues before the appellate courts as they have accumulated from the study of these six teacher-board strikes. Table 8 shows the name of the school district, the issue before the courts, and whether the controlling precedent was strict or loose. Figure 111 lists the controlling precedents applied in each case as they were cited in the opinion briefings in chapter five.

Ohio's judiciary has modified its posture concerning the right for boards of education to bargain collectively with their public employees. Four of these eight appellate court decisions dealt with the issue of the validity of a collective bargaining agreement between the board of education and a teachers' association. In the Building & Maintenance Union v. St. Luke's Hospital case in 1949, the court's decision was that there was not a case in Ohio's common law rule book that said an employer must, against its will, bargain collectively. In the Martins Ferry case in 1967, the court stated all government employees should realize that the process of collective bargaining can not be transplanted into public service. The court's decision in the Youngstown case avoided ruling on the validity of a collective bargaining agreement, but asserted it was the responsibility of the Youngstown Board of Education to adopt policies to manage and operate the school district. That court made note of

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<tr>
<th>School District</th>
<th>Issue:</th>
<th>View of Precedent</th>
<th>Classification</th>
<th>School District</th>
<th>Issue:</th>
<th>View of Precedent</th>
<th>Classification</th>
</tr>
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<td>Maple Heights</td>
<td>Section 5705.412 O.R.C.</td>
<td>Strict</td>
<td>Rule No. 1</td>
<td>Hamilton Local</td>
<td>Binding Arbitration</td>
<td>Strict</td>
<td>Rule No. 1</td>
</tr>
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<td>Martins Ferry</td>
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<td>Strict</td>
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<td>Wellston</td>
<td>Section 3313.23 O.R.C.</td>
<td>Strict</td>
<td>Rule No. 1</td>
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<td>Rule No. 2</td>
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<td>Hamilton Local</td>
<td>Binding Arbitration</td>
<td>Strict</td>
<td>Rule No. 1</td>
<td>Dayton</td>
<td>Validity of Master Contract: Enforceability of Binding Arbitration Clause</td>
<td>Strict</td>
<td>Rule No. 1</td>
</tr>
</tbody>
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FIGURE 111

CONTROLLING PRECEDENTS FOR TABLE 8

1. Maple Heights: State ex rel. Morse v. Christianson (1952) 262 Wis. 55 N.W. 2d 00 and State, ex rel. v. Board of Education, 170 OS 415.


3. Wellston: Perkins v. Village of Quaker City, 165 Ohio St. 120.


5. Hamilton Local: M. J. Kelly Co., v. Cleveland (1972) 32 Ohio St. 2d 150 in the case concerning a writ of prohibition.

6. Vinton County: Dayton Teachers' Association v. Board of Education 41 OS 2d 127 concerning the issue of the validity of a master agreement. May Co. v. Bailey Co. 81 Ohio St. 471 (1910) for writ of prohibition.

7. Youngstown: State ex rel. Idle v. Chamberlain 39 0.0.262 and State ex rel. Evans v. Fry, 40 0.0. for validity of master contract. Ohio Civ. R. 24(b) on issue of judiciary abuse.

the fact that Ohio's Supreme Court had not yet addressed itself to the issue of the validity of a collective bargaining agreement between a board of education and its teachers' association.

Finally, in 1975, Ohio's Supreme Court did speak to the two issues before it in the Dayton case: (1) whether a board of education may validly enter into a collective bargaining agreement, and (2) whether a binding grievance clause in such an agreement is valid and enforceable. Using the same sections of the Ohio Revised Code as were cited in the Youngstown case, Ohio's High Court stated it believed the rule that the enforcement of an arbitration clause in a collective bargaining agreement was not enforceable at common law should be repudiated. In excerpts quoted from a similar decision of the Wisconsin Supreme Court which Ohio's Supreme Court stated applied with equal force to the Dayton case, the following are cited:

The very purpose of grievance arbitration is to prevent individual problems from blossoming into labor disputes which cause strikes and lockouts and which require collective bargaining to restore peace and tranquility.

The Supreme Court repudiates the common law rule that notwithstanding the validity of arbitration provisions in a collective bargaining agreement, courts are powerless to enforce them.6

The significance of this decision in the Dayton case is that Ohio's Supreme Court held it was the policy of the law to favor and encourage arbitration. No distinction was mentioned as to its applicability to either the private or the public sector. One can only conclude

6Local 1226 v. Rhinelander, 35 Wis. 2d, 209 220, 151 N.W. 2d 30 (1967).
that the boundary between the private and public sector in labor relations law concerning collective bargaining and arbitration has vanished.

Ohio's Supreme Court has assumed an activist position philosophically regarding collective bargaining in the light of much litigation between boards of education and teachers' associations because of teacher strike activity. It has implied by reference that the Court cannot subscribe to the theory that the common law is an inflexible instrument which does not permit growth and adjustment to meet the social needs of the times.

The present study affirms the position of most scholars who have studied collective bargaining as it pertains to teacher-board industrial relations. It can be concluded that, in Ohio, to the degree that Ohio's judiciary has ordered boards of education to bargain collectively with their public employee groups, concomitant with the facts that it is now the policy of the law in Ohio to favor and encourage arbitration and that boards of education are vested with the discretionary authority to enter into collective bargaining agreements, the boundary line between public sector law and private sector law regarding collective bargaining and arbitration no longer exists. Bi-lateral decision making which is the heart of the collective bargaining process has significantly altered the decision making function of the governance of Ohio's public school systems.
The following implications are presented as answers to the fourth research question. They are based on the major and related findings of the study.

1. In the American system of jurisprudence, courts have at least three functions. They rule on the constitutionality of legislative enactment, they interpret laws, and they settle disputes. Teachers' associations and boards of education must settle their own problems or the judiciary will intervene.

2. The process of collective bargaining is only one aspect of labor industrial relations. Effective personnel policies should be developed which can produce mutual trust and respect between labor and management, thereby reducing issues from going to the collective bargaining table.

3. This study has confirmed that there is now a distinct body of public sector labor law. Central office administration should consider the possibility of creating administrative positions in which knowledge and understanding of such law are prerequisites for fulfilling these administrative positions. This may mean the employment of full-time professional negotiators.

4. If a public sector collective bargaining law is imminent in Ohio, there must be sufficient input into such legislation from school
administrators, professors of educational administration and school boards to protect the interests of all parties.

5. If Ohio's Legislature decides that some groups of public employees should have the right to strike, it must address itself to the issue of which public services are essential and which are not. Is the teaching activity an essential public service? Ohio's Supreme Court has said it is in the interest of public policy to keep the schools open.

6. If Ohio's Legislature were to adopt a public sector labor relations statute, legislation must provide for protecting the rights of public employees who must act as management. In both the Youngstown and the Dayton case, an appellate court and Ohio's High Court ruled that Section 3313.20 of the Ohio Revised Code means just what the language states, "The board of education shall make such rules and regulations as are necessary for its government." Both courts also upheld the language of Section 3313.47 of the Ohio Revised Code which reads, "...the local board of education shall have the management and control...in absence of abuse."

7. If Ohio's Legislature were to adopt a collective bargaining law for its public sector, the question of how the scope of bargaining should be delineated in order to preserve representative government in the governance of Ohio's public schools must be faced. The Supreme Court of the United States has already declared to the National Labor Relations Board that there is a distinction
between mandatory, prohibitive, and permissive subjects of bargaining. In the Dayton case, Ohio's Supreme Court stated a board of education may enter into a collective bargaining agreement so long as such agreement does not conflict with or purport to abrogate the duties and responsibilities imposed upon a board of education by law. And, the Court ruled on the binding grievance arbitration clause that a board of education must honor such a clause only where the grievance involves the application or interpretation of a valid term of the agreement and the arbitrator is specifically prohibited from making any decision which is inconsistent with the terms of the agreement or contrary to law. The careful delineation of mandatory, prohibitive, and permissive powers can prevent future confusion.

8. Unfair labor practices must be specifically spelled-out for both public employers and public employees. If unfair labor practices are delineated, fair and equitable penalties should be included in the language of the law. This would provide either part an adequate remedy at law if such practices are violated.

9. Provisions for accommodating impasse in the collective bargaining process should be developed. Various alternatives should be explored. Compulsory arbitration as it is practiced in the private sector would seem to defeat the underlying objective of encouraging the parties to negotiate their own agreements. Furthermore, a third party removes education decision making away from boards of education and the citizens they represent. Fact finding with recommendations, and a "final offer" arbitration condition should be considered.
10. If the Legislature decides to retain the Ferguson Act as the law for Ohio, the uncertainty and ambiguity of what does and what does not constitute a strike in the public sector should be clearly articulated.

Concluding Remarks

Ohio's Supreme Court, in the Dayton case, has finally addressed itself to the issue of collective bargaining in the public sector. It has adopted the posture of the Wisconsin Supreme Court that the common law is not an inflexible instrument which prevents growth and adjustment to meet the social needs of the times. Ohio's Supreme Court has maintained that the common law is susceptible for growth and adaptation to new times and circumstances. The common law has within itself the capacity for expansion and adaptation to new circumstances and changing social conditions. It has been said that public policy is the dominant force in the shaping and reshaping of common law principles. This study has confirmed that principle, and illustrates the character of the legislation and statutory law needed to fill the present void created by the Dayton decision.
BIBLIOGRAPHY

American Jurisprudence 2d Volume 15.

ALR 2d and 3d American Law Reports: Cases and Annotations.


Compact, (Monthly Magazine of the Education Commission of the States), Volume 18, No. 4, (April, 1974).

Constitution of the State of Ohio, Article VI, Section 3.

Constitution of the United States of America. First, Tenth and Fourteenth Amendments.

Cox, Archibald, Law and the National Labor Policy. (University of Southern California: Institute of Industrial Relations, 1966).


*Ohio Jurisprudence*, 2d Volumes 9, 11, and 14.

*Ohio Revised Code*, Annotated (Page's and Drury's).


OHIO APPELLATE COURT CASES

Board of Education v. Maple Heights Teachers' Ass'n. (1973), 41 Ohio Misc. 27.

Board of Education v. Ohio Education Association, 26 0. App. (2d) 237.

Crabtree v. Board of Education, 26 0. App. (2d) 237.

Dayton Classroom Teachers' Ass'n v. Board of Education, 41 OS (2d) 127.
Hamilton Local Board of Education v. Mrs. Judith Arthur, et al.,
In the Court of Appeals of Franklin County, Ohio. Decision

State ex rel., Ohio, Hamilton Local School District Board of
Education and Roger O. Hoffman, Superintendent v. The Honorable
George E. Tyack, Judge of the Court of Common Pleas, Franklin

Vinton Local Teachers' Association v. Vinton Local Board of
Education. Case No. 349, Court of Appeals, Vinton County,
Ohio.

Youngstown Education Association v. Youngstown City Board of
Education 36 Ohio App. (2d) 35.

OHIO TRIAL LEVEL COURT CASES

Case No. 59406, Ashtabula Area Board of Education v. Ashtabula Area
City School Board of Education, Court of Common Pleas, Ashtabula
County, Ohio.

Case No. 60213, Board of Education of the Geneva Area City School
District v. Geneva Area Teachers' Association, et al., Court
of Common Pleas, Ashtabula County, Ohio.

Case No. 23841, Board of Education of the Martins Ferry City School
District v. Ohio Education Association, et al., Court
of Common Pleas, Belmont County, Ohio.

Case, Board of Education, Perry Local School District v. The Perry
Classroom Teachers' Association, Court of Common Pleas, Lake
County, Ohio.

Case No. 20934, Board of Education, Wellston City v. Wellston
Teachers' Association, Court of Common Pleas, Jackson County,
Ohio.

Case No. 843188, Building Service & Maintenance Union Local No. 47
v. St. Luke's Hospital, et al., Court of Common Pleas, Cuyahoga
County, Ohio.

Case No. 72 Cl 752, Campbell Education Association v. Campbell Board
of Education, et al., Court of Common Pleas, Mahoning County,
Ohio.
Case No. 72 Cl 775, Campbell Board of Education v. Campbell Education Association, Court of Common Pleas, Mahoning County, Ohio.

Case No. 609819, Cleveland City, etc., v. Division 268, et al., Court of Common Pleas, Cuyahoga County, Ohio.

Case No. 77893, 74 Elyria City School District v. Elyria Education Association, et al., Court of Common Pleas, Lorain County, Ohio.

Case No. 286281, Green Education Association v. Board of Education, Green Local School District, Court of Common Pleas, Summit County, Ohio.

Case No. 73 CV - 02 - 550, Hamilton Local Board of Education v. Mrs. Judith R. Arthur, et al., Court of Common Pleas, Franklin County, Ohio.

Case No. 73 CIV 0187, Painesville Township Education Association v. Painesville Township School District Board of Education, Court of Common Pleas, Lake County, Ohio.

Case No. 73 Cl 11394, Newton Falls Classroom Teachers' Association v. Board of Education, Court of Common Pleas, Trumbull County, Ohio.

Case No. 11394, Plain Local School District, et al., v. Judith Woodcock, et al., Court of Common Pleas, Stark County, Ohio.

Case No. 188893, Struthers Education Association v. The Board of Education of the Struthers City School District, Court of Common Pleas, Mahoning County, Ohio.

Case No. 11074, The Vinton Local Teachers' Association v. The Vinton Local Board of Education, et al., Court of Common Pleas, Vinton County, Ohio.

Case No. 73 Ck 021, Wooster Education Association v. Wooster City School District Board of Education, et al., Court of Common Pleas, Wayne County, Ohio.

Case No. 73 Ck 124, The Youngstown Board of Education v. The Youngstown Educational Association, et al., Court of Common Pleas, Mahoning County, Ohio.
Athens Messenger, Athens, Ohio.
Chillicothe Gazette, Chillicothe, Ohio.
Cleveland Plain Dealer, Cleveland, Ohio.
Columbus Citizen Journal, Columbus, Ohio.
Columbus Evening Dispatch, Columbus, Ohio.
Elyria Chronicle Telegram, Elyria, Ohio.
Lorain Journal, Lorain, Ohio.
Middletown Journal, Middletown, Ohio.
Vinton County Courier, McArthur, Ohio.
Youngstown Vindicator, Youngstown, Ohio.