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## **IMPASSE IN NORTH CAROLINA: THE NEED FOR A VIABLE PUBLIC EMPLOYEES LABOR RELATIONS ACT**

**BY WILLIAM G. HAEMMEL\***

The legislature finds that joint decision making is the modern way of administering government. If public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work, to provide a rational method for dealing with disputes and work stoppages, to strengthen the merit principle where civil service is in effect and to maintain a favorable political and social environment. The legislature declares that it is the public policy of the state to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are to be effectuated by

- (1) recognizing the right of public employees to organize for the purpose of collective bargaining;
- (2) requiring public employers to negotiate with and to enter into written agreements with employee organizations on matters of wages, hours, and other terms and conditions of employment.

§. 23.40.070, Alaska Public Employment Act of 1972

### **I. INTRODUCTION**

North Carolina is faced with a clear and present need to adopt a modern, positive, and balanced government employees labor relations policy and the several levels of government, their employees and the general public will all benefit from the adoption. The tide is running strongly in such a direction, and North Carolina is one of only two states which is standing still, and has not yet recognized the right of public employees to join a union, gain recognition and bargain collectively. An increasing number

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of public employees are becoming union members, and while prohibited from doing so under existing, antiquated state law, public employers are meeting and dealing with public employees unions.

Further illegal action in the form of public employee strikes occur regularly. In some areas of North Carolina, frank and open meetings between public employee unions and public employers occur, while in other areas, there are refusals to meet. Such confusion, uncertainty and doubts serve only to create more of the same, and to sap time and energy which could otherwise be invested in moving on to the substantive questions which demand attention. While a public employees labor relations act may serve to make the administration of governmental business more complex and involved and call for actions and decisions which heretofore were not required, these are complex and involved times and the quest is for better ways to carry out the business of government. The times have shown that joint decision making by employers and employees in the public sector is one way to achieve this end. This article will consider the development of public employees labor relations in North Carolina and discuss why the time for change has arrived.

Employee labor relations rights include all or substantially all of a range of rights, including the rights to organize, to be recognized, to bargain collectively, to process grievances including the right to proceed to arbitration, and the right to strike.<sup>1</sup> In public sector labor relations, sometimes the "meet and confer" method of determining employment conditions is used, rather than the collective bargaining method. Under the meet and confer method, the parties are required to seek to reach an agreement, the memorandum of which is then presented to employer's governing body or statutory representative for final determination. In collective bargaining under the National Labor Relations Act, the parties are required by law to reach an agreement, but are not obligated to agree to a proposal or make a concession; they are required to bargain "in good faith".

### II. INCREASING NUMBERS AND FUNCTIONS OF GOVERNMENT EMPLOYEES

Since 1900, the number of public employees has grown tremendously as the population increased and an ever-increasing list of government functions and activities calls for more and more manpower. In 1901, there were 239,476 federal civilian employees, and no available figures for state and local governmental employees. By 1929, the first year that figures for both federal and state-local governmental employees were available, there were 579,559 federal and 2,532,000 state-local government employees.

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<sup>1</sup> ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, LABOR MANAGEMENT POLICIES FOR STATE AND LOCAL GOVERNMENT 2 (1969). A full glossary of public employment labor relations terms appears.

The North Carolina Department of Labor first began to report the estimated number of both federal and state-local governmental employees in 1947. In that year, the federal payroll included 2,111,001, while the state-local total was 3,582,000<sup>2</sup>, of which it was estimated 25,000 federal employees and 73,000 state-local employees were in North Carolina.<sup>3</sup>

In 1961, there were 7,938,000 governmental employees; 2,358,000 federal and 5,580,000 state-local,<sup>4</sup> and North Carolina reported 171,000 governmental employees; 36,700 federal, 73,300 in education, and 61,000 other state and local governmental employees.<sup>5</sup> By 1971, the comparable figures had reached 12,858,000; 2,664,000 and 10,194,000,<sup>6</sup> and 267,200; 43,700; 130,100 and 93,400. Of 1,794,300 residents of North Carolina engaged in nonagricultural work, 223,500 were in non-federal governmental employ; almost one out of six. An estimate published in 1967 projected that by 1975, state and local governmental employment will reach 11.4 million.<sup>7</sup>

At the start of the century, the civil servant was found in the judiciary, executive, and legislative branches of government; in teaching, police and performing other functions. Today, the functions and activities of government are ever-widening as the public demands more and better public service and public servants. Federal employees are engaged in more than 15,000 separate occupations, and local and state governments perform a vast variety of functions as well.<sup>8</sup> Among the federal employees are found numerous professional, scientific, clerical and service employees and a relative few engaged in managerial, skilled and semi-skilled work. About a quarter are classified as blue-collar, and the remainder are white collar. Among the federal employees a higher level of education is usually found.

Among the federal employees national defense and the postal service make up about two-thirds of the total. On the state-local level, education makes up almost one-half of the employees. Other significant functions and the percentage (full-time equivalent) consist of hospitals (almost ten per cent), highways (almost seven per cent), police protection (5.3 per cent) and public welfare (three per cent). General control (the courts, legislative bodies, the chief executives and central staff agencies) makes up another three per cent.

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<sup>2</sup> UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES 710-711 (1960).

<sup>3</sup> N.C. DEPARTMENT OF LABOR BIENNIAL REPORT FOR 1948-1950 (1950).

<sup>4</sup> UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES, CONTINUATION TO 1962 AND REVISIONS (1965).

<sup>5</sup> N.C. DEPARTMENT OF LABOR BIENNIAL REPORT FOR 1970-1972 (1972).

<sup>6</sup> UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 229 (1972).

<sup>7</sup> Stambler, *State and Local Government: Manpower in 1975*, MONTHLY LABOR REV. 13-17 (Apr., 1967).

<sup>8</sup> NATIONAL MANPOWER COUNCIL, GOVERNMENT AND MANPOWER 16 (1964).

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## III. FEDERAL LABOR RELATIONS LAWS

Under federal law, private sector legislation mandated progressively wider labor relations rights. The Norris-LaGuardia Act of 1932,<sup>9</sup> all but eliminated the anti-labor court injunction, and the National Labor Relations Act of 1935<sup>10</sup> recognized the right to organize, bargain collectively, and the right to strike.

While federal employee unions appeared as early as 1835,<sup>11</sup> it was late in the last century when postal employees and Governmental Printing Office printers and bookbinders organized. In 1935, the Tennessee Valley Authority, a separate governmental corporation, issued an Employee Relationship Policy. In 1948, the Department of the Interior established a labor relations program that included selection of representatives, collective bargaining and advisory arbitration in grievance matters.<sup>12</sup>

By Executive Order 10,988, 3 C.F.R. 204 (1971) signed January 17, 1962, by President Kennedy, certain features of the National Labor Relations Act were incorporated into federal employee labor relations. Executive Order 11,491,<sup>13</sup> signed by President Nixon October 3, 1969, repealed 10,988, and comprehensively provides for selection of representatives, recognition, negotiations, unfair practices by both agency management and unions, unions standards of conduct, and impasse procedures, and a prohibition against strikes.

For over two decades, public employment has been the fastest growing "industry," and the public employee unions have been the fastest growing labor organizations. In 1972, when the total labor force was 89 million, unions and employee associations rolls show 24.3 per cent membership. While the proportion has edged downward since 1968, the number continues to rise due to the growth in the labor force. In 1972, national and international unions reported an increase by about 50,000 to 19.4 million, while employee association membership climbed 347,000, almost 20 per cent, to 2.2 million. Association members outnumber those in unions at state and local levels and are of minor significance on the federal level.<sup>14</sup>

In 1968, total public employee unions and association membership was 3.86 million, 4.08 million in 1970, and 4,244,000 in 1972. The federal total moved from 1,390,000 in 1968, to 1,410,000 in 1970, and 1,396,000 in 1972, while the state-local total went up from 2,460,000 in 1968, to 2,670,000 in 1970, to 2,828,000 in 1972. Almost 30 per cent of state-local employees belonged to unions or associations, while almost 52 per cent

<sup>9</sup> 47 Stat. 70 (1932), as amended, 29 U.S.C. §§ 101-10, 113-15.

<sup>10</sup> 49 Stat. 449-57 (1935), as amended, 61 Stat. 136 (1947), and Pub. L. No. 86-257 (1959) 29 U.S.C. § 161-68.

<sup>11</sup> D. ZISKIND, ONE THOUSAND STRIKES OF GOVERNMENT EMPLOYEES 7 (1940).

<sup>12</sup> WILSON, COLLECTIVE BARGAINING IN THE FEDERAL SERVICE 1 (1961).

<sup>13</sup> 3 C.F.R. 260 (1971), amended by Executive Order 11,616, issued August 26, 1971, 36 Fed. Reg. 17319 (1971).

<sup>14</sup> MONTHLY LABOR REV. 56 (Jan., 1972), and MONTHLY LABOR REV. 2 (Oct., 1973).

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of federal employees were enrolled, almost entirely in unions, rather than both.<sup>15</sup>

## IV. PUBLIC EMPLOYEES LABOR RELATIONS LAW IN THE STATES

As would be expected in a field as novel, complex, and controversial as public employee labor relations, the several states have reacted in different ways and fashioned an unusually wide variety of policies based upon their particular needs, experience and outlook. The outlook and policies have changed from one of repression of public employees' labor relations rights, to one of recognition. The early minority view that public employees could organize and join unions,<sup>16</sup> is now all but universally accepted. The reversal of public policy began slowly 25 years ago,<sup>17</sup> gathered momentum and during the 1960's moved with great speed. At times, the court decisions, opinions of attorneys general and legislation took sharply opposite views.<sup>18</sup> During the 1960's the trend was fairly

<sup>15</sup> An analysis of federal percentages released in 1969 revealed 89% of postal employees, 67% of blue-collar and 28% of white collar employees were enrolled, to arrive at the 52%. UNITED STATES CIVIL SERVICE COMMISSION, OFFICE OF LABOR MANAGEMENT. ANALYSIS OF DATA ON UNION RECOGNITION IN THE FEDERAL SERVICE, BULL. 711-16 (1969).

<sup>16</sup> Hagan v. Picard, 171 Misc. 475 12 N.Y.S. 2d 873, *aff'd*, 258 App. Div. 771 (1939).

<sup>17</sup> N.J. CONST. art. 1, § 19 (1947); S.C. CONST. art. 6, § 2 (1946).

<sup>18</sup> In *Potts v. Hay*, 229 Ark. 830, 318 S.W.2d 826 (1958), the Supreme Court of Arkansas took the position that the right-to-work law created a right to organize and join, while in Tennessee, the right-to-work law does not mention public employees and the omission has been held fatal to their claim. *Keeble v. City of Alcoa*, 204 Tenn. 286, 319 S.W.2d 249 (1958). In 1934, the Attorney General of Montana ruled that employees of the county surveyor's office had the right to join unions, and that combinations of workmen were legal. He found a common-law right to join unions: "Labor organizations are no more unlawful than any organization or combination of farmers or manufacturers, doctors or lawyers. The right of laborers to organize unions is an exercise of the common-law right of every citizen to pursue his calling, whether of labor or business, as he, in his judgment thinks fit." OP. ATT'Y. GEN. 636(Mon., 1934). In 1961, the Attorney General of Iowa ruled that public employees had the right to organize, and stated that . . . "we have discovered little authority for the proposition that public employees may not organize and join labor organizations." OP. ATT'Y. GEN. 30.34 (Iowa, 40-11 1961). In 1965, the Attorney General of Nevada advised that neither the state nor its subdivisions could enter into a collective bargaining contract which affected public employment, and in 1970 the opinion was affirmed in an opinion which held that such activity was illegal until specifically authorized by the legislature. In 1959, the North Carolina General Assembly made it a misdemeanor for a public employee to join a union that was affiliated with a national or international union, and voided all existing contracts, N.C. GEN. STAT. §§ 95-97 (1959), and on January 8, 1959, the Attorney General of North Carolina held that a municipality may prohibit its employees from belonging to a union and that municipalities may not recognize nor bargain with a union. 35 OP. ATT'Y. GEN. 113 (N.C. 1959). In 1956, the United States Supreme Court ruled that the right of free speech under the First Amendment of the United States Constitution provided everyone, including those publicly employed, the right to join labor unions. *Slochower v. Board of Education*, 350 U.S. 555 (1956). And in *American Federation of State, County, and Municipal Employees, AFL-CIO v. Woodard*, 406 F.2d 137 (8th Cir. 1969), and *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968) it was held that the First and Fourteenth Amendments are violated by laws prohibiting union membership. In *Atkins v. City of Charlotte*, 296 F. Supp. 1068 (W.D. N.C. 1969), the North Carolina law which made it a misdemeanor to belong to a union was held unconstitutional, but the prohibition against contracts between unions and public employees was upheld.

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uniform but the speed with which the trend unfolded varied from state to state.

The peak of action and interest came late in the decade. In 1967, 17 states enacted legislation, and ten more followed in 1968 and 1969. General studies were released<sup>19</sup> and several legislative studies were made.<sup>20</sup>

Several of the large cities were the first to deal with public employee unions on a regular basis. Philadelphia has entered into labor agreements since 1939, and passed an ordinance to formalize the pattern in 1961. An employee organization received recognition in Cincinnati in 1951. In New York City, the Mayor's Interim Order on the Conduct of Labor Relations Between the City of New York and its Employees was issued July 21, 1954, and Executive Order 49 followed in March 31, 1958.<sup>21</sup>

On the state level, Wisconsin was the first state to take action with the Municipal Employee Relations Act of 1959, which conferred the right to organize and negotiate upon municipal employees and imposed the obligation to bargain with them, and in 1966 state employees received the same rights.<sup>22</sup> By the end of 1970, 33 additional state statutes, and the District of Columbia had recognized the right of all public employees, or some occupational group or groups of public employees to join unions, and to benefit from some additional labor relations rights.<sup>23</sup> In other states,

<sup>19</sup> See, e.g. NATIONAL GOVERNORS' CONFERENCE COMMITTEE REPORT (1967); NATIONAL GOVERNORS' CONFERENCE 1968 SUPPLEMENT TO REPORT (1968); NATIONAL GOVERNORS' CONFERENCE 1969 SUPPLEMENT TO REPORT (1969); NATIONAL GOVERNORS' CONFERENCE 1970 SUPPLEMENT TO REPORT (1970); ADVISORY COMMISSION ON INTER-GOVERNMENTAL RELATIONS, LABOR MANAGEMENT POLICIES FOR STATE AND LOCAL GOVERNMENT (1969); STATE OF TENNESSEE LEGISLATIVE COUNCIL COMMITTEE, STUDY ON PUBLIC EMPLOYER-EMPLOYEE RELATIONS (1970); U.S. DEPARTMENT OF LABOR, STATE PROFILES: CURRENT STATUS OF PUBLIC SECTOR LABOR RELATIONS (1971); Symposium, *Labor Relations in the Public Sector*, 2 CATH. U.L. REV. 493 (1972).

<sup>20</sup> See, e.g. the advisory reports of Connecticut (1965), Minnesota (1965), Rhode Island (1966), New York (1966), Michigan (1967), Illinois (1967), New Jersey (1968), Pennsylvania (1968), all discussed in Smith, *State and Local Advisory Reports on Public Employment Labor Legislation: A Comparative Analysis*, 67 MICH. L. REV. 891 (1969).

<sup>21</sup> See also New York City Collective Bargaining Law, Ch. 54, §§ 1170, 1173-13.0 (1967).

<sup>22</sup> WIS. STAT. § 111.70 (1) *et. seq.* (1966).

<sup>23</sup> Alabama, firefighters in 1967; Alaska, teachers in 1970; California firefighters in 1959, teachers in 1965, local in 1968 (state followed in 1971); Connecticut, teachers in 1964, and local in 1965; Delaware, mass transportation 1964, local transportation 1968, teachers 1969, state, county and local 1970; District of Columbia Order of Commissioners, all 1970; Florida, three statutes in 1969 for firefighters, teachers, and school officers in certain counties; Georgia, employees of one county 1968 (held unconstitutional 1969, firemen followed in 1971); Hawaii, comprehensive 1970; Idaho, firefighters in 1970 (teachers followed in 1971); Illinois, firefighters in certain municipalities in 1951, but limited by Attorney General in 1962; Kansas, teachers in 1970; Louisiana, public transportation in 1964; Maine, state in 1968, local and teachers in 1969; Maryland, teachers in 1969; Massachusetts, two statutes in 1965 for state, and local and teachers; Michigan, comprehensive 1965; Minnesota, state and local had meet and confer rights in 1951, amended in 1965, and same for teachers in 1967; Missouri, state and local 1967; Montana, nurses in 1967 (teachers followed in 1971); Nebraska, two acts in 1967, all public, and teachers; Nevada, local, and teachers in 1969; New Hampshire, local including teachers in 1955, state and certain state university 1969; New Jersey, all public and private in 1968; New York, comprehensive 1967; North Dakota, public employees could

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constitutional amendments, court decisions, opinions of attorneys general, or combinations of these served to reverse the old majority view and bring the states over to the new view.<sup>24</sup>

Since 1970, the momentum has been sustained. The trends toward broader coverage and more substantial rights have continued. Broad coverage was adopted in Kansas (1971), Minnesota (1971), and Alaska (1972), and Oklahoma passed an act for firemen and policemen in 1971 and granted municipal employees and teachers organizational and bargaining rights in 1972. Georgia enacted a law covering firemen in 1971. South Carolina enacted the State Employees Grievance Act of 1971. Kentucky enacted statutes affecting firefighters, and police in 1972. Other states took action in 1971, 1972 and 1973, including Texas, which passed a statute allowing firefighters and police to organize, based upon local action. Legislative studies began or continued in California, Maine, Minnesota, South Carolina, Virginia and West Virginia.<sup>25</sup>

In Alabama, a State circuit court struck down as unconstitutional the 1953 statute which prohibits public employee union membership, as violative of the First and Fourteenth amendments to the U.S. Constitution.<sup>26</sup>

Before departing from the topic of the varied public employee labor relations acts produced (or not produced, as the case may be) by the several states, it would be well to mention several possible sources of uniform

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join and grieve 1951, teachers 1969; Oregon, state and local 1963, teachers 1969 (other school personnel followed in 1971); Pennsylvania, transit 1967, police and fire 1968, comprehensive 1970; Rhode Island, firefighters 1961, police 1963, state 1966, teachers in 1966; South Dakota, all 1969 (police and firefighters followed in 1971); Tennessee, public transportation employees in 1971; Texas, school board teachers in 1967; Vermont, municipal 1967, teachers 1969; Washington, toll bridge employees in 1961, teachers 1965, local 1967, university 1969; Wyoming, firefighters in 1965.

<sup>24</sup> Arizona, by a 1948 right-to-work constitutional amendment and a 1954 decision, *Local 266, IBEW v. Salt River Project Agricultural Improvement and Power District*, 78 Ariz. 30, 275 P.2d 393 (1954); Arkansas, *Potts v. Hay*, 229 Ark. 830, 318 S.W.2d 826 (1958) broadly interpreting the right-to-work law; Colorado by the 1943 Labor Peace Act and 1961 opinion of the Attorney General; Indiana by a 1969 opinion of the Attorney General reaffirming earlier opinions, which allowed informal procedures; Iowa, by a 1961 opinion of the Attorney General; New Mexico by a 1965 Supreme Court decision, *IBEW local 611 v. Town of Farmington*, 405 P.2d 233 (1965); Ohio by a 1967 opinion of the Attorney General to Ohio State University which allowed discussions, and apparently by general practice; Utah, by a 1945 opinion of the Attorney General and the 1955 right-to-work law; Virginia, by a 1962 opinion of the Attorney General which permits negotiations; West Virginia, by an opinion of the Attorney General. See U.S. DEPT. OF LABOR, STATE PROFILES: CURRENT STATUS OF PUBLIC SECTOR LABOR RELATIONS (1971).

<sup>25</sup> Weissbrodt, *Changes in State Labor Laws in 1970*, MONTHLY LABOR REV. 15 (Jan., 1971); Goldberg, *Public Employee Developments in 1971*, MONTHLY LABOR REV. 56 (Jan., 1972); Weissbrodt, *Changes in State Labor Laws in 1972*, MONTHLY LABOR REV. 28 (Jan., 1973).

<sup>26</sup> *Alabama Labor Council v. Frazier*, 81 LRRM 2155 (1972). In *Melton v. City of Atlanta*, it was held that a Georgia statute which prohibited a policeman from joining a union was unconstitutional and was properly attacked under the Civil Rights Act of 1871, now 42 U.S.C. § 1983. 76 LRRM 2511 (N.D. Ga. 1971).



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public employee labor relations acts. Since 1969, one or more bills have been introduced into Congress which would extend federal jurisdiction to state and local public employees. The basis of such an extension of jurisdiction could lie in the commerce clause,<sup>27</sup> and the First and Fourteenth Amendments to the Constitution. The vehicle could be a special act of Congress to reach such public employees, or the National Labor Relations Act exemption as to all public employees could be removed,<sup>28</sup> or the Act could be expressly extended to public employees of state and local subdivisions.<sup>29</sup> Another possibility is to reach teachers only, for under *Maryland v. Wirtz*,<sup>30</sup> the federal government has broad powers to regulate the conditions of employment for state and local schools under the Fair Labor Standards Act.<sup>31</sup> Hearings have been held on several of these bills.

## V. PUBLIC EMPLOYEE STRIKES

While the prevailing common law and statutory view is that public employees do not and should not have the right to join in a work stoppage, several states have recognized the right to strike. In Montana, where county employees and nurses were accorded certain labor relations rights in 1967, nurses are given a limited right to strike,<sup>32</sup> and in Vermont teachers and city employees were given the right to strike.<sup>33</sup> In 1970, Hawaii and Pennsylvania became the first states to permit limited strikes, absent emergency situations, for all public employees.<sup>34</sup> The 1970 action was taken in Pennsylvania after a study by a Governor's Commission.<sup>35</sup> Sim-

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<sup>27</sup> U.S. CONST. art. I, § 8.

<sup>28</sup> 29 U.S.C. § 152 (1947), *amending* 29 U.S.C. § 152 (1935).

<sup>29</sup> 29 U.S.C. § 141 (1947).

<sup>30</sup> 392 U.S. 183 (1968).

<sup>31</sup> 29 U.S.C. § 201 (1938).

<sup>32</sup> MONT. REV. CODE ANN. tit. 41, § 2209 (Supp. 1970).

<sup>33</sup> Act. No. 188 (1967), § 29-34; VT. STAT. ANN. tit. 21, § 1701 (Supp. 1971).

<sup>34</sup> Hawaii Act 171, 1970 legislature, effective July 1, 1970; HAWAII ACTS, tit. 171, § 11 (1970); Pennsylvania Public Employee Relations Act, S.C. 133, 1970 legislature, effective October 21, 1970.

<sup>35</sup> STATE OF PENNSYLVANIA, REPORT AND RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION TO REVISE THE PUBLIC EMPLOYEES ACT OF PENNSYLVANIA (Hickman Commission, 1968). The Commission stated (at 13-14):

The collective bargaining process will be strengthened if this qualified right to strike is recognized. It will be some curb on the possible intransigence of an employer; and the limitations on the right to strike will serve notice on the employee that there are limits to the hardships that he can impose. We also believe that the limitations on the right to strike which we propose . . . will appeal to the general public as so much fairer than a general ban on strikes and the public will be less likely to tolerate strikes beyond these boundaries. Strikes can only be effective so long as they have public support. In short, we look upon the limited and carefully defined right to strike as a safety value that will in fact prevent strikes.

A study by the Ohio State Bar Association Labor Law Committee recommended the repeal of the Ohio statute which bans strikes by public employees, and would allow a strike if certain procedures were followed. 42 OHIO BAR 563 (1969).

ilar acts followed in Minnesota in 1971 and Alaska in 1972.<sup>36</sup> In 1968, the qualified right to strike was granted to nonessential public employees in Michigan by the Michigan Supreme Court, in *Holland Education Association v. Holland School District*.<sup>37</sup>

While the relative novelty of the public employee strike and the traditional view of the 1920's and 1930's<sup>38</sup> brings forth an adverse reaction from some, and penalties have sought unsuccessfully to contain them, public employee work stoppages are a present reality and must be faced as part of the world of today. The following table reveals the available figures:

TABLE 1—WORK STOPPAGES  
STATE AND LOCAL GOVERNMENT 1942-1971

The U.S. Department of Labor Bureau of Labor Statistics began to publish such information in 1942.

<i>Year</i>	<i>Number of Stoppages</i>	<i>Workers Involved</i>	<i>Mandays Idle</i>
1942	39 all local	6,020	23,700
1943	51 all local	10,200	48,500
1944	36 34 local	5,730	65,730
1945	32 all local	3,400	20,000
1946	62 61 local	9,660	51,030
1947	14 all local	1,090	7,290
1948	25 all local	1,440	8,830
1949	7 all local	2,930	10,300
1950	28 all local	3,990	32,700
1951	36 all local	4,900	28,800
1952	49 all local	8,100	33,400
1953	30 all local	6,280	53,400
1954	10 9 local	1,810	10,400
1955	17 16 local	1,470	7,210
1956	27 all local	3,460	11,100
1957	12 all local	820	4,430
1958	15 14 local	1,720	7,510
1959	25 21 local	2,050	10,500
1960	36 33 local	28,570	58,370
1961	28 all local	6,610	15,300

<sup>36</sup> Alaska Public Employment Relations Act, ch. 113, L. 1972, § 23.40.070 and Minnesota Public Employment Relations Act, M.S. 1969, § 179.61, effective July 1, 1972.

<sup>37</sup> 380 Mich. 314, 157 N.W.2d 206 (1968).

<sup>38</sup> Governor Calvin Coolidge sent the following telegram to Samuel Gompers, President, American Federation of Labor, September 16, 1919, regarding the Boston police strike: "There is no right to strike against the public safety by anybody, anywhere, any time." A. LINK, *AMERICAN EPOCH* 236 (2d ed. 1963). President Franklin D. Roosevelt sent the following letter to L. C. Steward, President, National Federation of Federal Employees, August 16, 1937, ". . . (A) strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of (g)overnment by those who have sworn to support it, is unthinkable and intolerable." 1937 *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 325 (1941).

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**TABLE I—Continued**

1962	28 all local	31,100	79,100
1963	29 all local	4,840	15,400
1964	41 all local	22,700	70,800
1965	42 all local	11,900	146,000
1966	142 all local	105,000	455,000
1967	181 all local	132,000	1,250,000
1968	254 all local	201,800	2,545,200
1969	411 Total		
	2 federal	600	1,100
	37 state	20,500	152,400
	372 local	139,000	592,200
1970	412 Total		
	3 federal	155,800	648,300
	23 state	8,800	44,600
	45 county	16,200	87,700
	164 city	28,700	221,500
	176 school district	123,700	1,021,000
	1 other local government	200	200
1971	329 Total		
	2 federal	1,000	8,100
	23 state	14,500	81,800
	29 county	6,700	30,100
	115 city	47,400	205,000
	159 school district	82,900	576,400
	1 other local government	100	100

SOURCE: U.S. DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS, WORK STOPPAGES—GOVERNMENT EMPLOYEES 1942-61, Report No. 247(1963); 92 MONTHLY LABOR REV. 29(1969); U.S. DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS, ANALYSIS OF WORK STOPPAGES Bulletin No. 1687(1971), Bulletin No. 1727(1972), and Bulletin No. 1777(1973).

Until the present, the law universally outlawed public employee strikes, but the punitive and overly-rigid laws prohibiting strikes were counterproductive. Rather than promote labor peace by helping to improve labor relations and so prevent strikes, the laws encouraged labor unrest and served to fuel strikes. Often the prohibition against and penalties provided for strikes are simply ignored; both the United States and New York have followed such courses of action and ignored the penalties.

Under federal law from 1912<sup>39</sup> to 1947, government employees could join organizations that did not authorize strikes, and from 1947<sup>40</sup> to 1955,

<sup>39</sup> The Lloyd-LaFollette Act of 1912, 37 Stat. 555 (1912).

<sup>40</sup> The National Labor Relations Act of 1935, and the Labor-Management Relations Act of 1947, 29 U.S.C. §§ 151-68 specifically exclude government employees from coverage. The 1947 amendments declared participation in a strike unlawful and provided the penalties.

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the penalty was immediate discharge and forfeiture of civil service status and denial of re-employment for three years. From 1955<sup>41</sup> to 1966, it was a felony to strike or belong to an organization which asserted the right to strike. Under the several Executive Orders which issued during the 1960's the strike prohibition continues and under the 1966 amendment, no one may "accept or hold a position . . . if he participates in . . . or asserts the right to strike."<sup>42</sup>

Recent events have revealed how public employees, the unions and the federal government have all changed their views. In 1962, a wildcat strike caused eighty-five sheetmetal workers to leave a TVA job. They were immediately replaced, the union aiding the government in finding replacements. In August, 1967, Brooklyn letter carriers threatened to strike and were dissuaded by counterthreats of dismissal.

Events in 1970 revealed why government employees strike and how bankrupt the federal law is under the circumstances. Between March 18 and 25, 1970, about 210,000 of the nation's 750,000 postal employees struck to emphasize their demands for pay increases. At the peak of the strike, 15 states and ten major cities, including New York, Philadelphia, Detroit, Chicago, Denver and San Francisco, were affected. The government obtained injunctions and postal union leaders appealed for a return to work, but it was not until the start of negotiations—the first time the government directly negotiated with unions over pay matters—that the workers returned. On April 2, 1970, agreement was reached, insuring a pay increase and the subsequent start upon collective bargaining to cover wages, working conditions and grievance procedures. On April 15, 1970, the first-stage pay increase was signed into law. In order to help pay for the increase, postal rates were to go up and discipline of striking employees was to be discussed.<sup>43</sup>

Among the federal air traffic controllers, nearly 2,000 were struck with "sickness" on March 25, 1970. An injunction was obtained to restrain the Professional Air Traffic Controllers Association from striking, but it appeared to be ineffective. The union had a history of "sick outs", and the nation's air transportation slowed. The "sick out" ended in mid-April; the return to work appeared to end the matter of contempt citations.<sup>44</sup> The third federal work stoppage took place among the compositors at the Government Printing Office. The three federal work stoppages of 1970 had a mean duration of 14.1 mandays.<sup>45</sup>

<sup>41</sup> 69 Stat. 624 (1955) provided a penalty of a \$1,000 fine and a year and a day in jail.

<sup>42</sup> 5 U.S.C. § 7311 (1966).

<sup>43</sup> MONTHLY LABOR REV. 77-78 (May 1970); FACTS ON FILE 224 (1970).

<sup>44</sup> MONTHLY LABOR REV. 77 (June 1970).

<sup>45</sup> U.S. DEPT. OF LABOR BUREAU OF LABOR STATISTICS, ANALYSIS OF WORK STOPPAGES 1970, 28 (1972). The figures do not square with those reported in MONTHLY LABOR REV. 77-78 (May 1970) as regards the number of postal employees involved.

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The facts and figures from New York, like those from the federal scene, are sufficiently accurate and available to warrant comment. The New York Condon-Wadlin no-strike statute<sup>46</sup> probably became the best known of the repressive laws and was on the books for 20 years. Under Condon-Wadlin, public employee strikes were prohibited, and if one did occur, the striker's employment was terminated. There were no rights in the employee created by the statute.

When New York abandoned the repressive Condon-Wadlin Act and adopted a broad range of public employee rights under the Public Employees Fair Employment Act of 1967,<sup>47</sup> the ban on strikes was continued, and strengthened in 1969.<sup>48</sup> New York continued to study public employee rights in 1970, and further amended the statute in 1971 and 1972.

The seven major strikes in New York City from 1966 to 1972 have all drawn the nation's attention: transit in January, 1966; teachers, transit and sanitation in 1968; the police wildcat strike in 1970; the American Federation of State, County, and Municipal Employees in 1971; and the teachers in January, 1972. The first of these strikes probably brought about the demise of the Condon-Wadlin Act, which was rarely enforced.<sup>49</sup> Local politicians were fearful that if they did so they would cripple the very services the strike had already impaired and also they would have to face union reprisals at the polls.

Low pay is a major factor in public employee strikes. The January, 1966, New York City transit strike was a case in point. The strike was caused by low pay; the transit worker was receiving an income below the amount required to maintain a modest but adequate standard of living.<sup>50</sup>

After the New York City subway and bus strike of January, 1966, the pay increase granted the strikers was prohibited in a court action brought by a citizen.<sup>51</sup> The travesty was made complete when one of the several

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<sup>46</sup> N.Y. CIV. SERV. LAW, § 108 (1947). Further penalties provided that if the former striker reentered public employment, his compensation could not exceed the amount he earned at the time of the strike and he was denied raises for three years. Further, he had to serve for the succeeding five years without tenure, on probation and at the pleasure of the appointing authority.

<sup>47</sup> N.Y. CIV. SERV. LAW art. 14, (McKinney 1967).

<sup>48</sup> LAWS OF NEW YORK ch. 24 (1969). The late Dr. George W. Taylor, Professor at the University of Pennsylvania, and chairman of the committee which brought forth the proposals which became the new statute, did not believe that the limited right to strike contained any solutions. He contended limited strikes would delay agreement and that any final determination as to whether the public health, safety, or welfare was affected would only leave the original dispute unresolved. GOVERNOR'S CONFERENCE ON PUBLIC EMPLOYMENT RELATIONS, NEW YORK CITY, SUMMARY OF PROCEEDINGS 50 (Oct. 1968) (Remarks by Dr. George A. Taylor).

<sup>49</sup> N.Y. Times, January 5, 1966, at 14, col. 8

<sup>50</sup> N.Y. Times, January 16, 1966, at 1, col. 4.

<sup>51</sup> *Weinstein v. Civil Serv. Comm. of the City of N.Y.*, 49 Misc.2d 170, 267 N.Y.S.2d 111 (Sup. Ct. 1966).

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special bills that were introduced under bipartisan action seeking to give retroactive forgiveness to the strikers became law.<sup>52</sup> The following year Condon-Wadlin was repealed.

In New York, the two-way fairness of the new law seeks to provide opportunities and responsibilities on both sides, and to abate public employee strikes. On the other hand, experience indicates a strikeless state is not consistent with a free society. There would appear to be some progress, and one recent commentator was optimistic.<sup>53</sup> Of course, in New York are found the largest number of public employees, almost all of whom are organized or members of associations, and the proportions of the situation are formidable.<sup>54</sup>

The peak of public employee strikes may be past. In 1966, both the current inflation and the upsurge in public employment strikes began: over three times as many strikes took place and nine times as many workers were involved as the year before. Low pay was a major factor and union recognition was another.<sup>55</sup> In 1970, the peak was reached at 412 stoppages (three federal, 23 state and the rest local), and a total of 333,500 workers were involved, for a total loss of 2,023,300 man-days.

In 1971 total of 329 represents a 20 per cent decline, and the numbers of workers involved and man-days lost dropped over 50 per cent. Over 90 per cent of the 1971 number of strikes and idle man-days were found on the local level of government, where more than two and one-half times the number of state workers are found. The total for government stoppages made up six per cent of all stoppages and less than two per cent of all idleness.

Of the 1971 strikes, one-third took place during negotiations of the first agreement, a figure about two and one-half times above the all-industry figure. Contract renegotiations brought forth 37 per cent of the strikes,

<sup>52</sup> N.Y. PUBLIC ACTS 1966, ch. 6.

<sup>53</sup> Gotbaum, *Finality in Collective Bargaining Disputes: The New York Experience*, 21 CATH. U.L. REV. 589, 595 (1972).

<sup>54</sup> In 1970, New York reported a population of 18,237,000 people, with 2,876,000 employees in unions (2,555,000) and associations (321,000), and ranking first in the nation in such organization strength, and ninth as to the proportion of union membership in non-agricultural employment, 35.6 per cent. The Empire State was first in number of full-time equivalent state and local employees, 934,564 (up from 617,104 in 1960), and with approximately 900,000 organized. In 1968 there were 23 work stoppages, in 1969, 13, and in 1970, 34. In 1970, 6,980 workers were involved, and 28,870 mandays were lost. California, the most populous state with 19,953,000 people, was second in rank of organizational strength, with 2,477,000 (union 2,137,000, and association 339,000) and 13th in rank of proportion of union membership in nonagricultural employment, at 30.5 per cent. California was second in rank of public employees, at 891,705 full-time equivalent (up from 581,542 in 1960). Work stoppages numbered 17 in 1968, 32 in 1969, and 24 in 1970. In 1970, 20,180 workers were involved, and 338,420 mandays were idled. U.S. DEPT. OF LABOR BUREAU OF LABOR STATISTICS, *DIRECTORY OF UNIONS* 84, 118 (1972); U.S. DEPT. OF LABOR, *STATE PROFILES: CURRENT STATUS OF PUBLIC SECTOR LABOR RELATIONS* 10, 66 (1971).

<sup>55</sup> White, *Work Stoppages of Government Employees*, MONTHLY LABOR REV. 29-34 (Dec. 1969).

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and over one-fourth were caused by disputes over union organization and security, and plant administration. Over 80 per cent were over in two weeks or less, as compared to 56 per cent of all strikes being settled in that time. Only four lasted more than two months.

While the significant drop in the number of public employee strikes in 1971 suggests that the peak may be past, the characteristics of the 1971 strikes also serve to promote hope of greater peace. The reasons for the strikes suggest that both sides are just getting adjusted to the new realities and that further adjustments will bring about better and improved relationships. When both sides accept the power adjustments of the other and come to recognize that the strike is the ultimate weapon which must be avoided if at all possible, then greater employee-employer peace is closer.

Wages were the main issue, both in government strikes, where 58 per cent were over wages, as well as in general employment. The largest number of wage-related stoppages was the 109 school district strikes, while plant administration issues, generally in cities and school districts, accounted for another 49, and unionization and recognition were involved in 43.

On the local level, almost one-third of the employees are engaged in educational occupations, and 131 public school and library teachers strikes took place, the largest proportion of strike activity in school districts. On the city level, sanitation, blue-collar and manual workers were involved in almost 60 per cent of the strikes, and at the state and county level housekeeping, maintenance, cafeteria workers, blue-collar and manual workers accounted for the greatest proportion of strikes.<sup>56</sup>

Over the past decade the vast majority of public employees have gained rights it took employees in the private sector a generation to gain. The increase in public employee strikes suggests that the public employee desires to join in the benefits of collective bargaining and is ready to act to achieve that objective. Whether it was this increased militancy, or the general broadening of rights among women, the poor, black citizens, inmates of prisons, youth, consumers, and others, is difficult, if not impossible, to determine. The new outlook is here, and here to stay and prosper.

### VI. THE NORTH CAROLINA EXPERIENCE

In Mississippi and North Carolina, the forces moving for a public employees labor relations act appear balanced against the forces seeking to block such legislation. The two states have much in common: more rural than urban, with low income per capita, they have the lowest proportion of their nonagricultural population in unions. On the other hand, North Carolina's other neighboring states also share some of these characteristics,

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<sup>56</sup> U.S. DEPT. OF LABOR BUREAU OF LABOR STATISTICS, ANALYSIS OF WORK STOPPAGES 1971, BULLETIN 1777 8 (1973).

and in Georgia, Virginia, Tennessee and South Carolina, public employees have gained rights.

TABLE 2.

A COMPARATIVE PROFILE OF NORTH CAROLINA  
AS REGARDS URBAN-RURAL, INCOME, EMPLOYEES  
ORGANIZED AND WORK STOPPAGES

	Population Percentage-Rank	URBAN	RURAL	Per Capita Income	RANK AMOUNT	Nonagricultural Employees in Unions	RANK PERCENT	Work Stoppages	1969	1970
GEORGIA	60.3—34	39.7—18			35—\$3,332		42—16.2	3		4
MISSISSIPPI	44.5—48	55.5—4			51—\$2,575		47—13.2	0		1
NORTH CAROLINA	45	—46	55 —6		40—\$3,207		50— 7.8	9		9
SOUTH CAROLINA	47.6—45	52.4—7			48—\$2,936		49— 9.6	2		0
TENNESSEE	58.8—35	41.2—17			43—\$3,085		27—20.6	3		1
VIRGINIA	63.1—31	36.9—21			28—\$3,607		39—16.7	1		1

NOTE: Figures are based on 1970 information. All of these states have right to work laws. Employee Associations are not included.

SOURCE: U.S. DEPT. OF LABOR, STATE PROFILES: CURRENT STATUS OF PUBLIC SECTOR LABOR RELATIONS(1971).

In 1947, the General Assembly of North Carolina passed the first general law which affected employee-employer relationship, in the form of the right-to-work law.<sup>57</sup> The law applied to both private and public employers. In 1959, the General Assembly passed a repressive statute, which exempted public employees from the right-to-work law, and added three additional provisions. G.S. 95-97 prohibited fire and police employee membership in any national or international labor union which had as a goal collective bargaining with a governmental unit, while G.S. 95-98 provided that any agreement between a union and the State or local government was null and void, and that any violation of G.S. 95-97 and 95-98 was a misdemeanor, with the punishment to be set by the court, under G.S. 95-99.

<sup>57</sup> N.C. GEN. STAT. § 95-78 (1957). The several statutes dealing with the establishment of the N.C. Department of Labor or any of its constituent parts, are not included in this study. See, e.g. Laws of 1941, ch. 362, establishing the conciliation service to carry on voluntary mediation, N.C. GEN. STAT. § 95-32 (1941); Laws of 1945, ch. 1045, which set up the Division of Conciliation and Arbitration, and provides for such services, Voluntary Arbitration Act, N.C. GEN. STAT. § 95-36.1 (1945).



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While Alabama,<sup>58</sup> Georgia,<sup>59</sup> and Texas<sup>60</sup> enacted repressive statutes which sought to deny public employees rights under civil laws, North Carolina elected to make similar actions a misdemeanor in 1959,<sup>61</sup> although the United States Supreme Court had indicated three years earlier that the right of free speech under the first amendment to the United States Constitution gives everyone, including those publicly employed, the right to join labor organizations.<sup>62</sup>

On January 8, 1959, the Attorney General of North Carolina issued an opinion which held that a municipality may prohibit its employees from belonging to a union and that a municipality may not recognize nor bargain with a union.<sup>63</sup>

In February, 1969, a three judge panel in the U.S. District Court in a case brought by the Charlotte firemen, found in *Atkins v. City of Charlotte*,<sup>64</sup> that G.S. 95-97 was unconstitutional under the first and fourteenth amendments to the U.S. Constitution guarantees of freedom of association. While G.S. 95-97 and G.S. 95-99 were struck down, the Court left G.S. 95-98 intact. Thus there could be unions but any contract with them was void.

On August 20, 1970, then Governor Robert W. Scott appointed The Study Commission on Employer-Employee Relations.<sup>65</sup> Following seven general meetings, two public hearings, and numerous subcommittee meetings, the Commission returned its report on December 21, 1970. Of the 17 members, 13 recommended legislation which would permit organizing and grant each public employer the discretion to meet and confer and prohibited contracts, all to be enforced by a revival of the misdemeanor penalty. A minority report was filed by P. R. Latta for himself and three others, in which they voted against the recommendations and urged the passage of a meet and confer bill.

A 1970 survey by the North Carolina League of Municipalities indicated there were labor organizations in 25 per cent of communities over 5,000.<sup>66</sup> The Governor's Study Commission reported that in a two and one-

<sup>58</sup> ALA. CODE tit. 37, § 450 (3) (1958).

<sup>59</sup> GA. CODE ANN. §§ 54-909, 54-9923 (1953).

<sup>60</sup> TEX. REV. CIV. STAT. art. 5154c § 6 (1948) prohibited public officials from recognizing a labor organization as bargaining agent for any group of employees and made any resulting contract null and void. But the right to join was recognized in *Beverly v. City of Dallas*, 292 S.W.2d 172 (1956).

<sup>61</sup> N.C. GEN. STAT. §§ 95-97 (1959).

<sup>62</sup> *Slochower v. Board of Education*, 350 U.S. 555 (1956). And in *American Federation of State, County, and Municipal Employees, AFL-CIO v. Woodard*, 406 F.2d 137 (8th Cir. 1969), and *McLaughlin v. Tilendis*, 398 F.2d 387 (7th Cir. 1968) it was held that the First and Fourteenth Amendments were violated by laws prohibiting union membership.

<sup>63</sup> 35 OP. ATT'Y GEN. 113 (N.C. 1959).

<sup>64</sup> 296 F. Supp. 1068 (W.D.N.C. 1969).

<sup>65</sup> STATE OF NORTH CAROLINA, REPORT OF THE GOVERNOR'S STUDY COMMISSION ON EMPLOYER-EMPLOYEE RELATIONS (Coggins Commission, 1970).

<sup>66</sup> U.S. DEPT. OF LABOR, STATE PROFILES: CURRENT STATUS OF PUBLIC SECTOR LABOR RELATIONS 69 (1971).

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half year period, 17 per cent of the communities had work stoppages, and that the federal court decision had served to reactivate or bring about the chartering of fire and police locals and increased municipal employee union activity.<sup>67</sup>

Table 3 sets forth details regarding public employee work stoppages in North Carolina from 1953 to 1973. While the N.C. Department of Labor, Division of Conciliation and Arbitration, first reported government (federal, state, and local) work stoppages in the Biennial Report for 1970-72, the Division has maintained such records since at least 1953.

TABLE 3  
Public Employee Work Stoppages in North Carolina 1953-1973

<i>Employer</i>	<i>Employee Classification</i>	<i>Union or No Union</i>	<i>Numbers of Employees</i>	<i>Dates</i>	<i>Mandays Idled</i>
From 1953 through 1958, none indicated					
1959					
City of Charlotte	Sanitation Department	No Union	132	9/1 -9/2	264
1960					
Town of Mt. Olive	Garbage Collectors	No Union	10	4/18	10
1961					
City of Wilson	Sanitation	No Union	11	7/10-7/13	33
City of Durham	Sanitation	No Union	61	7/29-7/31	122
City of Durham	Sanitation	No Union	65	9/5 -9/8	195
1962					
City of Wilson	Sanitation (Garbage)	No Union	9	7/2 -7/20	126
1963 and 1964, none indicated					
1965					
Durham County and City Schools	Cafeteria & Maintenance Workers	Durham City School Employees Union Local 481	150	Began 9/11/65	
1966					
The 1965 stoppage continued until 3/1/66 and resulted in 6,300 idle mandays					
Lumberton City	Employees	No Union	58	7/5 -7/8	232
Durham City	Employees	Durham City Employees Union, Local 481	200	7/6 -7/8	600

<sup>67</sup> Report cited note 65 *supra* at 3.

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Town of Dunn		No Union	14	8/22-8/24	28
1967					
City of Salisbury	Sanitation	No Union	18	2/6 -2/7	36
City of Jacksonville	Sanitation	No Union	20	7/31-8/4	100
1968					
City of Wilson		No Union	50	4/25-4/28	100
City of Charlotte		No Union	425	8/26-8/28	1,275
City of Raleigh		No Union	115	9/30-10/9	846
1969					
City of Charlotte		AFSCME	450	2/20-2/21	450
UNC-CH	Cafeteria		175	2/23-3/24	4,200
(Election held by N.C. Dept. of Labor and employees assigned to private employee)					
City of Wilmington	Garbage	No Union	30	3/19-3/24	90
Charlotte City Schools		AFSCME	39	3/25-3/26	78
City of Fayetteville		Local Organization	65	5/26-5/27	130
City of Wilson		AFSCME	83	6/12-6/23	581
City of Charlotte		AFSCME	497	7/29-8/4	1,988
Town of Benson		No Union	3	8/2 -8/13	3
City of Salisbury		No Union	30	9/3 -9/4	30
Greensboro Hous- ing Authority		Laborers Union	38	9/30-10/2	76
1970					
City of Charlotte	Sanitation	AFSCME Local 1127	430	1/23-1/24	430
City of Charlotte		AFSCME Local 1197	450	2/5 -2/9 (2 days)	900
City of Greensboro	Sanitation	Labor Union Local 1109	76	5/1 -5/7	281
City of Greensboro	Public School Cafeteria Workers	No Union	45	5/5 -5/20	540
City of Greensboro	Sanitation	Brotherhood of Greensboro City Workers (NC Labor Al- liance-Ind.)	93	6/16-6/22	330

TABLE III—Continued

City of Jacksonville	Sanitation	No Union	10	8/3 -8/4	10
City of Raleigh	Sanitation	AFSCME Local 1887	91	8/31-9/1	91
City of Charlotte	Sanitation	NC Labor Alliance Local 1197	411	9/21-9/28	2,050
1971, none indicated					
1972					
Town of Wadesboro		No Union	6	11-12 (1 day)	6
City of Kings Mtn.	Sanitation and Gas Dept. (utility)	No Union	24	7/17-7/20	96
1973					
Buncombe County Social Services Dept. (Model Cities)		No Union	21	2/21-3/19	378
Wilmington (State) Port Authority		No Union (ILA Local 1426 known to be active)	69	9/7 -9/26	

The above N.C. Dept. of Labor list contains 18 stoppages for the two-and-a-half years from January, 1968 to June, 1970, inclusive. The definition used for stoppage is one which lasts for at least eight hours, a normal working day. The 18 stoppages involved 3,094 employees in the 18 instances, perhaps in more than one stoppage. Mandays idled came to 12,368.

The Governor's Study Commission reported 26 strikes, slowdowns, sickouts or work stoppages for the same period. While "sanctions alerts" were invoked by teachers in two counties, the strikes were confined to other than state and county employees. Further, the Commission report stated that all of the work stoppages took place in ten municipalities, with 16 occurring in cities of over 25,000 population. The municipal employees included four groups: firemen, public utility, public works, and sanitation workers. In 16 strikes, a total of 2,251 sanitation workers lost 8,851 mandays. This figure represented 82 per cent of the total of 10,433 days lost.<sup>68</sup>

The Governor's Study Commission also included a report upon the several issues which were involved in the work stoppages, as determined by the N.C. League of Municipalities:

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<sup>68</sup> *Id.* at 1.

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TABLE 4  
Points of Disagreement in Municipal Work Stoppages in North Carolina<sup>a</sup>  
January 1, 1968-July 1, 1970

ISSUES	FREQUENCY
Grievance Procedures	4
Promotion-Demotion	3
Salaries and Wages	9
Union Dues Check-Off	4
Working Conditions	4
Holidays	2
Longevity Pay	2
Overtime Compensatory Time Policies	2
Vacation	2
Working Hours	2
Hospitalization Insurance	1
Life Insurance	1
Physical Examination Policies	1
Promotions of Blacks	1
Sick Leave Policies	1
Union Recognition by Governing Body	1

<sup>a</sup> Municipal Labor-Management Relations Committee, North Carolina League of Municipalities, *N.C. Municipal Labor Management Relations Survey*, October, 1970.

During the 1971 session of the General Assembly, two bills were introduced dealing with public employee labor relations. Senators Coggins<sup>69</sup> and Flaherty introduced Senate Bill 399, An Act Governing Employer-Employee Relations in Governmental Service, and Senators Alley and Frink introduced Senate Bill 9627, the Fire Fighters Collective Bargaining Act of 1971. Neither bill cleared committee.

Late in the 1973 General Assembly session, House Bill 1070, the Public Employee Collective Bargaining Act of 1973 was introduced.<sup>70</sup> The public policy and stated purpose include the statement: "to permit public employees to join together in association for the purpose of collective bargaining with their employers" (G.S. 95-97.1). The coverage is broad: for all public employees and all 'governmental employing authorities.' Public employees receive the right to join unions, which will be recognized as the sole and exclusive bargaining agent following a majority vote in an election held by the N.C. Department of Labor. The "obligation to bargain in good faith" is imposed upon the governmental employing authority (G.S. 95-97.5), and if no agreement is reached in 30 days, the matter goes to a three-man arbitration board, which is mandated to resolve the issues within 30 days, and submit written findings and opinion.

<sup>69</sup> Jyles J. Coggins served as the chairman of the Governor's Study Commission, and the bill incorporated the recommendations of the 1970 Commission report.

<sup>70</sup> House Bill 1070 had 21 sponsors.

The arbitration board has subpoena power. Work stoppages and slow-downs are prohibited.

While the proposed act does not supply any guidance as regards unit determination and eligibility standards, other than a definition of a supervisor, in connection with the required election, the Labor Commissioner can supply the answers under his powers to make such rules and regulations as "shall be necessary to properly carry out the duties imposed upon him", such rules to be subject to the approval of the Governor.<sup>71</sup>

The proposed act does not deal with unfair labor practices nor prescribe a code of conduct for either employees, the union nor the governmental employing authority. Further, there is no provision for arbitration other than as a means to arrive at the collective bargaining contract.

Of course, there are abundant ground rules at hand to provide answers for all of these questions, and more. The National Labor Relations Board has set standards and procedures which are generally followed, and labor law generally is sufficiently sophisticated and its practitioners armed with adequate knowledge to provide answers, given a good faith effort on the part of all parties involved.<sup>72</sup>

During the 1973 General Assembly session the Public Employee Collective Bargaining Act of 1973 was referred to Judiciary Committee 1. In that North Carolina joined the large majority of states in which the legislatures meet annually in 1973, the Act will come before the 1974 session for determination and decision.<sup>73</sup>

## VII. CONCLUSION

In the course of the 1974 session of the General Assembly, the legislators will no doubt be told why the Public Employee Collective Bargaining Act is not proper, nor required, nor good State government business. The opponents will in all likelihood stress the theory of sovereign prerogative,<sup>74</sup> the need for continuity of services, the dependence upon the budget process, the direct accountability of elected officials to their governmental superiors or to the electorate, the impact upon the merit

<sup>71</sup> N.C. GEN. STAT. § 95-4 (2) (1931).

<sup>72</sup> Rock, *The Appropriate Unit Question in the Public Service*, 67 MICH. L. REV. 1001 (1969); Haber, *The Relevance of Private Sector Experience to Public Sector Collective Bargaining*, Conference Proceedings, The Institute of Management and Labor Relations, Rutgers University (1968); Reskin, *Uncle Sam Learns About Living With Labor*, N.Y. Times, April 20, 1970, at 38, ed. 5.

<sup>73</sup> Public Employee Collective Bargaining Act of 1973, Gen. Assembly of N.C. H.B. 1070. (Referred to Judiciary I Committee in 1973. No further action taken on the bill at the close of the 1974 session of the General Assembly.)

<sup>74</sup> This concept harkens back to the old common law concept that "the King can do no wrong." For discussion on these matters, see ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, LABOR-MANAGEMENT POLICIES FOR STATE AND LOCAL GOVERNMENT 54 (1969); Gitlow, *Public Employee Unionism in the United States: Growth and Outlook*, 21 LAB. L.J. 766 (1970).

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system, and more. Several additional arguments can be made along economic or tax lines: that any gains to public employees will result in unavoidable tax burden increases and higher costs-per-unit of public service and possible interruption of same, which further drives up the costs-per-unit. Further, a possible fall off of efficiency and quality might result as public employees flex their economic muscle through organized effort.

The answers to these theoretical traditionalist observations can be found in the practical experiences of the United States, 48 other states, and the District of Columbia, and in thousands of other local governmental units across the nation, including some in North Carolina.<sup>75</sup> Among the 48 states, 38 have enacted legislation which recognizes the realities of the situation and the strong winds of change, and granted some, or most rights to all public employees, or one or several occupational groups of public employees. In the ten other states<sup>76</sup> public employees are accorded rights under the constitutions, court decisions, or opinions of the attorneys general, and there is no pressing need for immediate action.

Mississippi, like North Carolina, is standing still. In Mississippi, Pascagoula and Moss Point have signed contracts and late in 1970, a strike by AFSCME failed to gain recognition from the City of Jackson. Several bills relating to labor have been rejected by the legislature in recent years; in 1971, a bill to establish a State Department of Labor received only two votes for adoption.

In responding to the arguments of the traditionalist, the pragmatist can reply on several levels. In reply to the argument that "the King can do no wrong", the answer is that society is rapidly moving to new concepts. Today the government signs binding contracts, can be sued in tort,<sup>77</sup> and agrees to arbitration. In 1970, the federal government engaged in collective bargaining—for the first time—and then secured legislative approval of the contract. The New York City school board bargains first and then settles the budget in the regular course of budgetary action.

<sup>75</sup> Durham has recognized unions for formal bargaining. Since the Charlotte sanitation workers organized in 1968, to 1970 they have gone on strike five times, and at least two of the strikes were settled by negotiations with the union. In an editorial of November 14, 1970, the Greensboro Daily News stated: "The truth is that most North Carolina municipal governments have been negotiating with their employees for years, but the negotiating sessions are called 'discussions'. Obviously, public employee unions are a fact, and a fact that has an air of permanency. The trend in that direction is national and a majority of the states now permit local governments to contract with employee unions." At 4, col. 1.

<sup>76</sup> Arizona, Arkansas, Colorado, Indiana, Iowa, New Mexico, Ohio, Utah, Virginia, and West Virginia.

<sup>77</sup> Under the old common law doctrine of sovereign immunity, the State cannot be liable, regardless of the facts. Generally within the past decade the doctrine has been partially or totally abrogated in 21 states: Alaska, Arizona, California, Colorado, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New York, Rhode Island, South Dakota, Texas, and Washington. The federal government passed the Federal Tort Claims Act in 1946. 60 Stat. 812, 28 U.S.C. § 1346(b) (1946). Sindell, *Sovereign Immunity—An Argument Con*, 22 CLEVE. ST. L. REV. 55 (1973).

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Within North Carolina, of the 1970 population of 5,082,000, 1,782,900 people were engaged in nonagricultural work, and 137,000 were union members. The 1971 figures for public employees, up from the 1970 levels, show a total of 267,200: 43,700 federal, 130,100 in education on the state and local levels, and 93,400 other local public employees. No doubt these figures have grown since 1971. In the fall, 1973, the N.C. State AFL-CIO reported that a considerable number of public employees were organized in North Carolina.<sup>78</sup>

For five years, the questions regarding the rights of public employees have gone unanswered in North Carolina. The February 1969 Atkins decision allows membership and nothing more. Some public officials in North Carolina have reacted as have public officials in other states, seeking to resolve immediate problems at hand and leaving the questions of the legalities to be settled when and if such questions come up. Other public officials have resisted and for the ten years of repression under the 1959 legislation and for the years of doubt following the Atkins decision, have been able to stand pat and wait. The greatest uncertainty and anxiety lies somewhere in between; there has been inaction where possible and action when pressure is applied.

The present posture of the public employee in North Carolina is theoretically untenable. He can join a union—the first step. But beyond that he is off balance and he can only wonder and become frustrated. He does not know what more he can properly do or accomplish. No one safely knows what is next or what may follow.

Under the law, reasonable men seek to bring some order into their lives, activities and pursuits. Where there is confusion and doubt, the law seeks to introduce whatever degree of certainty we can manage to summon in this otherwise uncertain life. On one hand, the jungle of doubt, confusion and uncertainty; while on the other, certain procedures and

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<sup>78</sup> The American Federation of Government Employees had 34 locals with a membership of approximately 11,700; the American Postal Workers Union N.C. Council reported about 4,400 members; the National Association of Letter Carriers had over 100 locals and a membership of 3,443; the International Association of Machinists had six locals with a membership of 2,374; the Operating Engineers has a local at Seymour Johnson AF Base (782 members) and Local 465 (about 55 members) has had advanced labor relations with the Durham Housing Authority for some years. The Durham City/County Library has just been organized. American Federation of State, County, and Municipal Employees Local 1194 (over 160 members) deals with Durham, Local 1887 (over 100 members) is located in Raleigh, and Local 77 has members in local government and 730 members employed by Duke University, a private school. Four additional locals were in the process of formation. The Professional Fire Fighters Association of N.C. has 12 locals, with an estimated membership of 1735, and another of federal employees at the U.S. Marine Corps station at Cherry Point. An additional three locals were in the process of formation. There were four police locals of the National Union of Police Officers, and approximately 25 local chapters of the Fraternal Order of Police. There were five locals of the American Federation of Teachers, with approximately 525 members: four among public school teachers—#2258 at Greensboro, #2259 at High Point, #2362 at Reidsville, and #2363 at Winston-Salem. The faculty at Western Carolina University made up Local #2437.



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rights under the law lead to some order and method. True, the new way and method may be difficult, trying, and uncertain, but so are the times, and we cannot halt because of fear to take the first step on that long journey.

A recent study by two commentators of the American labor scene stated:

The United States has had the bloodiest and most violent labor history of any industrial nation in the world.<sup>79</sup>

The establishment of proper legal machinery for the orderly settlement of labor disputes changed all of that, and mob violence is a thing of the past in almost all cases. The days when the employees went out on strike and armed themselves, and the plant guards did the same and the governor often declared martial law and called out the National Guard, are gone. What was almost the common situation for sixty years and more changed upon the passage of the Labor Relations Act in 1935. Sound labor policies and balanced labor laws changed all of that a generation ago. Today, private sector labor relations is almost always orderly, generally peaceful, and productive of a rising standard of living, at good wages, and with a fair return upon investment. While much of the private sector, industrial labor relations cannot be imported into public sector, non-industrialized government labor relations, the broad lessons can be used to good advantage.

During the search for a modern, balanced, positive government employee labor relations policy, there has been a cautious moving forward under the spur of necessity. Clearly, the trend is toward an enlargement and strengthening of the voice of the public employee. A system unilaterally administered by public managers is giving way to one characterized by increasing bilateralism as to wages and working conditions, and at times even as to the functions, operations, and procedures of the public agency. The underlying question is more economic than political; money and stature would seem to be the main focus of conflict. But our society and institutions have a long history of withstanding pressures and new shocks, and there is every reason to believe a new force will not tip the scales nor disarray the scene.

While cries of expediency will be heard if the legislature moves toward the establishment of a modern, balanced, positive government employee labor relations policy, it is obvious that some new and meaningful answer must be found. The present impasse must be resolved and the present balance of forces has to move from dead center. Of course, few of the public employees or general public in favor of a positive step forward will be heard in the halls of the General Assembly, while the special interests, including the municipal authorities in large numbers, will be out in force.

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<sup>79</sup> Taft and Ross, *American Labor Violence: Its Causes, Character, and Outcome, in Violence in America: Historical and Comparative Perspectives*, 221—THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE (1969).

Public officials will be more rather than less accountable if they perform responsibly to a wider group of critics on a continuing basis, rather than only to the electorate every several years. The public has gained as government continues to improve the quality and quantity of its services and personnel. When the public comes to realize it must pay in accordance with what it receives in the public sector, as in the private sector, and that it will receive no more than what it pays for, the public will gain more. Government can and should become more responsive to the public, and government can and should become more equalitarian as to the services performed, and an improved democracy will result. A more free, more fair, more equal society can and should result.

Accepting then the pressure forces, it would be proper for the General Assembly to attempt to channel and guide the forces by establishing a modern, balanced, and positive government employee labor relations policy—and the time is at hand.