

STRIKE!!!

A Teacher's Legal Dilemma

By
Robert Lane
JD Candidate
University of Georgia
School of Law

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Introduction

“Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society ... It is the very foundation of good citizenship.”¹ The Supreme Court, in *Brown v. Board of Education*, noted the absolute importance that education plays in the development of our children and the need to ensure that all children receive an equal education. However, as the Supreme Court was announcing the need for equal public education, a new debate about education was on the political horizon. Since the early 1960’s, there has been an ever-growing debate in American society about the quality of education our children receive in the public educational system. As time has passed, the public at large has come to regard all public educational institutions as far less effective than they once were, and this trend seems only to be growing worse. There are a number of arguments that politicians, parents, administrators, educators, and other special interest groups have attributed to the perceived decline in the public educational system. Although there is no one specific reason for this reported decline in the quality of public education, the reasons run the full spectrum of the educational field and include such arguments as inadequate testing standards, inadequate funding for instructional materials,

¹ *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

lack of parental involvement and support, and the strength and political influence of special interest organizations, namely teacher unions.

Although several volumes could be devoted to the broad field of public education and the numerous problems that may or may not plague it, this paper will focus primarily on the argument that special interest organizations, namely teacher unions, inhibit the recruiting and retention of qualified educators while blocking meaningful education reforms at the political level. This argument should come as no surprise since it is similar to other arguments that private industry has used against national labor organizations in claiming that labor unions inhibit production while drastically raising production costs to the detriment of private industry and the public at large. At first glance, the argument that teacher unions prevent meaningful education reform can be rather appealing, as it was with private labor unions, until a more in depth analysis of what teacher unions accomplish and inhibit in terms of education reform.

Part I of this paper analyzes and discusses the history of teacher unions (and other public employee unions) and compares them to the older private labor movements of the Twentieth Century. Once an adequate foundation for understanding the rise of teacher unions has been provided, Part II focuses on the actual legal framework surrounding teacher unions as it exists today. Unfortunately, there is no national legal framework to regulate public employee unions as there is for private sector unions. Thus, there are over fifty different variations as to how states handle the issue of teacher unions in the broader

context of educational reform. This section will focus on three specific states (Georgia, Florida, and Massachusetts) in order to demonstrate the different ways states have approached this complicated issue and tried to implement meaningful reforms and compromises in an attempt to foster a sense of cooperation in education reform through public employee labor laws. Following the legal discussion, Part III will detail the policy arguments behind the critics and supporters of teacher unions. One such policy argument that is often heard is the critique that teacher unions deflect money away from material instruction by increasing educators' salary, while those who support teacher unions argue in response that increased salaries only draw better and more qualified educators. Following the policy discussion, Part IV will introduce the limited number of studies that have been conducted by social scientists and educators who have tried to determine if teacher unions have a detrimental or beneficial effect upon the quality of public education. Furthermore, this section will also introduce and analyze proposed solutions and reforms that could be implemented to ensure that educators' rights and professional needs are protected and met, while still protecting the needs of children and society to ensure that all children are provided with a more than adequate public education with special attention regarding the state of education and educators' rights in Georgia.

Part I: The Rise of Teacher (Public Employee) Unions²

² See generally, James R. Beard, *Labor Relations Policy for Public Employees: A Legal Perspective*, 4 Ga. L. Rev. 110 (1969) (This article details the history of private and public labor law in more detail. This article was heavily relied upon for information and structural purposes since private and public labor law history is beyond the scope of this paper and is only discussed

Before a meaningful discussion about the rise of teacher (public employee) unions, one must understand the rise of these relatively new unions in the larger context of the much older national labor movement that occurred in the private sector. Before the early 1900's, most attempts by laborers to organize into associations for the purpose of collective negotiations with employers was heavily frowned upon by the public and the courts in general. In fact, most attempts by employees to form labor unions were enjoined by the courts and viewed as a common law tort for interfering with the trade and practice of the owner's business rights. Even the United States Supreme Court stated in 1921, that "Concert of action is a conspiracy if its object is unlawful or if the means used are unlawful."³ In fact, as the law developed in the late 1800's and early 1900's, many state courts viewed labor union members as nothing more than criminals. Although this was the dominant view of most states, there was a small minority of states, like California and New York that were far more sympathetic to the labor movement and the desire of workers to seek increased pay and better working conditions through collective bargaining. In the early 1930's, the federal government decided to get involved in the national labor movement when Congress passed the Norris LaGuardia Act in 1932.⁴ Under this Act, Congress hoped that all labor disputes would be resolved through the peaceful picketing

for foundational purposes. However, all statutes and cases have been researched and are still valid law and have been updated where appropriate as detailed by the footnotes within this section).

³ *Truax v. Corrigan*, 257 U.S. 312, at 327 (1921).

⁴ 29 U.S.C.S. § 101 (2005) (originally enacted as Act of March 23, 1932, ch. 90, §§ 1-15, 47 Stat. 70).

and strikes of labor unions since the courts would no longer have the jurisdiction to enjoin peaceful protests. Several years later, the Supreme Court recognized the rights of private individuals to picket in *Thornhill v. Alabama*, which held that "...the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution..."⁵ as guaranteed by the First Amendment as applied to the states through the Fourteenth Amendment. Then in 1935, Congress enacted the Wagner Act,⁶ which for the first time protected an employee's right to join a labor union by prohibiting employer retaliation, like dismissal for union membership. Also, the Wagner Act created the National Labor Relations Board whose job it was to enforce and administer the Act to ensure that employers and the employees' recognized representative could negotiate on equal terms. It was the intention of Congress to create a system whereby strikes could be avoided through fair negotiations between employers and employees, thus making both parties equals in the management of corporate labor policy.

Despite the great gains that had been made by the Labor movement during the 1930's and 1940's, there was a slight backlash against the labor movement as politicians became a little hesitant to grant unions greater rights to engage in strikes and collective bargaining. In fact, the right to strike and engage in collective bargaining was curtailed in 1947 with the passage of the Taft-Hartley

⁵ 310 U.S. 88, at 102 (1940)

⁶ 29 U.S.C.S. §§ 151-169 (2005) (originally enacted as Act of July 5, 1935, ch 372 §§ 1-13, 49 Stat. 449).

Act,⁷ which banned secondary boycotts along with a host of other unfair labor practices used by labor unions in order to gain bargaining advantage over employers. Instead of allowing the courts to intercede, the federal government could outright prohibit a strike that was dangerous to the national interest during a national emergency. Likewise, a new mediation agency known as the Federal Mediation and Conciliation Service was created in the hopes of settling emergency disputes between unions and employers before a strike would be permitted that would injure the public welfare. The final act of great importance during this period, one which limited the power of private labor unions, was the Landrum-Griffin Act of 1957.⁸ This act seriously curtailed the power of private labor unions because it subjected internal union affairs, like who could hold office and the bargaining devices that could be used, to federal government regulation. Despite these government regulations, private labor unions are still a force to be reckoned with. However, the rights guaranteed to all private sector union members have never been extended to public employees, which in turn has subjugated the power of public labor unions to the whim of state and federal legislators.

When Congress passed the Labor Management Relations Act,⁹ it was careful to exclude all public employees from the statutory protection that they were affording to private citizens by specifying that “The term ‘employer’ includes

⁷ 29 U.S.C.S. §§ 171-183 (2005) (originally enacted as Act of June 23, 1947, ch. 120, Title II § 102, 61 Stat. 152).

⁸ 29 U.S.C.S. §§ 501-504 (2005) (originally enacted as Act of September 14, 1959, Pub. L. No. 86-257, Title V, § 501, 73 Stat. 535).

⁹ 29 U.S.C.S. § 152 (2005) (originally enacted as Act of July 5, 1935, ch. 372, § 2, 49 Stat. 450).

any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation ... or any State or political subdivision thereof....”¹⁰ The federal government decided to exclude all public employees from the rights that they guaranteed to employees in the private sector not because of some callous indifference to members of the bureaucracy but because of a constitutional conflict, namely the 10th Amendment, which forbids the federal government from exercising rights that were not delegated to it in the Constitution.¹¹ Therefore, the rights of public employees to form and join a union and engage in collective bargaining fell squarely within the purview of the individual state governments. The first dent in the almost unanimous view held by the states that it was against the public policy to allow public employees to unionize was when President Kennedy issued Executive Order 10988,¹² which allowed federal employees to join unions and participate in the negotiation of their contracts and other working conditions, while forbidding the use of strikes. After the federal government began allowing federal employees to join labor unions, many states began to follow suit and enacted similar statutory provisions modeled after the federal statutes, which allowed their public employees to form and join unions while prohibiting strikes.

¹⁰ *Id.* at § 152 (2).

¹¹ U.S. Const. Amend. X, The Amendment states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Author’s note: No case law could be found challenging the Labor Management Relations Act’s exclusion of public employees from the rights created by the act.

¹² 27 Fed. Reg. 551 (1962).

Not every state was as eager to follow the federal government in allowing their public employees to join labor unions. There had been a long-held view among many state and federal courts that states were free to regulate their employees as they saw fit. In the 1960's, this view began to change, especially in the federal courts, which began to regulate the extent to which state governments could deprive their employees of their federally protected rights. One of the first cases in which the Supreme Court was confronted with the right of states to curtail the federally protected rights of its public employees was *Pickering v. Board of Education*.¹³ In this case, an Illinois teacher was dismissed because she exercised her First Amendment right by expressing her grievances about school board policy to a local newspaper. The Supreme Court was not swayed by the state's argument that educators could be constitutionally compelled to give up their First Amendment rights for a vague public interest policy. Furthermore, the state's argument in *Pickering* failed because a number of cases in the early 1960's, had held that state governments could no longer infringe on public employees' rights at will as the court noted in *Sherbert v. Verner*.¹⁴ In *Sherbert*, the court recognized that states could not infringe upon citizen's rights because of a tenuous rational relationship to a state interest as the court noted that "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a

¹³ 391 U.S. 563 (1968).

¹⁴ 374 U.S. 398 (1963).

benefit or privilege.”¹⁵ After the Supreme Court recognized that public employees’ rights could not be curtailed by the state governments without a proper showing of a valid and compelling state interest, public employee unions began focusing their attention on the right to join labor organizations through the argument of freedom of association.

The right to freedom of association was first recognized as a constitutionally protected First Amendment right in 1958 when the court delivered its opinion in *NAACP v. Alabama*.¹⁶ In that ruling, the court held that the only way a state could suspend the First Amendment right of freedom of association would be if the state could show that the reasons presented for the infringement, “...were constitutionally sufficient to justify its possible deterrent effect upon such freedoms.”¹⁷ Then in 1968, the first challenge against state action by a public labor organization was brought to the Seventh Circuit in *McLaughlin v. Tilendis*.¹⁸ In this case, two educators from Chicago alleged that they were fired and/ or not rehired because they were affiliated with the American Federation of Teachers, AFL-CIO. The Seventh Circuit held that there was a constitutionally protected right to form and join a labor union and that the state had not been able to show a public policy justification for limiting the rights of the public employees to join a labor union.¹⁹ After these successes, public labor unions began to test the courts to see how far they would extend federal law and rights in granting labor

¹⁵ *Id.* at 404.

¹⁶ 357 U.S. 449 (1958).

¹⁷ *Id.* at 461.

¹⁸ 398 F.2d 287 (7th Cir. 1968).

¹⁹ *Id.* at 290.

unions the right to enter into collective bargaining agreements with public employers.

Although the public employee unions initially had a great deal of success in arguing that they had a federally protected right in forming and joining labor unions, they were not as successful in convincing either the federal or state courts that they had a right to bargain collectively with the state employers and the right to strike when those negotiations failed. What the public employee unions failed to consider was that this issue was much more of a hornets nest than simply joining a labor organization because collective bargaining entailed the possible use of a strike in labor negotiations. Therefore, the federal courts were unwilling to consider any application of federally guaranteed rights to bargain collectively because under the terms of the federal statutes, public employers are expressly exempted from having to negotiate with employee unions. Also, the Supreme Court in *McGowan v. Maryland*²⁰ has said, state legislatures may draft laws that affect one group of citizens differently from others provided that the distinction is rationally related to some lawful objective because “A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.”²¹ Likewise, state courts were reluctant to acknowledge that public employees had a right to collective bargaining and to strike unless there was express statutory language authorizing such negotiations

²⁰ 366 U.S. 420, 425-26 (1961); See generally, Arvid Anderson, *Strikes Impasse Resolution in Public Employment*, 67 Mich. L. Rev. 943 (1969).

²¹ *Id.* at 425-426.

between unions and state agencies. For example, one of the most well known opinions against granting public employees the right to strike came in the 1968 case of *City of New York v. DeLury*.²² In that opinion, the New York Court of Appeals held unanimously that “the orderly functioning of our democratic form of representative government and the preservation of the right of our representatives to make budgetary allocations free ... from the compulsion of crippling strikes ... require the regulation of strikes by public employees whereas there is no similar countervailing reason for a prohibition of strikes in the private sector.”²³

Despite these initial setbacks, there were a few courts that were willing to allow state agencies to negotiate with employee unions provided that there was no threat of a strike that would essentially blackmail the state and cause the public employee unions to gain an unfair advantage. In *Norwalk Teachers’ Association v. Board of Education*,²⁴ the Connecticut Supreme Court noted that, in the absence of statutory language prohibiting the negotiations between state agencies and public employee unions, the court would not interfere because “If the strike threat is absent and the defendant (state) prefers to handle the matter through negotiations with the plaintiff, no reason exists why it should not do so.”²⁵ The Connecticut Supreme Court did not consider the problem that, although the state agency could negotiate with the public employee union, they could not

²² 243 N.E.2d 128 (1968).

²³ *Id.* at 134.

²⁴ 83 A.2d 482 (1951).

²⁵ *Id.* at 486.

guarantee the increases in wages and other educational reforms because those changes would have to be made by the state legislature and those powers could not be freely exercised by a state executive agency. Therefore, the negotiations would not be enforceable if the state legislature was unwilling to provide the needed funds or laws to meet the requirements of the negotiated contract.

Despite all of the uphill challenges that public employee unions have faced over the years, they still continue to thrive. This is due in large part to the fact that many states have recognized the need to grant public employees rights similar to their fellow citizens employed in the private sector while still safeguarding the needs of the public to have a well functioning civil bureaucracy. Another key factor in the growth of public employee unions has been the ever-growing membership rolls of teacher unions. The oldest and strongest of these teacher unions is the National Educators Association (NEA), which was founded in 1857 as the National Teachers Association (NTA). Originally this organization was not founded as a labor organization, but as a professional organization composed primarily of administrators and a few educators. The original goal of the NTA (later the NEA) was not to engage in the larger modern labor movement and increase the living standards of educators, but was instead an attempt by educators to be recognized as practicing professionals.²⁶ In essence, the original hope of the NEA was to obtain from the state the power to certify and regulate teacher credentials much in the same way that the individual state bars

²⁶ George R. La Noue & Marvin R. Pilo, *Teacher Unions and Educational Accountability*, 30 Proceedings of the Academy of Political Science 146, 148 (1970).

and medical boards license lawyers and physicians before they are allowed to practice.

It was this desire to have educators recognized as independent professional practitioners that kept the NEA from becoming the strong labor union it is today. Instead, the NEA remained nothing more than a political/lobbying organization for educators until the mid 1960's when it became increasingly clear to the broad membership of the NEA that collective bargaining was a tool that should be utilized for the educational profession. One of the key reasons for this shift in the NEA's official policy was the advent of a smaller and more vocal teacher union in 1917. That was the year when the American Federation of Teachers (AFT) was granted charter membership in the American Federation of Labor (AFL). Since the AFT was a member of the AFL, later the AFL-CIO (American Federation of Labor – Congress of Industrial Organizations), the AFT never had a desire to raise the profession of educators to the status of an independent sole practitioner. Instead, the AFT viewed educators as employees in a much larger governmental bureaucratic machine which necessitated that educators utilize collective bargaining to protect their interest and improve their working conditions. Despite this early realization, the AFT took a “hands off” approach to collective bargaining and strikes because most educators believed that union membership was nothing more than anti-professionalism.²⁷

²⁷ *Id.*, 149.

In the 1960's, the policy of the AFT and later the NEA would completely change as educators began to realize that the professional movement was all but lost. The loss of the professional movement was something the teacher unions were unwilling to acknowledge, as was the case during the 1940's, 1950's, and early 1960's. During that time, the AFT never authorized a strike by a local union chapter because that would damage the credibility of the teaching profession and harm attempts by educators to gain professional status. However, in 1960 and 1962 respectively, the United Federation of Teachers (UFT), a local union of the AFT in New York, authorized two strikes to obtain collective bargaining agreements with New York City. These strikes were so successful they forced New York City to enter into a number of binding collective employment agreements with the public school educators, which in turn made the AFT the sole representatives for the educators of New York City. With that resounding success, more and more educators began joining the AFT at what the NEA considered to be an alarming rate. It was this massive surge in AFT membership, along with strike successes, that caused the NEA to reverse its six decade old policy of prohibiting strikes in 1966. Following the change in the NEA's official policy regarding strikes, the union required the expulsion of all school administration officials because of a possible conflict of interest in negotiations between the local and state school boards and the NEA representatives. Needless to say, the change in positions by the nation's two most powerful teacher unions was dramatic and almost instantaneous. However,

there was no longer an option for teacher unions to remain a solely professional association for educators as evidenced by a statement of Albert Shanker, the Vice President of the AFT and President of the UFT, “Power is never given to anyone. Power is taken, and it is taken from someone. Teachers, as one of society’s powerless groups are now starting to take power from supervisors and school boards. This is causing and will continue to cause a realignment of power relationships.”²⁸

Although the NEA and AFT adopted very pro-union stances during the late 1960’s and were part of the larger labor movement (the AFT’s affiliation with the AFL-CIO), these two teacher unions have never developed into the stereotypical labor union that has defined the private sector despite some of the rhetoric by the firebrands at the head of these unions. In fact, it has been argued that by adopting more “union friendly” positions regarding collective bargaining and strikes, teacher unions have been able to elevate the status of their profession by gaining significant influence in the operation and organization of schools and their respective curriculum. What is especially interesting about the development of teacher unions is that they have developed their own distinct identity apart from private sector labor unions and even other public employee unions. Teacher unions for the most part have become what can be termed a “professional union” with the goal of implementing and supporting what has been called “professional unionism.” In essence, “professional unionism” is the theory

²⁸ *Id.* at 151.

that although the teacher unions and school systems are adversaries in the labor negotiations, the two are mutually dependent on the other. This has necessitated the creation of what is practically a joint management of the schools by some unions and school systems. Unlike the stereo-typical labor unions of the private sector, teacher unions are greatly concerned about the operation and functioning of their schools and are less concerned with back and forth discussions about economic advantage that surrounds traditional contract negotiations within the private sector. This in turn has led to joint negotiation committees whereby the schools systems work with teacher unions to establish joint committees on academic policies, the creation of meaningful academic reforms, along with internal quality controls on the part of unions by controlling teacher certification and training.²⁹ Although there are many more policy concerns that have been created by the rise of teacher unions, one must understand the law which governs the relationship between school systems and teacher unions before a more in depth discussion of policy can be entertained.

Part II: The Fifty Different Ways to Deal with Teacher Unions³⁰

As discussed earlier in this paper, public employees were expressly exempted from the National Labor Relations Act³¹, which governs private labor

²⁹ Charles Taylor Kerchner & Krista D. Cauffman, *Lurching Toward Professionalism*, 96 *The Elementary School Journal* 107, 112-113 (1995).

³⁰ The following discussion has been constrained by the scope of this paper and various other factors and is intended to provide the reader with an overview of the current status of public education labor law. The sheer breadth of this subject would require a multi-volume treatise to analyze the controlling state statutes and case law.

³¹ There are a number of statutes which regulate private labor relations; however, this is the most pertinent in regards to the exclusion of public employees from being able to exercise the same

relations between private sector employees and their employers. There are also a number of constitutional issues that inhibit comprehensive federal regulation of public labor relations, namely the right of the state to maintain its own civil bureaucracy as an independent sovereign, which can be inferred from the Tenth Amendment and the structure of our Federal Republic. Therefore, there is no national standard that can highlight the general rights that public employees are entitled to because each state is entitled to regulate the labor relations it has with the members of its civil bureaucracy. Unfortunately, not for labor attorneys, this uncertainty has led to a great deal of litigation and political lobbying on the part of public employees to gain the same collective bargaining rights as private employees at the state political level, which in turn has resulted in many different systems to address the myriad of labor relations.

Although the states were collectively very hesitant to allow their public employees to join labor unions and engage in collective bargaining in order to gain labor concessions during the early 1960's, this trend began to shift after the federal government began to allow its employees to join labor unions and engage in negotiations with their respective agencies. Likewise, many states began to realize that outlawing public employee unions caused more problems than it settled. This new realization resulted in many states enacting new statutes to guarantee their public employees the right to join a labor union or at least provide for some form of system to allow employees to address their grievances to their

rights of collective bargaining as their private counterparts, see Part I of this paper for further discussion of the NLRA and primary case law.

state employers. As is always the case with any major change in public policy, there were a number of holdout states, which primarily consisted of southern states. Many of these states, Georgia in particular, retained their outright prohibition against public employees joining labor unions while also failing to place any system in place to allow educators or public employees to address their grievances to state management. This resulted in a number of strikes throughout the region and led to a number of public employee strikes in the most stalwart of anti-union states, Georgia.³²

Although a number of social scientists have tried to explain why southern states, as a general rule, have been so anti-union and even more anti-public employee union, the actual reason still remains a mystery. The proposed hypotheses run the full range of theories from the protestant work ethic to the ever-stereotypical notion that the southern states are just backward and deeply rooted in the status quo. Yet, these theories fail, especially considering that most southern states have begun authorizing the creation of statutory rights allowing their public employees to join labor unions along with the creation of some sort of political system to negotiate between the demands of public employee unions and state agencies. Although there has been significant progress within the South and across the nation in recognizing the right of public employees to

³² Baird, *supra* note 2, at 126-127 (There were a number of public employee strikes starting with a teachers strike and work stoppage in Catoosa County in 1964, followed by a firemen strike in Atlanta in 1966, along with a sanitary workers strike in Chatham county in 1968).

negotiate with state agencies through their respective unions, there is still one notable holdout, Georgia.³³

Ever since Georgia began regulating its labor relations with its public employees in the 1960's, they have been at the forefront of prohibiting any and all attempts by labor unions to gain a right to collective bargaining. As has previously been discussed, all citizens have the right to join a labor union if they choose because of their right to freedom of association guaranteed by the federal constitution and federal precedent. Also, most Georgia courts follow the common law presumption as stated in that, "...in the absence of prohibitory statute or regulation, no good reason appears why public employees should not organize as a labor union."³⁴ In Georgia, the right to join a labor union is as far as the federal rights for public employees extend. Georgia has been very careful to ensure that joining a labor union is as far as that right extends as exemplified by the very first section of Title 45 of the Georgia Code which prohibits a "strike" which is defined as, "...the failure to report for duty, the willful absence from one's position, the stoppage or deliberate slowing of work...for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment..."³⁵ The Attorney General for the State of Georgia has gone even further and has issued an official

³³ All fifty state constitutions were researched along with corresponding case law and Georgia was the only state that has yet to adequately expand the rights of its public employees or establish a system comparable to that of her sister states in the South or throughout the nation to regulate employee grievances. The States of Florida and Massachusetts will be analyzed later in this paper to show contrasting systems.

³⁴ *Norwalk*, 83 A.2d at 485.

³⁵ O.C.G.A. § 45-19-1 (2005).

opinion which clarified that state employees have no right to engage in meaningful collective bargaining because they have the right to join a labor organization and express their opinions individually or collectively, "...the only limitation upon such activities of the state employees would prevent their striking, or otherwise interfering with proper performance of the duties of state employment, or obstructing access to or egress from state property."³⁶

It is not uncommon for most states to prohibit their public employees from pursuing collective bargaining rights through strikes and work stoppages under the theory that it is against the public interest to allow the civil bureaucracy to hold the state and citizens hostage at the bargaining table. What is uncommon though is the extent to which Georgia has codified the prohibitions against strikes and other forms of work stoppages without providing some form of procedure for public employees to express their grievances and gain the attention of their respective state agencies. In essence, what the State of Georgia has been able to accomplish is a system in which educators, along with other public employees, can join labor unions. Then, if the state feels like it, they could agree to negotiate with the employees, but the employees are left without any chips to bargain with and are left virtually powerless because they are forbidden to retaliate against their employers if their demands are ignored. Also, public employees are not only powerless because they are forbidden to engage in strikes; there are also civil and criminal sanctions that can be levied against the employees and their

³⁶ 1969 Op. Att'y Gen. No. 69-379.

personal representatives for engaging in strikes. Under Georgia law, a person who engages in a strike or other prohibited work stoppage, "...shall be deemed to have terminated his or her employment; shall forfeit his or her civil service status, job rights, seniority, and emoluments...and subsequent to the violation shall not be eligible for appointment or reappointment or reemployment in public employment for a period of three years...."³⁷ It would be hard to argue that an educator, or any public employee, would be willing to risk their livelihood in an attempt to achieve collective bargaining rights or force their employers to negotiate for better pay and working conditions especially considering that they would be barred from employment with all state agencies. Another interesting provision, that is very particular to Georgia public labor relations law, is a provision that criminalizes any attempt by non-public employees to help organize and promote strikes and work stoppages. According to Georgia law,

Any person who is not a public employee and who shall knowingly incite, agitate, influence, coerce, persuade, or picket to urge a public employee to strike shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment not to exceed one year, or by a fine of not less than \$100.00 nor more than 1,000.00, or both.³⁸

Just as it would be difficult to make a convincing argument that an educator would be unwilling to risk their livelihood in a collective bargaining negotiation, the argument also applies to the employees' personal representatives because there are few people who actively seek to commit a crime with a possible jail sentence of one year.

³⁷ O.C.G.A. § 45-19-4 (2005).

³⁸ O.C.G.A. § 45-19-5 (2005).

Another surprising feature about Georgia labor law has been the absolute deference the state courts have been willing to pay to the legislative intent of the statutes. In general, most of the Georgia statutes are not that uncommon when compared to similar statutes throughout the country. What is very uncommon is the extent to which the state courts of Georgia have been willing to enforce almost every single provision of the Georgia Code without ever testing the outer limits of the statutes' intent. While most states were allowing educators to join labor unions and engage in collective bargaining with their state employers, provided they agreed not to strike, Georgia was quick to prohibit any right to collective bargaining. In *International Longshoremen's Association v. Georgia Ports Authority*, a unanimous Georgia Supreme Court held, "...it is contrary to the public policy of the State of Georgia for State employees to strike...." ³⁹ However, this case was not about an attempt by public employees to strike, instead it was an attempt by public employees to bring the state employer to the bargaining table through peaceful picketing outside of the port gates. Instead, the court granted the injunction requested by the port authority and stated that the state agency was immune from any form of strike or other form of action attempting to force them into collective bargaining negotiations. Likewise, the court held generally that the Georgia Port Authority was precluded from entering into any collective bargaining agreement with its workers because of public policy and because the agency lacked the statutory authority to enter into collective

³⁹ 217 Ga. 712, at 717 (1962), cert. denied, 370 U.S. 922 (1962).

bargaining with the employees chosen representative.⁴⁰ Furthermore, the Attorney General for Georgia has stated that "...school teachers have no legal right to require local school boards to bargain collectively."⁴¹

After Georgia declared that no state employee could force a state agency to enter into collective negotiations with their chosen representatives, there was still the lingering question of whether state agencies could choose to enter into collective bargaining agreements with public employees on a voluntary basis? Once again, the Georgia Supreme Court in another unanimous decision held that it was forbidden for a state agency to enter into a collective bargaining agreement because, "The rule is well settled that legislative power cannot be delegated by a municipality, unless expressly authorized by the statute conferring the power."⁴² Furthermore, the court reaffirmed its past decision in *International Longshoremen's Association* by holding that state agencies could not negotiate with unions, "...because under Georgia law local governmental entities generally are not permitted to bargain collectively with employee representatives."⁴³ The only break within this iron wall preventing public employee unions from engaging in collective bargaining with state agencies was that the court recognized that the legislature could authorize such rights if it granted exceptions to the general prohibition as it did for the Metropolitan Rapid Transit Authority.⁴⁴

⁴⁰ *Id.* at 712-719, see generally Baird, *supra* note 2, at 127.

⁴¹ Unofficial Op. Ga. Att'y Gen. (Sept. 1, 1966), *cited in* Baird, *supra* note 2, at 127.

⁴² *Local Div. 732, Amalgamated Transit Union v. MARTA*, 253 Ga. 219, at 222-223 (1984).

⁴³ *Id.* at 221.

⁴⁴ *Id.* at 221, see MARTA Act of 1965, (Ga. L. 1965, pp. 2243, 2273) (This act authorized the Board of Directors of MARTA to bargain with MARTA employees through such agents in the

Yet despite these rather firm affirmations of Georgia's prohibition against public employees engaging in collective bargaining, the tide of public opinion, along with legislative attention, may be shifting towards a not to distant repeal of the rather harsh anti-public employee union statutes. The federal courts are also becoming more active in one of the last remaining states to adopt some form of collective bargaining mechanism for its public employees. Although the cases that have been brought before the federal courts have dealt with the right of employees to join public employee unions, the federal courts have been very swift in striking down any law or action that seeks to limit this federally protected right. In 1981, the Federal District Court held in *International Union of Police Association v. Barrett*, that a statute prohibiting supervisory employees from joining the police union was unconstitutionally broad and violated the supervisors' First Amendment rights to free speech and association as well as their Fourteenth Amendment right to equal protection.⁴⁵ The most recent decision by the federal courts regarding Georgia labor law came from the Eleventh Circuit Court of Appeals in *Cook v. Gwinnett County School Dist.*, which held that a retaliatory transfer of a school employee for recruiting fellow employees and raising matters of various safety concerns violated the employee's First and Fourteenth Amendment rights. The court further held that, "...the law is clearly established that public employees have a First Amendment right to engage in

same manner and to the same extent as if they were the employees of any privately-owned transportation system.).

⁴⁵ 524 F. Supp. 760 (D. Ga. 1981).

associative activity without retaliation ... and ... courts have long held that freedom of association protection extends to membership in organizations such as labor unions.”⁴⁶ Although these two cases have not recognized a right to collective bargaining or a reasonable alternative for public employees, it is important because it shows the potential growing impatience the federal courts may be having with the inflexible Georgia labor laws. The most important fact to take away from these two rulings is the language that the court used, not to mention the need for Federal courts to protect what has been codified as a state right under Georgia law.⁴⁷ In essence, the attorneys who represented the respective plaintiffs in this case felt that they would have a better chance at enforcing a state created (federally backed) right not within the courts of Georgia, but within the Federal courts.

Although Georgia decided to retain much of its pre-Cold War labor relations laws by prohibiting any kind of meaningful public employee union negotiation rights, many states began realizing that providing some kind of bargaining rights to their public employees was beneficial. The first state to implement such changes to their labor laws was Massachusetts which passed a law in 1958, authorizing its public employees to join labor unions; needless to say this was done before President Kennedy’s Executive Order 10988 in 1962, which was hailed as the beginning of public employee unions. The 1958 right to join

⁴⁶ 414 F.3d 1313 at 1320 (11th Cir. 2005).

⁴⁷ See *supra* note 36, (Unofficial opinion of the Georgia Attorney General referring to O.C.G.A. § 45-19-1 (2005).

labor unions was followed in 1964 and 1965, respectively, by the right to bargain collectively for working conditions and wages. Then in 1974, the state established a labor management committee charged with settling disputes between state agencies and their employees.⁴⁸

Under the laws of Massachusetts, the rights that public employees are entitled to are very similar to the rights of employees in the private sector. For example, public employees have a statutory right to join or not join a labor union as they see fit and to engage in collective bargaining for terms or employment ranging from wages to working conditions.⁴⁹ However, what is different about the Massachusetts law is that it specifically provides that employees may, “...engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference restraint, or coercion.”⁵⁰ There is one caveat to this new statutory protection because most people believed that this meant that public employees could commence a strike in order to protect their contract. The Massachusetts legislature had a different idea in mind and expressly forbid the use of strikes and other work stoppages by stating that, “No public employee or employee organization shall engage in a strike...work stoppage, slowdown or withholding of services by such public employees.”⁵¹ Likewise if a public employee, most notably teachers in recent years, engage in any of the above mentioned prohibited labor practices they are

⁴⁸ Richard B. Freeman, *Unionism Comes to the Public Sector*, 24 *Journal of Economic Literature* 41, 47 (1986).

⁴⁹ ALM GL Ch. 150E, § 2 (2005).

⁵⁰ *Id.* at § 2.

⁵¹ ALM GL Ch. 150E, § 9A (2005).

subject to the withholding of pay for the duration of the strike and the violation of the labor contract and subject to discipline and termination proceedings by the state employer.⁵²

So if Massachusetts prohibits public employees from engaging in strikes and other forms of work stoppages, how is the system any more advanced than ones similar to Georgia's? According to statutes, Massachusetts heavily regulates what is to be negotiated between the state agency and the public employees' collective representative during labor negotiations. For example, school boards are required to, "...negotiate in good faith with respect to wages; hours, standards or productivity and performance...class size, and workload...."⁵³ Then once a final agreement between the two parties has been reached, the contract must be submitted to the state legislature for approval and funding, which acts as a political check against any attempt at unfair negotiations between either the school districts and the public employees respective agents.⁵⁴ Also, Massachusetts has established a labor relations commission which is charged by statute to resolve any disputes between the state agency and the public employees' collective representative through the use of a very elaborate binding arbitration system.⁵⁵

⁵² ALM GL Ch. 150E, § 15 (2005).

⁵³ ALM GL Ch. 150E, § 6 (2005).

⁵⁴ ALM GL Ch. 150E, § 7 (2005) (Note: that educators' contracts are exempt from legislative approval, but school boards still must obtain legislative funding bills to finance teacher salary increases and other programs).

⁵⁵ ALM GL Ch. 150E, §§ 8-9 (2005) (Note: these sections are too complex to be discussed within the confines of this paper. However, the general premise is that the commission acts as a general arbiter between the two parties and their decision is final).

In addition to a very strict statutory scheme, which guarantees public employees many of the same rights and benefits as their private counterparts, the courts in Massachusetts have been very supportive of enforcing the statutory rights of public employees. For example, the Supreme Judicial Court of Massachusetts held that they would not review the decision of the state labor relations committees binding arbitration that held that a school board had to negotiate any changes in the school curriculum (final exam schedules) with the teacher union because it was a material provision of the labor contract.⁵⁶ Yet even as the court was proclaiming that they would uphold labor contracts and the decisions of the state labor relations committee, the court was quick to point out that they considered any form of strike or work stoppage to be illegal and against the public policy of the Commonwealth of Massachusetts.⁵⁷ In addition to the strong judicial support for public employee unions, there is a strong support for public, especially teacher unions, among the citizens of Massachusetts. In what was a rather interesting case, the Federal District Court for Massachusetts was asked if a teacher union could force a religious school to recognize the union as the collective representative of the teachers employed by the Catholic Archdiocese of Boston. The court responded with a simple opinion in the negative since the National Labor Relations Act and subsequent Labor

⁵⁶ *School Committee of Boston v. Boston Teachers Union, AFT AFL-CIO*, 378 Mass. 65 (Mass. 1979) (Note: the court held that the state could not bargain away the school curriculum as a whole. For example, which subjects would be taught; however, non-material curriculum matters like when finals are held and what qualifications teachers are to obtain are within the purview of labor negotiations).

⁵⁷ *Id.* at 47.

Management Relations Act were not intended to apply to church operated schools. The court also noted that there were serious implications of the First Amendment concerns and freedom of religion if they were to apply the National Labor Relations Act to church schools.⁵⁸ However, the Archdiocese was not trying to rid itself of the teacher unions through the First Amendment or through statutory construction. Instead, the Archdiocese was attempting to void the current union contracts in order to reorganize the ownership structure of the schools while still maintaining the teacher unions as a viable organization for the educators albeit with a new contract in place.

Although the Northeast has often been viewed as a bastion of union activity, to the surprise of many, Massachusetts and northern states were not always at the forefront of labor relations law, and the South was not as backwards as usually perceived. This is especially true because Florida followed Massachusetts's lead and began recognizing the rights of its public employees to engage in collective bargaining and labor activities in 1969 when the Florida Supreme Court ruled that public employees were entitled to the same rights as private employees in *Dade County Classroom Teachers' Association, Inc. v. Michael Ryan*.⁵⁹ What also makes Florida very similar to Massachusetts is the fact that many of these rights have been codified in a very elaborate statutory scheme that has been designed to ensure that public employees are given the

⁵⁸ *Boston Archdiocese Teachers Ass'n v. Archdiocesan Central High Schools*, 2005 WL 1940439 (D. Mass.).

⁵⁹ 225 So. 2d 903 (Fla. 1969). See also, *American Fed'n of Teachers v. School Board of Hillsborough County*, 584 So. 2d 62 (Fla. App. 1991).

benefit of collective bargaining without threatening the state with service interruptions and unreasonable demands by its public employees. The only real difference between public employee rights in Florida when compared to Massachusetts is the fact that all employees in Florida are entitled to refuse to join a labor union under the states right to work doctrine under the Florida Constitution.⁶⁰

Under the first section of the labor relations code, the Florida legislature has guaranteed that every public employee has the right to collective bargaining and in turn, the state has required that all state agencies engage in negotiations with duly elected representatives in the negotiation of state employment contracts.⁶¹ Over the past three decades, the Florida Supreme court has vigorously upheld this right despite attempts by the state executive branch to curtail the ability of public employee unions to gain concessions from state agencies. In one of the most recent decisions, the Florida Supreme Court struck down an attempt by the Florida University System Board of Trustees which attempted to materially alter the negotiated contract for university employees by no longer allowing union membership fees to be subtracted from their paycheck. The Florida Public Employment Relations Committee (the sister organization to the Massachusetts Labor Relations Committee) ruled that there was no enforceable contract because the new Board of Trustees was not a successor organization to the Board of Education, the predecessor that had been in charge

⁶⁰ *Schermerhorn v. Retail Clerks Int'l Ass'n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962).

⁶¹ Fla. Stat. § 447.201 (2005).

of the Florida University System. Although this case began over a simple disagreement about whether union dues would be automatically deducted from paychecks, the Florida Supreme Court made clear its displeasure with the state executive branch by upholding the educators' contracts with the Board of Trustees by declaring that the state could not materially alter the employees' contract by restructuring the state bureaucracy. In short, the court held that such an outcome would violate Florida's Constitutional right to collective bargaining as well as frustrate the legislature's goal, "to promote harmonious and cooperative relationships between government and its employees."⁶²

Despite this vigorous support for public employee unions by the state legislature and judiciary of Florida, the state has adopted what could be called a hybrid labor relations code, which allows for strong public employee unions with statutory and judicially protected rights to collective bargaining. On the other hand, the state and its citizens are protected from unnecessary strikes and other forms of public employee work stoppages by outlawing all forms of coercive labor practices on the part of the public employees. Although Massachusetts has a similar system, the Massachusetts's labor code lacks any meaningful enforcement provision, with the exception of docking educators' and other public employees' pay when they engage in strikes and work stoppages. In contrast, Florida has retained most of its prohibitions against public employee strikes along with enough penalties to make even Georgia feel better about its proscriptive

⁶² *United Faculty of Florida v. Florida Public Employees Council*, 898 So. 2d 96, at 104-105 (Fla. 2005).

provisions.⁶³ For example, under the Florida statute, an employee would face termination and an eighteen-month bar from seeking employment with the state. The real teeth in the statute appear in regards to public labor unions because unlike Georgia's misdemeanor charge and one thousand dollar fine, the officers of the organization can be fined five thousand dollars and the organization itself can be fined twenty thousand dollars a day along with the civil damages arising from the cost to the public for services not rendered.⁶⁴ Therefore, it is hard to conceive of a situation in which public employee unions would be willing to risk such massive liability unless they had a truly legitimate reason.

Part III: To Unionize or Not to Unionize, A Teacher's Dilemma?

Just as the debate raged on the floors of the state legislatures whether teacher unions were a good idea and something that the public was willing to accept, many social scientists still debate whether teacher unions (public employee unions to a lesser extent) really benefit the public as a whole. One of the first arguments by critics of teacher unions is that teacher unions as a whole are bastions of party politics and loyal supporters of the Democratic Party.⁶⁵ This argument is unpersuasive because although most unions are highly politically active in the private and public sector, that as a general rule has no bearing on the benefit or detriment public employee unions have on the public at large unless you engage in a wider political debate about ideology. Therefore, if one is

⁶³ Fla. Stat. § 447.505 (2005).

⁶⁴ Fla. Stat. § 447.507 (2005).

⁶⁵ Charlene K. Haar, *Teacher Unions and Parent Involvement*, Education Policy Institute (Jan. 1999), at <http://www.educationpolicy.org/EPIseries/parent-bklt.htm>.

to look at the pros and cons of the wider teacher union debate, one of the best places to begin would be with a discussion about the effects teacher unions have on the schools themselves.

It has been argued that teacher unions are nothing more than a giant political machine with the sole purpose of increasing educators' salaries while draining money from material instruction, which only serves to reduce the quality of instruction that students receive. Yet, supporters of teacher unions counter this argument by stating that higher salaries and subsequently higher benefits only improve education by attracting and retaining superior teachers who would normally have sought employment in the private sector.⁶⁶ Other arguments run the entire spectrum of education policy from those who believe that teacher unions protect inadequate educators from proper dismissal and that unions create unnecessary tension between teachers and school administrators. In turn, proponents of teacher unions claim that teacher unions provide educators with a greater sense of professionalism and dignity while providing educators with more manageable class sizes and a more responsive and flexible school administration.⁶⁷

Although there has been little research to support either the proponents or the critics of teacher unions in regards to their claims, there is some evidence the

⁶⁶ Alex Molnar & Robert M. Carini, *School Reform Proposals, The Research Evidence*, Arizona State University Education Policy Studies Laboratory (Jan. 2002), available at http://www.asu.edu/educ/eps/EPRU/epru_Research_Writing.htm. See also, David N. Figlio, *Can Public Schools Buy Better-Qualified Teachers?*, 55 Ind. & Lab. Rel. Rev. 686 (Cornell University 2002).

⁶⁷ *Id.* at 3-4 (page print out is an approximation).

teacher unions do have a beneficial effect upon their students at the educational level. Without considering the statistics of schools' SAT and ACT scores there have been studies which have shown that teacher unions provide a standardized system of instruction that is beneficial to students of the middle range because a standard curriculum and method of instruction is developed by members of the union. Likewise, there is some evidence that this increased school standardization has resulted in the decrease of standardized school exam scores among students of the upper and lower learning curves because of a decrease in the amount of individualized instruction.⁶⁸ Also, there has been some research that demonstrates that schools that are unionized tend to operate as a more responsive and effective organization.⁶⁹ In essence, research tended to show that teacher unions keep school administrators on their toes because administrators want to keep student achievement high and will enact meaningful reforms to keep the teacher unions away from their office. Besides, better principals would realize that they could utilize teacher unions to their benefit because they could better control their students' curriculum through standardization while gaining meaningful input from their educators in designing a more effective education program.⁷⁰ Yet, no matter how persuasive these arguments are to either proponents or opponents of teacher unions, there is still

⁶⁸ *Id.* at 7-8.

⁶⁹ *Id.* at 8.

⁷⁰ *Id.* at 9.

the burning issue of what truly are the effects of teacher unions upon school systems.

Part IV: The Numbers and Potential Solutions

Some state politicians, those whose students do not perform well on the SAT, cringe every year when the College Board (a division of Educational Testing Services) releases the national state rankings for the SAT since this exam is considered by many in the United States as the sole benchmark for measuring a states' academic performance. At first, the College Board resisted with great vigor any attempt to compare state rankings in SAT reports because the directors realized that the figures could not demonstrate effectively the host of factors that contribute to one state's success or failure. In fact, it was not until the early 1980's that the College Board was even willing to release its internal rankings of all fifty states, once figures were released, proponents and opponents of teacher unions descended upon these numbers with delight.⁷¹ Both proponents and opponents sought to justify their arguments by comparing the relative amount of money that schools spent on education compared with the level of teacher unionization while drawing a corollary between those two factors and the states SAT score.⁷²

Despite this interest, there are hardly any studies that have been conducted to study the relationship between a state's educational policy in

⁷¹ Brian Powell & Lala Carr Steelman, *Bewitched, Bothered, and Beweildering: The Use and Misuse of State SAT and ACT Scores*, 66 *Harvard Educational Review* 1, at 2-3 (Spring 1996).

⁷² Brian Powell & Lala Carr Steelman, *Do Teacher Unions Hinder Educational Performance? Lessons Learned from State SAT and ACT Scores*, 70 *Harvard Educational Review* 4 (Winter 2000).

regards to teacher unions and their respective SAT score. Moreover there are a host of other factors that contribute to a state's SAT score like the socio-economic status of the child. Surprisingly it is neither teacher unions nor the amount of money that state politicians throw at the problem, but instead is simple participation rates.⁷³ More simply put, as more people take the SAT or ACT respectively there is an inverse relationship upon the states relative average score because there are fewer college bound students who have prepared to take the standard exam when coupled with the majority of non-college bound students. Likewise, the converse is true that states with extremely high SAT and ACT averages are states that do not encourage all of their students to take the college entrance exam and direct those "less academic" students to more vocational education opportunities. Therefore, many studies have conclusively held that, "...it appears that states with high rates of teacher unionization rates are neither advantaged nor disadvantaged in terms of SAT performance."⁷⁴

The only conclusion that can be taken away from these limited studies is the fact that in addition to student participation rates there are a number of factors that potentially contribute to a state's overall SAT and ACT performance. Teacher unionization is but only a small part of the overall equation, and even if there were to be a study to show whether teacher unions had a beneficial or detrimental effect upon test scores, it would only be representative of an immeasurable factor. One example such example would be the corollary that

⁷³ See *supra* note 71 at 5.

⁷⁴ See *supra* note 72 at 8.

educators would be better instructors because of increased job satisfaction rather than direct evidence about the overall effects teacher unions would have on the larger educational system.⁷⁵ Therefore, it is much more important to focus on the large issues surrounding teacher unions and the direct effects that they have on the rights of educators and the role of the state in shaping and responding to those rights.

Therefore, states should stop focusing on the sheer politics involved in the issue of public employee unions and look at the larger role teacher unions could play in shaping educational policy. Although it is the primary responsibility of the state to ensure that all children receive an appropriate education under the states compulsory education laws, the state would do well to listen to the collective voice of its educators. After all, educators are the people on the front lines of education, and they would be able to provide the state with valuable information when determining if a program needs to be modified and if so how to best achieve their desired results. Also, more experienced teachers would be willing to work for school systems and improve education if they were given an opportunity to express their grievances in a collective manner that would allow them to be heard over opportunistic politicians and highly motivated parents. Therefore, states should be willing to adopt similar statutory schemes and labor policies as the states of Florida and Massachusetts. Although the state has a right and duty to protect its citizens from the whim of private organizations, the

⁷⁵ *Id.* at 12.

state also has a duty to ensure that all of its citizens have equal labor rights. The few states that have remained stuck in the early 1950's (Georgia) would do well to implement a more coherent and defined statutory system that would allow its public employees to protest their grievances in an organized and legal manner. This is especially important when those employees are held to such exacting standards as educators are often expected to meet. It is fundamentally unfair to blame educators for the faults in education without providing them with any meaningful input or voice in the overall educational system.

Conclusion

Labor relation laws have come a long way from the late 1800's prohibitions against all labor unions on the grounds that it was against the states' public policy and strikes were an actionable tort against the members of the union and the union itself. It was not until the advent of a true national labor movement during the mid 1900's that states even began to consider the fact that their public employees would also try and organize into labor unions. As with any form of political movement, there were a few states that quickly embraced the concept of labor rights for public employees and enacted statutes repealing their former prohibitions against public employee unions. Then with the help of federally backed rights, namely the freedom of association, all fifty states recognized that their public employees had the right to form labor unions.

Ironically one of the biggest obstacles in the forming of viable teacher unions were the teacher unions themselves since they desired to become

professional associations rather than a modern labor organization engaged in collective bargaining. However, with the success of several local union affiliates in New York and throughout the Northeast, the NEA and AFT began to realize that there was some public support for the creation of teacher unions. Although there never was and still is not sufficient public support to warrant teacher unions to declare a strike, this need has been all but alleviated through statutory schemes initiated throughout the individual fifty states. Florida and Massachusetts are often pointed to as model examples of how a state can create a system in which teachers and other public employees are guaranteed the same rights as their private counterparts while still protecting the general public from the effects of a strike. They are able to accomplish this delicate balancing act through a system in which public employees are forbidden to strike. However, there is usually no need to strike because the alternative remedy to collective bargaining impasses are handled through the use of a public labor commission which acts as a final and impartial arbiter in the event that the state agency and public employees cannot reach an agreement. Despite these successes, a painfully small number of states (Georgia) have yet to provide any meaningful reform to their labor laws in order to grant their public employees the same rights as their private counterparts. That, in turn, is a bitter sweet victory in which the State of Georgia has declared that public employees have no avenues to address grievances in a meaningful manner (collective bargaining), but they can

complain in one large voice because they have a federal right to associate with any group they like.

Unfortunately, given the current public opinion about the state of education, there will probably be little advancement in the way of public labor law in the state of Georgia. As public opinion continues to blame teachers and administrators for school test scores and as that public opinion is kindled by the rhetoric from the state legislature, teacher unions will continue to bear the brunt of public scorn and contempt. Although there are few studies that actually detail how teacher unions affect students' test scores and overall academic performance, the general consensus amongst social scientists is that the most important contributing factors to student achievement are not directly correlated or even related to the amount of teacher unionization. In fact, the number one correlation is the mere percentage of college bound students versus vocational students required to take a standardized exam.

In closing, the most important thing for the public to realize is the benefits that society could reap by allowing teacher unions to flourish. These unions could provide the basis for a more enhanced reform program by allowing educators to communicate to school administrators which reforms were worthwhile while discontinuing the reforms that were not. Also, teacher unions would help retain more qualified personnel by increasing the amount of compensation that educator's would receive. As in the private sector, increased salaries in the private sector help retain better and more qualified personnel.

Therefore, states should attempt to model their statutory schemes and labor relation laws based on the examples of states like Florida and Massachusetts and guarantee equal rights to all of their state citizens while still protecting the public from unnecessary civil service disruptions. After all, it is not fair to blame teachers and other public employees for the current system while refusing to grant them any meaningful say in how that system is formed and operated.

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