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Labor Law - *Illinois Education Association v. Board of Education of School District 218 and Board of Trustees of Junior College District No. 508 v. Cook County College Teachers Union, Local 1600*: Ominous Implications for Public Sector Collective Bargaining in Illinois

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LABOR LAW—*Illinois Education Association v. Board of Education of School District 218 and Board of Trustees of Junior College District No. 508 v. Cook County College Teachers Union, Local 1600*:
Ominous Implications for Public Sector Collective Bargaining in Illinois

For the first time in Illinois, the state supreme court has addressed the question of the legal limitations on the power of public bodies to bargain with their employee unions. In two recent decisions, *Illinois Education Association v. Board of Education of School District 218*¹ and *Board of Trustees of Junior College District No. 508 v. Cook County College Teachers Union, Local 1600*,² the supreme court held unenforceable specific agreements contained in collective bargaining contracts because their terms infringed on the public body's statutory responsibilities. The court found certain provisions in these agreements beyond the power of the public body to negotiate. Because of their far-reaching implications, these decisions may encourage the passage of a comprehensive public employee labor relations act in Illinois—an impossible task for the past 30 years.³

The author wishes to thank the Honorable Roger J. Kiley, Jr., Judge of the Circuit Court of Cook County, for providing valuable assistance in the preparation of this article. Judge Kiley, prior to his elevation to the bench, successfully argued before the Illinois Supreme Court as counsel for the Board of Trustees of Jr. College Dist. No. 508.

1. 62 Ill. 2d 127, 340 N.E.2d 7 (1975).

2. 62 Ill. 2d 470, 343 N.E.2d 473 (1976).

3. In addition to legislation that has been introduced in every session of the Illinois General Assembly since 1945, investigative commissions were appointed by two governors to develop legislation. Neither commissions' proposal met with any success. COMMISSION ON LABOR LAWS, REPORTS AND RECOMMENDATIONS (1971) [hereinafter cited as OGILVIE REPORT]; GOVERNOR'S ADVISORY COMMISSION ON LABOR-MANAGEMENT POLICY FOR PUBLIC EMPLOYEES, REPORT AND RECOMMENDATIONS (1967) [hereinafter cited as KERNER REPORT].

Commentators have long criticized the lack of public employee labor legislation in Illinois. See Edwards, *The Emerging Duty to Bargain in the Public Sector*, 71 MICH. L. REV. 885 (1973) [hereinafter cited as Edwards]; Goldstein, *Current Trends in Public Employee Labor Law in Illinois: Alice-in-Wonderland Revisited?* 23 DE PAUL L. REV. 382 (1973) [hereinafter cited as Goldstein]; Kiley, *A Public Employee Labor Act in Illinois? Clear Need with No Clear Solution*, 4 LOY. CHI. L.J. 309 (1973) [hereinafter cited as Kiley]; Shaw and Clark, *The Need for Public Employee Labor Legislation in Illinois*, 59 ILL. B.J. 628 (1971) [hereinafter cited as Shaw and Clark]; Clark, *Public Employee Labor Legislation: A Study of the Unsuccessful Attempt to Enact a Public Employee Bargaining Statute in Illinois*, 20 LAB. L.J. 164 (1969) [hereinafter cited as Clark]; Miller, *Alice-in-Wonderland World of Public Employee Bargaining*, 50 CHI. B. REC. 223 (1969) [hereinafter cited as Miller]; Derber, *Labor Management Policy for Public Employees in Illinois: The Experience of the Governor's Commission*, 21 IND. & LAB. REL. REV. 541 (1968) [hereinafter cited as Derber].

THE CASES

IEA and Board 508: The Trial Court

Both cases involve disputes between public school boards and public school teachers' associations under collective bargaining agreements. In *IEA*, the board and the association entered into an agreement containing provisions for periodic evaluation of all probationary teachers.⁴ The Board of Trustees of Junior College District No. 508 and the Cook County College Teachers Union also agreed to specific contract procedures for annual evaluation of non-tenured teachers.⁵

In *IEA*, the association filed suit on behalf of one of its members alleging that the agreed-upon evaluation procedures were not followed prior to the teacher's dismissal. At trial all parties admitted that the classroom evaluation procedures in the bargaining agreement had not been complied with. However, the board maintained that the terms of the agreement were not applicable because the dismissal was for reasons other than classroom performance.⁶ The trial court found the provisions of the contract applicable and the agreement breached by the board. The court ordered the board to reinstate the teacher.⁷ Since the reinstatement insured the teacher

These commentators have pointed to comprehensive legislation in force in other jurisdictions. CAL. GOVT. CODE §§ 3500 *et seq.* (West 1964), *as amended*, (West Supp. 1976) (provided for collective bargaining between public employers and the elected representative of their public employees; established an office to mediate disputes; however, the statute, known as the Meyers-Milias-Brown Act, contains no provisions relating to strikes in the public sector); CAL. GOVT. CODE §§ 3541 *et seq.* (West Supp. 1976), as supplemented by Ch. 961, L. 1975, effective July 1, 1976 (extends collective bargaining rights to public school employees); HAWAII REV. STAT., tit. 11 §§ 89-1 *et seq.* (Supp. 1973) (authorizes public employers to collectively bargain with their employees on matters of wages, hours and other terms and conditions of employment; contains provisions for mediation through the office of the governor; and prohibits strikes against the government); N.Y. CIV. SERV. L. §§ 200 *et seq.* (McKinney Supp. 1976) (known as the Taylor Act, the statute provides for collective bargaining between political subdivisions and recognized representatives of public employees, provides for binding arbitration of all disputes, and contains an absolute prohibition on the public employees' right to strike); PA. STAT. ANN. tit. 43, §§ 1101.101 *et seq.* (Supp. 1974) (known as the Public Employee Relation Act, directs public employers and their employees to bargain in good faith on wages, hours, and other terms and conditions of employment; gives employees a limited right to strike after the collective bargaining process has been exhausted).

4. 62 Ill. 2d at 129, 340 N.E.2d at 9.

5. 62 Ill. 2d at 473, 343 N.E.2d at 475.

6. The member had been working as an art teacher under annual contract during the 1969-70 and 1970-71 school terms. There were nine enumerated reasons for his dismissal in the March 18th letter, dealing generally with his unacceptable and uncooperative attitude vis-a-vis the other members of the faculty and the school administration. Only two of the reasons given were related to his classroom performance.

7. ILL. REV. STAT. ch. 122, § 24-11 (1973) provides in pertinent part:

Any teacher who has been employed in any district as a full-time teacher for a

his third consecutive year under contract at the school, the trial court further ordered the board to assign him as a full-time tenured teacher.

In comparison, Board 508, rather than the teachers union, contested the power of an arbitrator to grant employment contracts to non-tenured teachers under the terms of their collective bargaining agreement.⁸ The dispute arose when the president of Malcolm X College, one of seven junior colleges in Chicago operated by Board 508, recommended that eight non-tenured teachers at the college not be rehired for the following school year. The union then filed a grievance on behalf of the teachers charging the board with failure to comply with the evaluation procedures prior to the teachers' dismissals. As a remedy, the union requested that an arbitrator grant new employment contracts to the eight teachers. The court ordered the parties to proceed to arbitration, but found that the arbitrator did not have the authority to grant employment contracts. In granting the more restrictive relief sought by the board, the court allowed the arbitrator to determine only whether the board had complied with the evaluation procedures agreed upon.⁹

IEA and Board 508: The Appellate Court

The school board appealed the *IEA* decision, contending that by ordering the teacher's reinstatement the trial court had usurped the board's statutory grant of authority to hire and fire teachers. The appellate court, however, concluded that the issue was controlled by *Classroom Teachers Association v. Board of Education of United Township H.S. District No. 30*,¹⁰ and found that the procedures

probationary period of 2 consecutive school terms shall enter upon contractual continued service unless given written notice of dismissal stating the specific reason therefor, by registered mail by the employing board at least 60 days before the end of such period

8. Board 508 and the union had entered into a series of collective bargaining agreements, beginning in 1967 when the union was recognized as the exclusive bargaining agent for all of the board's full-time teachers. While the board and the union were negotiating the terms of a new contract, the agreement then in force expired on December 31, 1970. The union called a strike for January 5, 1971, and the board immediately sought an injunction in the Circuit Court of Cook County. Following this legal action, the board and the union began negotiations on a new collective bargaining agreement in open court, resulting in an agreement that was incorporated into the Circuit Court's Agreed Decree in late July 1971. Subsequent to the entry of the Agreed Decree, the board and the union invoked the court's jurisdiction to resolve matters of interpretation of the Agreed Decree. Abstract of Record, Bd. of Trustees of Jr. College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 22 Ill. App. 3d 1061, 318 N.E.2d 193 (1974).

9. Bd. of Trustees of Jr. College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 22 Ill. App. 3d 1060, 1062-64, 318 N.E.2d 193, 194-96 (1974).

10. 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973). The court found evaluation procedures,

established in the collective bargaining agreement did not restrict the board's statutory powers. The procedures were merely steps that the board had agreed to follow before exercising its non-delegable power to dismiss a teacher. Because the board had failed to comply with the contractual prerequisites in dismissing the teacher, the court found that he was entitled to tenure under the Illinois Teacher Tenure Act.¹¹ Since the teacher was not given proper notice at least 60 days prior to the end of his probationary period, the court decided that the statute granted him tenure automatically.¹²

In contrast, the union appealed the circuit court decision in *Board 508*. The appellate court, however, affirmed the lower court's decision, finding that:

There is . . . no question that an arbitrator is without authority to award positions of employment in the Junior Colleges of the State of Illinois. Under Section 3-26 of the Public Junior College Act the Board has the power to make appointments of all teachers¹³

In support of this conclusion, the court noted the collective bargaining agreement contained two provisions limiting the scope of arbitration with respect to the board's authority.¹⁴

The decisions in *IEA* and *Board 508* left the Appellate Court for the First District divided. Within a period of three months, the Third and Fourth Divisions of that district had rendered conflicting determinations on the limitations on a public employer to collectively bargain with its employees. These decisions, along with other appellate decisions on similar questions, made it clear that the Illinois lower courts were in a quandry over the scope of collective bargaining in the public sector.

which appeared to infringe on the school board's statutory duty to appoint and assign teachers, enforceable against the board.

11. See note 7 *supra*, for text of act.

12. 23 Ill. App. 3d 649, 661, 320 N.E.2d 240, 249 (1974).

13. 22 Ill. App. 3d at 1064, 318 N.E.2d at 196.

14. *Id.* at 1064, 318 N.E.2d at 196. Article II, Section G, of the agreement provided in pertinent part:

The Union recognizes that the Board retains full authority to carry out the power and duties granted to it by the Public Junior College Act and other applicable laws. Article X, "Grievance Procedure" stated that:

The arbitrator shall limit his decision strictly to the application and interpretation of this agreement and he shall be without power or authority to make any decision:

. . . .
(2) Limiting or interfering in any way with the powers, duties and responsibilities of the Board under applicable law.

The Appellate Court Conflict

Several years earlier, the Appellate Court for the Second District considered whether a board of education had the power, through a collective bargaining agreement, to delegate matters of discretion vested in the board by statute. In *Board of Education, School District No. 205 v. Rockford Education Association*,¹⁵ the board and the teachers' association entered into a collective bargaining agreement containing specific promotion procedures and providing for arbitration of all grievances arising under the agreement. An association member was recommended for a newly created administrative position by the superintendent of schools. When he did not get the position, he filed a grievance pursuant to the agreement.¹⁶ The board sought to enjoin the arbitration required under the contract. The board contended that to the extent the bargaining agreement relinquished the board's statutory power to select and promote employees to an arbitrator, it was unenforceable as a matter of law. The lower court agreed, finding that the board could not delegate its statutory power to appoint teachers through a collective bargaining agreement or otherwise.¹⁷ The appellate court affirmed, holding that discretionary powers vested in the board by statute were non-delegable and non-arbitrable.¹⁸

One year later, however, the Appellate Court for the Third District held that provisions in a collective bargaining agreement which appeared to limit a school board's statutory duty to appoint and assign teachers, were enforceable against the board. In *Classroom Teachers Association v. Board of Education of United Township H.S. District No. 30*,¹⁹ a teacher had filed suit to prevent her involuntary transfer from counselor to instructor. The collective bargaining agreement contained evaluation procedures, provisions for written review, and the opportunity for a hearing prior to any involuntary transfer. No written report had been made before the teacher was notified of the transfer. The board maintained that the evaluation and transfer procedures were null and void because they infringed on the board's absolute power to appoint and assign teachers.²⁰ Although the lower court ruled in the board's favor, the appellate court held the provisions in the agreement neither restricted the board's power to appoint teachers nor required the

15. 3 Ill. App. 3d 1090, 280 N.E.2d 286 (1972).

16. *Id.* at 1092, 280 N.E.2d at 287.

17. *Id.* at 1093, 280 N.E.2d at 287. ILL. REV. STAT. ch. 122, §§ 10-20, 10-20.7 (1975).

18. 3 Ill. App. 3d at 1094, 280 N.E.2d at 288.

19. 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973).

20. *Id.* at 227, 304 N.E.2d at 517.

board to delegate any statutory authority. The court noted that the procedures were merely steps, consistent with ordinary concepts of fairness, that the board had agreed to follow before exercising its statutory powers.²¹

The Appellate Court for the First District, Fifth Division, confronted the same issue in *Board of Education, South Stickney School District III v. Johnson*.²² The teacher filed a grievance pursuant to procedures contained in the collective bargaining agreement, challenging her involuntary transfer to another position. The board refused to arbitrate the matter, contending the assignment of teachers was specifically reserved to the board by statute. Both the lower court and the appellate court found that the grievance was non-arbitrable; the power of the board to appoint all teachers could not be limited by a collective bargaining agreement.²³ With the First and Third Districts already at odds over what constituted the non-delegable powers of a school board, the *IEA* and *Board 508* decisions created a further split within the divisions of a single district. The First District, Third Division, maintained the question in *IEA* was controlled by *Classroom Teachers Association v. Board of Education of United Township H.S. District No. 30*,²⁴ and found that the evaluation procedures in the collective bargaining agreement did not infringe upon the powers vested in the board by statute. On the other hand, in *Board 508*, the First District, Fourth Division, relied upon *Board of Education, School District No. 205 v. Rockford Education Association*.²⁵ In so doing, the court found the arbitrator did not have authority to award employment contracts to non-tenured faculty members pursuant to contract grievance procedures because employment of teachers was a non-delegable duty vested in the board by statute.

Recognizing this conflict among and within the appellate districts, the Illinois Supreme Court addressed this issue, adopting neither the *IEA* nor the *Board 508* approach. Instead the court chose an altogether different, and rather suprising, direction.

IEA and Board 508: The Illinois Supreme Court

The Illinois Supreme Court found the terms of the collective bargaining agreements in both *IEA* and *Board 508* unenforceable as a

21. *Id.* at 228, 304 N.E.2d at 519.

22. 21 Ill. App. 3d 482, 315 N.E.2d 634 (1974).

23. *Id.* at 492, 315 N.E.2d at 639. ILL. REV. STAT. ch. 122, § 10-20.7 (1975) provides: [school boards shall have the duty] to appoint all teachers and fix the amount of their salaries, subject to the limitations set forth in this Act.

24. 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973).

25. 3 Ill. App. 3d 1090, 280 N.E.2d 286 (1972).

matter of law. In *IEA*, the court considered only one issue on appeal: whether a termination in compliance with the Illinois Teacher Tenure Act,²⁶ was rendered invalid by the board's failure to comply with the collective bargaining procedures.²⁷ Noting the school board's absolute statutory duty to appoint and to terminate teachers, the court went on to strictly construe the provisions of the Teacher Tenure Act,²⁸ stating:

[N]either the powers conferred nor the rights granted by section 24-11 were restricted or expanded by the provisions of paragraph M of Appendix XXX to the collective bargaining agreement. The termination of [the teacher's] services having been effected in compliance with the provisions of section 24-11 was valid, and in ordering mandamus to issue the circuit court erred.²⁹

In effect, the court indicated that public bodies would not be bound by *any* provisions of the collective bargaining agreements, when the provisions are found to infringe upon or usurp *any* statutory powers vested in public bodies.

In *Board 508*, the supreme court considered the power of an arbitrator to award teaching contracts to non-tenured junior college teachers whose contracts were not renewed by the board. In dismissing the teachers, the board failed to obtain the prior advisory faculty evaluations and recommendations required under the collective bargaining agreement. While it was undisputed that no faculty evaluation had been made, the court noted that the agreement established a uniform procedure directing tenured faculty within a department to evaluate the non-tenured teachers and make non-binding recommendations regarding their future employment to the college president.³⁰ The court accepted the board's contention that

26. See note 7 *supra*.

27. 62 Ill. 2d at 130, 340 N.E.2d at 9. Appendix XXX to the collective bargaining agreement provided in pertinent part:

k. When any evaluation indicates the possibility that any teacher may not be recommended for continued employment, the teacher shall be so advised in writing with reasons and necessary improvements, if any, that may be required for this teacher to be recommended for continued employment.

.....

m. Discharge, demotion, or other involuntary change in the employment status of any teacher shall be preceded by:

1). The faithful execution of the evaluation procedures for the evaluation of classroom teaching performance and the honoring of all teachers' rights included in this agreement and applicable statutes.

28. *Id.* at 130, 340 N.E.2d at 9. The court strictly construed the Act's provisions because they created liability where none would otherwise exist.

29. *Id.* at 131, 340 N.E.2d at 9.

30. Additional Abstract of Record of Board of Trustees of Junior College District No. 508

even if these evaluations were made, they would be advisory only, and not binding on the board's final decision.³¹ The court believed that the *IEA* holding dictated the result in this case. Since the board's statutory authority to appoint teachers was non-delegable, the arbitrator lacked authority to award an employment contract for violation of the collective bargaining agreement procedure.³² Further, the court found the appellate court's decision that an arbitrator could require reevaluation in compliance with the procedures outlined in the bargaining agreement incompatible with its own opinion in *IEA*. Holding non-renewal of the teachers' contracts valid despite non-compliance with the agreed-upon evaluation procedures, the court stated, "[I]t is clear that the evaluation procedure is not enforceable against the Board."³³

THE IMPACT

The *IEA* and *Board 508* decisions mark the first time that the Illinois Supreme Court has considered the limitations on a public

as Appellee at 14-15, Bd. of Trustees of Jr. College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 22 Ill. App. 3d 1061, 318 N.E.2d 193 (1974). The relevant portions of Article VIII, Section J, provide:

Employment and Tenure Policy.

1. Initial employment and renewal of employment contract.

a. Recommendations on initial employment . . . and renewal of employment contracts on non-tenured faculty members shall be made by the eligible members of the department or a committee of their democratically chosen representatives. . . . However decisions concerning the recommendation of tenure contracts shall be made only by the tenured members of the department, except as provided for in c below.

b. The criteria for, and the procedures by which, recommendations on initial employment and the renewal of employment contracts are to be made shall be agreed upon by a majority of the eligible members of the department and shall be published in writing for the members of the department

c. Voting on candidates for renewal of contract other than tenure contracts shall be limited to those eligible members who have at least two semesters more continuous full-time service in the department than has the candidate except that all tenured members may vote on all candidates and only tenured members shall vote on the granting of tenure contracts. . . . Recommendations not to renew an employment contract will be by majority vote by secret ballot.

d. Such recommendations on initial employment and renewal of employment contracts and tenure contracts shall be forwarded in writing by the Department Chairman together with his views to the Campus Head. If the Campus Head does not accept the recommendation of the department, then he shall state his reasons in writing to the Department Chairman, who in turn shall inform the eligible members of the department.

31. Bd. of Trustees of Jr. College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 62 Ill. 2d 470, 475, 343 N.E.2d 473, 476 (1976).

32. *Id.* at 476, 343 N.E.2d at 476.

33. *Id.*

body's power to collectively bargain with its employees. In this court's previous decisions, the emphasis has been on the right of public employees to strike.³⁴ Although it has long been understood that public bodies cannot delegate their statutory powers,³⁵ it has been assumed that such bodies would be bound by any collective bargaining agreements that they chose to enter.³⁶ After *IEA* and *Board 508*, however, this assumption is suspect, if not altogether incorrect. It appears that these two decisions, when viewed with an earlier Illinois Supreme Court case, virtually strip public employees of any leverage at the collective bargaining table.

*City of Pana v. Crowe*³⁷

In this case, the Circuit Court of Christian County issued a permanent injunction restraining the employees of the Pana water, sewer, street, and police departments from striking. The Illinois Appellate Court reversed, finding that the Illinois Anti-Injunction Act³⁸ applied. The Illinois Supreme Court reinstated the circuit

34. See *City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513 (1974) (anti-injunction act is not applicable to strikes by public employees); *County of Peoria v. Benedict*, 47 Ill. 2d 166, 265 N.E.2d 141 (1970), *cert. denied*, 402 U.S. 929 (1971) (anti-injunction act is applicable to a strike by employees of a county-owned nursing home); *Bd. of Educ. v. Kankakee Fed'n. of Teachers*, 46 Ill. 2d 439, 264 N.E.2d 18 (1970), *cert. denied*, 403 U.S. 904 (1971) (strikes by school employees are an unlawful violation of public policy); *Bd. of Educ. of Community School Dist. No. 2 v. Redding*, 32 Ill. 2d 567, 207 N.E.2d 427 (1965) (strikes by school employees are prohibited by public policy).

35. *Anderson v. Bd. of Educ. of School Dist. No. 91*, 390 Ill. 412, 61 N.E.2d 562 (1945) (school board has statutory power to contract with whomever it desires); *Lindblad v. Bd. of Educ. of Normal School Dist.*, 221 Ill. 261, 77 N.E. 450 (1906) (school district could not delegate power to hire and fire teachers to a superintendent); *Bd. of Educ., S. Stickney School Dist. III v. Johnson*, 21 Ill. App. 3d 482, 315 N.E.2d 634 (1974) (power to transfer teachers cannot be delegated); *Bd. of Educ. of School Dist. No. 205 v. Rockford Educ. Ass'n.*, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (1972) (power to appoint teachers cannot be delegated); *Elder v. Bd. of Educ. of School Dist. No. 127 ½*, 60 Ill. App. 2d 56, 208 N.E.2d 423 (1965) (power to appoint teachers cannot be delegated); *Stroh v. Casner*, 201 Ill. App. 281 (1916) (power to appoint teachers cannot be delegated).

36. *Classroom Teachers Ass'n. v. Bd. of Educ. of United Township H.S. Dist. No. 30*, 15 Ill. App. 3d 224, 304 N.E.2d 516 (1973) (court held that the procedures outlines in the collective bargaining agreement did not limit the ultimate power of the board to make decisions, and for that reason the procedures were enforceable against the board as a matter of fundamental fairness); *Chicago Div. of Illinois Educ. Ass'n. v. Bd. of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (1966) (appellate court held that the board had the power and the right, but not the duty, to enter into a collective bargaining agreement with the Chicago Teachers Union as exclusive bargaining agent. The Supreme Court refused review, thus letting stand the notion that a public school board did not require legislative authority to enter into a collective bargaining agreement with its employees).

37. 57 Ill. 2d 547, 316 N.E.2d 513 (1974). For an excellent discussion of the case see Comment, *Labor Law—The Illinois Anti-Injunction Act Is Not Applicable To Strikes by Public Sector Employees and Such Strikes Are Illegal Per Se—City of Pana v. Crowe*, 6 Loy. Chi. L.J. 187 (1975).

38. ILL. REV. STAT. ch. 48, § 2a (1973). The statute provides in relevant part:

court decision holding that the Anti-Injunction Act was not applicable to an unlawful strike by public employees. The court found no reason to

depart in this case from the long-standing rule that public employees have no right to strike and that a strike by them is unlawful and therefore not within the scope of the anti-injunction act.³⁹

Pana resolved the lower court conflict which followed earlier supreme court decisions,⁴⁰ and established that all strikes by public employees are illegal in Illinois. In effect, this decision made a "no-strike" provision present in public sector collective bargaining agreements a mere formality rather than a bargained-for contract term. Still, the overall impact of *Pana* in the public sector has been slight. Because the *Pana* court was concerned only with what the union could or could not do, it did not consider issues outside of or beyond the union's control. The union in *Pana* could ignore the court's decision and, in fact, did.⁴¹ Other public employees' unions and associations throughout Illinois have been similarly unimpressed with *Pana*, as evidenced by the still significant number of strikes involving public employees since the decision.⁴²

In fact, strikes by public employees have been illegal since 1925,⁴³ but the number of such strikes in Illinois remains high, *Pana* notwithstanding. While the law provides the public employer a remedy,

No restraining order or injunction shall be granted by any court of this State, or by a judge or the judges thereof in any case involving or growing out of a dispute concerning terms or conditions of employment, enjoining or restraining any person or persons, either singly or in concert, from terminating any relation of employment or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising or persuading others to do so

39. 57 Ill. 2d at 552, 316 N.E.2d at 515.

40. In two earlier decisions the court had held the anti-injunction act applicable to a strike by the employees of a county-owned nursing home, *County of Peoria v. Benedict*, 47 Ill. 2d 166, 265 N.E.2d 141 (1970), *cert. denied*, 402 U.S. 929 (1971); and to a strike by the employees of a not-for-profit hospital, *Peters v. S. Chicago Community Hosp.*, 44 Ill. 2d 22, 253 N.E.2d 375 (1969).

41. The work stoppage continued until negotiators worked out a collective bargaining agreement between the city and its employees.

42. Statistics supplied by the U.S. Department of Labor, Bureau of Labor Statistics indicate that Illinois suffered 29 work stoppages idling 8,800 workers in 1972, 32 work stoppages idling 28,900 workers in 1973, and 26 work stoppages idling 4,500 workers in 1974. The number of workers idled in 1973 was significantly higher only because of the Chicago Teachers Union strike in January 1973 idling between 11,000 and 14,000 teachers. The total number of work stoppages in 1974 was six less than in 1973 but was still significant. Even after *Pana* Illinois registered the fifth highest number of strikes in the United States. U.S. DEP'T. OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1972, REPORT 434, at 7 (1974). U.S. DEP'T. OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1973, REPORT 437, at 7 (1975), and U.S. DEP'T. OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1974, REPORT 453, at 7 (1976).

43. Annot., 37 A.L.R.3d 1147 (1971).

few public bodies in a labor-oriented state like Illinois seek injunctions against illegal public employees' strikes.⁴⁴ For this reason, the strike still remains the unions' most effective weapon to force concessions from the public employer at the bargaining table.

Public employees contend that the right to strike is an absolute necessity. Without such power, public employees' representatives would have little leverage at the bargaining table. They would have few concessions to offer in the give-and-take of collective bargaining. Without the right to strike, the bargaining representatives would have only one choice—acceptance of the employer's last offer. The unions and associations would be left with no bargaining power to extract concessions and benefits for their members. In the absence of any comprehensive legislation and despite the illegality of strikes in the public sector,⁴⁵ a typical collective bargaining agreement between a public employer and employees still contains a no-strike provision.⁴⁶ Employees' bargaining representatives, normally give a no-strike pledge in exchange for concessions and benefits for union members. When that agreement expires, the representative will often use the threat of a work stoppage to elicit an even more favorable agreement. Given the repeated success of this approach, it is not suprising that public employees' unions and associations have been reluctant to accept a statutory prohibition on the right to strike.

After IEA and Board 508

In *IEA* and *Board 508* the court was asked, for the first time, to consider what the public *employer* can and cannot do in collective

44. See Goldstein, note 3 *supra*; and Miller, note 3 *supra*. It is not economically feasible to have mass firings when public employees strike, nor is it politically sound to enjoin strikes in a state where a large percentage of the electorate are union members. Board 508, however, has sought injunctions against the college teachers union on two occasions. The union ignored the injunctions in both August, 1966 and August, 1975; union president Norman Swenson was cited for contempt on both occasions. Chicago Tribune, Sept. 10, 1975, § 1, at 1, col. 6.

45. See *City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513 (1974); *Bd. of Educ. of Community School Dist. No. 2 v. Redding*, 32 Ill. 2d 567, 207 N.E.2d 427 (1965).

46. See note 30 *supra*. The Agreement between Board 508 and the union provides:

ARTICLE XIII—NO STRIKE PLEDGE

The Union and the Board subscribe to the principle that any and all differences shall be resolved by peaceful and appropriate means without interruption of the College program. The Union therefore agrees that it will not instigate, engage in, support, encourage, or condone any strike, work stoppage, or other concerted refusal to perform work by the faculty members covered by this Agreement. Differences between the parties concerning the meaning, interpretation or application of this Agreement shall be resolved by utilization of the Grievance Procedure set forth in Article X hereof or by other lawful and peaceful means available under the law of Illinois.

bargaining—an issue completely outside union control. Because these decisions shift the emphasis in collective bargaining from the actions of the union to the authority of the public employer, they should have significant impact on public employee organizations. As envisioned by one commentator,⁴⁷ these decisions lead to the very real possibility that public employers may not feel obligated to comply with the terms of their collective bargaining agreements.

While *Pana* has had little practical effect in the area, *IEA* and *Board 508* could radically change the collective bargaining climate in Illinois. The public employer, intent on avoiding a strike by his employees, can submit to their terms at the bargaining table. While appearing to bargain in good faith, he can elicit concessions from the employees' representatives in exchange for each term by which he agrees to be bound. This supposed agreement covering employment procedures, wage scales, working conditions, fringe benefits and grievance procedures providing for compulsory arbitration of all disputes, can be drawn up and signed by both parties, and ratified by the union. Then, claiming the terms include non-delegable statutory powers, the employer can go into court at some future time to void the agreement. The union representatives will never know, as they sit across the bargaining table and make their concessions, what, if anything, they are gaining for their members. The politically aware and legally astute public employer will realize that after *IEA* and *Board 508*, almost nothing conceded at the bargaining table can be enforced against the public employer in the absence of a statute; therefore, almost all concessions made in the collective bargaining process can be avoided through later court action.⁴⁸

Possibility: The Passage of an Act

Once the impact of the *IEA* and *Board 508* decisions is appreciated, a well-drafted public employee labor relations act may have an excellent chance of passing both houses of the Illinois General Assembly and reaching the governor's desk, for the first time since

47. See Edwards, *supra* note 3, at 927-28:

Good faith bargaining cannot thrive when public employers are led to believe that they may escape consequences of a bad bargain by postnegotiations court challenge on grounds that the disputed contract was ultra vires. In such an atmosphere, the employer may be tempted to choose the easy path of agreeing to contract provisions with which it cannot comply and which it has no intention of honoring.

48. For example, it is clear after *Bd. of Educ. v. Rockford Educ. Ass'n.*, 3 Ill. App. 3d 1090, 280 N.E.2d 286 (1972), that matters of educational policy are not negotiable in the absence of enabling legislation. But what is included under educational policy? Is class size? Boards of Education say yes; teachers say no, it is a working condition. See Note, *Teacher Negotiations in Illinois: Current Status and Proposed Reforms*, 1973 U. ILL. L.F. 307.

1945.⁴⁹ It seems clear that after these two decisions, public employees' labor organizations will feel a need for such legislation to protect their own interests. In the past, their opposition to proposed forms of public sector legislation made passage impossible.⁵⁰

At one time public employees' labor organizations strongly favored passage of comprehensive public employee labor relations legislation, believing that such legislative authority was necessary to organize public employees. Since that time, however, court determinations have given employees the right to organize⁵¹ and public employers the right to recognize and bargain with such employee organizations.⁵² With the one obstacle to organization removed without legislative action, the mood of public employees' unions and associations toward comprehensive legislation began to change. A graphic example of this change in attitude was the American Federation of Teachers' (AFT) actions in the aftermath of the Kerner Report.⁵³ The AFT had been one of the labor groups originally voicing support for legislation, even legislation containing a strike prohibition, that would provide for public sector collective bargaining. During the course of the legislative session, however, the AFT's attitude changed. AFT chapters in Chicago (Chicago Teachers Union) and in other large cities throughout the country were making impressive gains at the bargaining table through use of the strike and the strike threat. Although public employee strikes were and still are illegal in Illinois, the Chicago Teachers Union had used the threat of a work stoppage to gain a new agreement with the Chicago

49. The first public employee labor relations bill was introduced in the Illinois General Assembly during the 1945 session (S.B. 427). The bill reached the governor's desk, but was vetoed by Governor Dwight H. Green on July 26, 1945. No bill introduced since that time has ever passed both the Senate and the House. As recently as July 1, 1976, during the special appropriations session of the General Assembly, an effort was made to bring a collective bargaining bill to a vote on the floor of the House. The bill was designed to cover the costs of collective bargaining agreements reached under terms of Executive Order No. 6 issued by Gov. Dan Walker September 4, 1973. The Senate took the position that a contract with a public employees' union was not binding on the legislature unless the General Assembly was included in the bargaining process. See ILLINOIS ISSUES, August, 1976, *The State of the State*, at 24, col. 1-2.

50. See Derber, note 3 *supra*, for an excellent discussion of how the opposition of public employees' labor organizations helped to defeat the legislation growing out of the KERNER REPORT.

51. See *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968) (the court held that public employees have First Amendment rights to join and form unions).

52. *Chicago Div. of Illinois Educ. Ass'n. v. Bd. of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (1966). The appellate court held that the board had the power and right, but not the duty, to collectively bargain. *But see* *Lewallen v. Indianapolis Educ. Ass'n.*, 72 L.R.R.M. 2071 (7th Cir. 1969). However it must be noted that Indiana is not a labor oriented state like Illinois. Few public bodies have sought such a ruling in this state.

53. See KERNER REPORT, note 3 *supra*.

Board of Education. The Cook County College Teachers Union had used similar tactics to force a settlement with the Cook County Junior College Board.⁵⁴ Consequently, the AFT became a vigorous opponent of the governor's bill with its mandatory no-strike provision.⁵⁵ Other public employees' unions and associations, with experiences similar to AFT's, felt the same way about a bill with a no-strike provision and helped to defeat the legislation.⁵⁶ The strike/no-strike issue became, and remains, the major stumbling block to passage of comprehensive labor legislation for the public sector.

Labor leaders argue that the absence of the strike weapon in the public sector reduces collective bargaining to collective begging.⁵⁷ Such a feeling was expressed by the union in *Board 508*:

It is obvious that any decision which leaves fundamental provisions of the collective bargaining agreement dealing with basic issues of employment effectively unenforceable, while still asserting employment of severe penalties for peaceful work stoppages to obtain employment contracts, will render public sector collective bargaining relations in a shambles.⁵⁸

Massive union opposition to no-strike provisions has helped to defeat bill after bill in session after session of the Illinois General Assembly.⁵⁹ Public employees' unions and associations have found no collective bargaining legislation preferable to an act that places any limitation on the public employees' right to strike.

The past, and present, focus on the strike/no-strike issue is really an exercise in abstractions. The laws of this state have always forbidden the use of the strike in the public sector; yet, public employees continue to strike. One need only observe the semi-annual work stoppage by the Chicago teachers to realize how meaningless the judicial prohibitions have been.⁶⁰ While it is true there is a remedy for illegal strikes—the injunction—few public bodies will invite the wrath of their organized labor constituency by seeking to enjoin a

54. Pursuant to ILL. REV. STAT. ch. 122, § 1-1 *et seq.* (1975), the Cook County Junior College Board became the Board of Trustees of Junior College District No. 508.

55. See Derber, note 3 *supra*, at 552-53.

56. *Id.* at 556-57.

57. See Edwards, note 3 *supra*, at 892.

58. Brief of the Cook County College Teachers Union as Appellant at 40, Bd. of Trustees of Junior College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 22 Ill. App. 3d 1060, 318 N.E.2d 193 (1974).

59. See Edwards, *supra* note 3; Goldstein, *supra* note 3; Kiley, *supra* note 3; Shaw and Clark, *supra* note 3; Clark, *supra* note 3; Miller, *supra* note 3; and Derber, *supra* note 3.

60. See Chicago Tribune, May 22, 1969, § 1 at 1, col. 1; Chicago Tribune, Jan. 12, 1971, § 1 at 1, col. 5; Chicago Tribune, Jan. 10, 1973, § 1 at 1, col. 1; and Chicago Tribune, Sept. 3, 1975, § 1 at 1, col. 5.

strike.⁶¹ By court decree, no one except the state or the public body affected have standing to seek injunctive relief from a strike in the public sector.⁶²

After *IEA* and *Board 508*, the focus in the public sector may shift from the no-strike controversy to a new issue—the *enforceability* of a collective bargaining agreement. Until now, it has always been assumed that a public sector collective bargaining agreement, like all other collective bargaining agreements, was sacrosanct—no more. *IEA* and *Board 508* may mean that public bodies in Illinois are bound by few, if any, terms of an agreement that infringe upon their statutory powers. The boards in these cases were not bound by the evaluation procedures that they had agreed to follow before dismissing teachers, because the School Code⁶³ and the Public Junior College Act⁶⁴ grant the public bodies the absolute statutory power to hire and fire personnel. Arguably, the boards could not be bound by wage agreements either, since the same acts give them absolute power to fix salaries and set wage schedules.⁶⁵ With the enforceability of their collective bargaining agreements highly questionable after *IEA* and *Board 508*, public employees' unions and associations should be ready to seek the protection of their interests through enactment of comprehensive legislation.

CONCLUSION

Public employees' unions and associations may now be ready to accept an act which prohibits strikes, or contains a less than absolute right to strike, in order to guarantee enforceability of their collective bargaining agreements. Unions will likely ignore whatever a statute may say about work stoppages; just as they have continued to ignore judicial pronouncements. Looking to other states that have enacted comprehensive legislation, it appears that a no-strike provision in a statute is no guarantee against a work stoppage in the public sector.⁶⁶ Illinois labor organizations should accept an act to

61. See note 44 *supra* for notable exceptions.

62. *Allen v. Maurer*, 6 Ill. App. 3d 633, 286 N.E.2d 135 (1972).

63. ILL. REV. STAT. ch. 122, §§ 1-1 *et seq.* (1975).

64. ILL. REV. STAT. ch. 122, §§ 101-1 *et seq.* (1975).

65. This assertion seems valid in the aftermath of the Chicago Board of Education's actions in closing the public schools 16 days early, despite a collective bargaining agreement with the Chicago Teachers Union guaranteeing 39 weeks salary, when the board ran out of funds. Although the union has threatened to take legal action, it had not done so by October 1976. It appears that the present state of the law supports the actions of the board and would preclude relief to the union. (Chicago Tribune, June 3, 1976, § 1 at 1, col. 2.).

66. The Taylor Act in New York is generally recognized as a strict no-strike statute, and yet the state has suffered through 27 work stoppages idling 22,600 workers in 1972, 16 work stoppages idling 3,000 workers in 1973, and 18 work stoppages idling 9,600 workers in 1974.

ensure that the public employer will be obligated to comply with agreed upon terms concerning wage scales, fringe benefits, working conditions, and evaluation procedures. More importantly perhaps, the unions and associations will accept an act which gives the public employer the *right* to agree to a formal grievance procedure with provisions for binding arbitration of all disputes arising under the terms of the collective bargaining agreement. If such a statute were presently in effect in Illinois, *IEA* and *Board 508* could not have been decided as they were. The court could not have found that "[a] termination in compliance with the statute was valid notwithstanding a failure to comply with the evaluation provisions of the collective bargaining agreement."⁶⁷ The supreme court would have been obligated to order the school boards to comply with the evaluation procedures in the collective bargaining agreement under a comprehensive public employee labor relations act.

Although much criticism has been leveled at the courts of this state for their past indecision in the public employee labor relations area, the supreme court's decisions in *IEA* and *Board 508* are graphic examples of the judicial process in action. The court has not retreated from its refusal to fill a gap created by legislative inaction; it has, instead, so completely dismembered the concept of collective bargaining in the public sector that the legislature will be forced to act. These two decisions should ensure that public employees' unions and associations will now work together with the General Assembly to pass comprehensive legislation to govern collective bargaining in the public sector.

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U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1972, REPORT 434, at 7 (1974), U.S. DEP'T. OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1973, REPORT 437, at 7 (1975) and U.S. DEP'T. OF LABOR, BUREAU OF LABOR STATISTICS, WORK STOPPAGES IN GOVERNMENT, 1974, REPORT 453, at 7 (1976).

67. Bd. of Jr. College Dist. No. 508 v. Cook County College Teachers Union, Local 1600, 62 Ill. 2d 470, 476, 343 N.E.2d 473, 476 (1976).