

CALIFORNIA PUBLIC EMPLOYEES GRANTED RIGHT TO STRIKE
WITHOUT LEGISLATIVE AUTHORIZATION

County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660, 699 P.2d 835,
214 Cal. Rptr. 424 (1985)

In *County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660*,¹ the California Supreme Court granted public employees the right to strike, disregarding precedent from its own and other jurisdictions.²

Plaintiff, the Los Angeles Sanitation District, obtained a temporary restraining order enjoining a strike by its employees.³ The employees, members of the defendant union, violated the order and the plaintiff sued for tort damages.⁴ The trial court held the strike unlawful and awarded damages.⁵ On appeal, the California Supreme Court reversed and *held*: Public employee strikes are not unlawful at common law unless the strike creates a substantial and imminent threat to public health and safety.⁶

Traditionally, courts have refused to grant public employees the right to strike against their employers,⁷ citing four policy arguments in support

1. 699 P.2d 835, 214 Cal. Rptr. 424 (1985).

2. See *infra* notes 7-11 & 27-33 and accompanying text.

3. Plaintiff, the Los Angeles Sanitation District, provides, operates, and maintains sewage transport and treatment facilities and landfill disposal sites throughout the county. Defendant union, Local 660, is the certified bargaining representative of the Los Angeles Sanitation District blue collar employees. Each year, the District and the union bargain for wage, hour, and working condition agreements pursuant to the Meyers-Milias-Brown Act (MMBA), CAL. GOV'T CODE §§ 3500-3511 (Deering 1982). 699 P.2d at 837, 214 Cal. Rptr. at 426.

4. District employees went on an eleven-day strike in violation of the temporary restraining order after contract negotiations between the District and the union reached an impasse. *Id.*

5. The court awarded \$246,904 in compensatory damages, \$87,615.22 in prejudgment interest, and \$874.65 in costs. *Id.*

6. *Id.* at 854, 214 Cal. Rptr. at 442. See also *infra* note 47 (describing the court's standard for determining which strikes pose an imminent threat to public health and safety). See generally Note, *Collective Bargaining Under the Meyers-Milias-Brown Act—Should Local Public Employees Have the Right to Strike?*, 35 HASTINGS L.J. 523, 525 n.15 (1984) (citing defendant's petition for hearing).

7. The Supreme Court first recognized a federal public employee strike prohibition in *United States v. United Mine Workers*, 330 U.S. 258 (1947). Many state courts applied this prohibition to state and local employees. See, e.g., *Norwalk Teachers Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951); see also *City of San Diego v. American Fed'n of State, County & Mun. Employees*, 8 Cal. App. 3d 308, 311, 87 Cal. Rptr. 258, 260 (1970) (citing cases from 24 jurisdictions); Annot., 37 A.L.R.3d 1147 (1971) (listing cases by state).

The federal government and many states also statutorily deny public employees the right to strike. See, e.g., 5 U.S.C. § 7311 (1982) (forbidding an individual from holding a federal position if he

of their position. First, public employer strikes would undermine governmental authority.⁸ Second, government employers would not respond to strike pressure because the legislature sets employment terms.⁹ Third, because public services are essential, employers would make excessive concessions to avoid a strike.¹⁰ Finally, interruptions in essential public services would threaten the public welfare.¹¹

At least nine state legislatures have enacted statutory exceptions to the common-law rule that permit public employee strikes in certain situations.¹² These statutes use various methods to determine when a strike is permissible. Some statutes prohibit the union from striking during the terms of a valid collective bargaining agreement.¹³ Most statutes require that a certified bargaining representative represent employees.¹⁴ Some statutes require the parties to exhaust resolution procedures prior to striking.¹⁵ In addition, most state statutes prohibit strikes by employees whose absence would endanger the public health, safety, and welfare.¹⁶

participates in a strike); N.Y. CIV. SERV. LAW § 210 (Consol. 1983) (prohibiting all public employees and employee organizations from striking).

8. See *infra* note 38 and accompanying text.

9. See *infra* note 41 and accompanying text.

10. See *infra* note 43 and accompanying text.

11. See *infra* note 36 and accompanying text.

12. See ALASKA STAT. § 23.40.200 (1984); HAWAII REV. STAT. § 89-12 (1976 & Supp. 1984); ILL. ANN. STAT. ch. 48, §§ 1617-1618 (Smith-Hurd Supp. 1985); MINN. STAT. ANN. § 179A.18 (West Supp. 1985); MONT. CODE ANN. § 39-31-201 (1984); OR. REV. STAT. § 243.726 (1983); PA. STAT. ANN. tit. 43, § 1101.1001 (Purdon Supp. 1984); VT. STAT. ANN. tit. 21, § 1730 (1978); WIS. STAT. ANN. § 111.70(4)(cm)(6)(c) (West Supp. 1984).

13. See ILL. ANN. STAT. ch. 48, § 1617(a)(2) (Smith-Hurd Supp. 1985); MINN. STAT. ANN. § 179A.18, subd. 1(1)(a) (West Supp. 1985).

14. See HAWAII REV. STAT. § 89-12(a)(1) (1976 & Supp. 1984); ILL. ANN. STAT. ch. 48, § 1617(a)(1) (Smith-Hurd Supp. 1985); MINN. STAT. ANN. § 179A.18 subd. 1(1)(b) (West Supp. 1985); OR. REV. STAT. § 243.726(1) (1983).

15. See ALASKA STAT. § 23.40.200(c) (1984) (requiring mediation for employees whose services may be interrupted for a limited time); HAWAII REV. STAT. § 89-12(b) (1976 & Supp. 1984) (requiring mediation, fact-finding, and arbitration); ILL. ANN. STAT. ch. 48, § 1617(a)(4) (Smith-Hurd Supp. 1985) (requiring mediation or conciliation); MINN. STAT. ANN. § 179A.18 subd. 1(1)(b) (West Supp. 1985) (requiring mediation for at least 45 days); OR. REV. STAT. § 243.726(2)(a) (1983) (requiring mediation and fact-finding); PA. STAT. ANN. tit. 43, § 1101.1003 (Purdon Supp. 1984) (requiring mediation); WIS. STAT. ANN. 111.70(4)(cm)(6)(c) (West Supp. 1984) (requiring mediation and arbitration).

16. See ALASKA STAT. § 23.40.200(b) (1984) (prohibiting police, fire, and correctional facility employees from striking); HAWAII REV. STAT. § 89-12(a)(3) (1976 & Supp. 1984) (prohibiting "essential" employees from striking); ILL. ANN. STAT. ch. 48, § 1617(a) (Smith-Hurd Supp. 1985) (prohibiting security employees, state peace officers, and state firefighters from striking); MINN. STAT. ANN. § 179A.18 (West Supp. 1985) (prohibiting confidential, essential, and managerial employees from striking); OR. REV. STAT. § 243.736 (1983) (prohibiting police officers, firefighters, and

The specificity of the state legislation varies. The Illinois statute, for example, details the class of employees entitled to strike, the prerequisites for permissible strikes, and the procedures for employer petitions for judicial relief.¹⁷ The Montana statute, on the other hand, broadly authorizes "concerted [bargaining] activities,"¹⁸ which the Montana Supreme Court has interpreted to include a right to strike.¹⁹

In states that have refused to recognize a public employee right to strike, the courts have generally held that the legislature is the appropriate vehicle for such a change. In *Port of Seattle v. International Longshoremen's & Warehousemen's Union*,²⁰ the Washington Supreme Court refused to overturn the common-law rule prohibiting public employee strikes, although it conceded justification for such a change.²¹ The court rejected the proposed modification, reasoning that the legislature is better equipped to evaluate policy issues and to determine the effects of a strike on public health and safety.²²

Similarly, the New Jersey Superior Court sympathized with arguments allowing public employee strikes, but upheld the common-law prohibition.²³ The court reasoned that the legislature should determine when the public interest dictated a change.²⁴ Likewise, the Idaho Supreme

guards at correctional or mental institutions from striking); PA. STAT. ANN. tit. 43, §§ 1101.1001 & 1101.301(2) (Purdon Supp. 1984) (prohibiting prison and mental hospital guards, court employees, elected officials, Governor's appointees, clergy, police officers and firefighters from striking); VT. STAT. ANN. tit. 21, § 1730 (1978) (prohibiting strikes that would endanger the public health, safety, or welfare); WIS. STAT. ANN. § 111.70(1)(nm) (West Supp. 1984) (prohibiting firefighters and law enforcement personnel from striking).

17. ILL. ANN. STAT. ch. 48, §§ 1617-1618 (Smith-Hurd Supp. 1985).

18. MONT. CODE ANN. § 39-31-201 (1983).

19. See *State ex rel. Dep't of Highways v. Public Employees Craft Council*, 165 Mont. 349, 352, 529 P.2d 785, 788 (1974). Although Montana public employees have a general right to strike, a state statute prohibits public health care facility employees from striking if another strike is occurring at a facility within a 150-mile radius. MONT. CODE ANN. § 39-32-110 (1985). In addition, firefighters may not strike during the negotiation or arbitration of an employment contract. *Id.* § 39-34-105.

20. 52 Wash. 2d 317, 324 P.2d 1099 (1958).

21. *Id.* at 322, 324 P.2d at 1103. After reviewing the public health and safety justification for the common-law rule, the court recognized that not all municipal functions are related to public health and safety, such as municipal parks, pools, and museums. *Id.*

22. *Id.* The court believed that by determining the effect of a strike for each municipal function, the legislature could more appropriately determine the public interest in social regulation and control. *Id.*

23. *Board of Educ. v. Sussex County Vocational-Technical Teachers Educ. Ass'n*, 170 N.J. Super. 426, 430, 406 A.2d 989, 991 (1979).

24. *Id.* at 431, 406 A.2d at 992. The court stated that the state supreme court and the legislature were responsible for the rule prohibiting public school teacher strikes. The court noted, however, that only the legislature had the right to change the rule. *Id.* at 430-31, 406 A.2d at 991-92.

Court found that the legislature had made a policy decision by not expressly providing for the right to strike in its labor statute.²⁵ Thus, the court held that the common law would control until statutorily abrogated.²⁶

Until recently, California courts have adhered to the common-law rule.²⁷ In *Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen*,²⁸ the California Supreme Court held that state transit employees had a *statutory* right to strike.²⁹ The court stated in dictum, however, that in the absence of legislative authorization, public employees did not have the right to strike.³⁰

Citing this dictum, California appellate courts consistently disallowed public employee strikes absent authorizing legislation.³¹ The California Supreme Court repeatedly avoided deciding the issue,³² although the court protected striking unions from harsh sanctions.³³

25. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 489, 567 P.2d 830, 834-35 (1977). The Idaho Professional Negotiations Act does not refer to the teachers' right to strike, but the statute expressly prohibits strikes by firefighters. See IDAHO CODE § 44-1811 (1981). The court rejected appellant's argument that the legislature intended to permit other employee strikes. The court stated that if the legislature had intended that result, the legislature would have expressly provided for such strikes. 98 Idaho at 489, 567 P.2d at 833.

26. 98 Idaho at 489, 567 P.2d at 833. See IDAHO CODE § 73-116 (1981) (the common law is the rule of decision in all cases not provided for by statutory law).

27. See, e.g., *City of Los Angeles v. Los Angeles Bldg. & Constr. Trades Council*, 94 Cal. App. 2d 36, 210 P.2d 305 (1949). The court held that the city had no legal duty to collectively bargain with its employees. In addition, the city employees could not lawfully strike or picket to enforce their demands. The court stated that such action would constitute government by contract instead of government by law and would be inconsistent with the city charter that set the terms for city employees. The court also cited various forms of the government sovereignty justification. *Id.* at 44-46, 210 P.2d at 311-12.

28. 54 Cal. 2d 684, 355 P.2d 905, 8 Cal. Rptr. 1 (1960).

29. See CAL. PUB. UTIL. CODE § 30755 (Deering 1970). The statute granted employees the right to engage in "concerted activities" for the purpose of collective bargaining. *Id.*

30. 54 Cal. 2d at 687, 355 P.2d at 906, 8 Cal. Rptr. at 2.

31. See, e.g., *Almond v. County of Sacramento*, 276 Cal. App. 2d 32, 80 Cal. Rptr. 518 (1969). Striking employees were governed by the MMBA, CAL. GOV'T CODE §§ 3500-3510 (Deering 1982). Because nothing in the MMBA authorized public employee strikes, the court held the strike unlawful. 276 Cal. App. 2d at 27, 80 Cal. Rptr. at 532. See also *Pasadena Unified School Dist. v. Pasadena Fed'n of Teachers*, 72 Cal. App. 3d 100, 140 Cal. Rptr. 41 (1977); *Trustees of Cal. State College v. Local 1352, San Francisco State College Fed'n of Teachers*, 13 Cal. App. 3d 863, 92 Cal. Rptr. 134 (1970); Note, *supra* note 6, at 524 nn.7-8 (collecting California cases following the common-law rule).

32. See, e.g., *City and County of San Francisco v. Cooper*, 13 Cal. 3d 898, 534 P.2d 403, 120 Cal. Rptr. 707 (1975); *In re Berry*, 68 Cal. 2d 137, 436 P.2d 273, 65 Cal. Rptr. 273 (1968).

33. See Comment, *Public Employee Strikes: Legalization Through the Elimination of Remedies*, 72 CALIF. L. REV. 629 (1984) (arguing that the court, in effect, legalized public employee strikes by

In *County Sanitation District No. 2*,³⁴ the California Supreme Court reversed the trend created by its prior dictum and established a common-law right to strike for public employees.³⁵ The court examined the four policy arguments previously relied on by courts to disallow public employee strikes.³⁶ The court concluded that under modern socioeconomic conditions, three of the four policy concerns no longer justified restricting public employee strikes.³⁷

First, the court rejected the argument that strikes would undermine governmental authority. The court found this argument,³⁸ premised on the notion that "the King can do no wrong," outdated and vague.³⁹ Because the government now provides many services not traditionally associated with the sovereign, this justification was inconsistent with modern reality.⁴⁰

Second, the court rejected the assertion that government employers

not providing employers with remedies against striking employees); see also *San Diego Teachers Ass'n v. Superior Court*, 24 Cal. 3d 1, 593 P.2d 838, 154 Cal. Rptr. 893 (1979) (setting aside trial court's strike injunction because the Public Employees Relations Board had exclusive jurisdiction to determine what remedies to pursue).

34. 699 P.2d 835, 214 Cal. Rptr. 424 (1985).

35. *Id.* at 849, 214 Cal. Rptr. at 438. The employer argued that the MMBA, CAL. GOV'T CODE §§ 3500-3510 (Deering 1982), should be construed as a general strike prohibition. 699 P.2d at 840, 214 Cal. Rptr. at 429. The MMBA governs municipal employee bargaining rights. *Id.* § 3505. The MMBA does not expressly grant or deny the right to strike. The court concluded that the legislature intentionally avoided provisions granting or prohibiting the right to strike. 699 P.2d at 841, 214 Cal. Rptr. at 430. For a detailed analysis of the MMBA, see Grodin, *Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts*, 23 HASTINGS L.J. 719 (1972); see also Note, *supra* note 6.

36. See text accompanying *supra* notes 8-11. There are many variations of these four policy considerations. For further discussion of the various policy arguments for and against the right to strike, see H. WELLINGTON & R. WINTER, JR., *THE UNION AND THE CITIES* (1971); Bernstein, *Alternatives to the Strike in Public Labor Relations*, 85 HARV. L. REV. 459 (1971); Burton & Krider, *The Role and Consequences of Strikes by Public Employees*, 79 YALE L.J. 418 (1970); Hanslowe & Acierno, *The Law and Theory of Strikes By Government Employees*, 67 CORNELL L. REV. 1055 (1982); Wellington & Winter, *More on Strikes by Public Employees*, 79 YALE L.J. 441 (1970); Wellington & Winter, *The Limits of Collective Bargaining in Public Employment*, 78 YALE L.J. 1107 (1969); see also 699 P.2d at 841, 214 Cal. Rptr. at 430 n.18 (citing additional authorities).

37. 699 P.2d at 846, 214 Cal. Rptr. at 435.

38. See *Norwalk Teachers Ass'n v. Board of Educ.*, 138 Conn. 269, 83 A.2d 482 (1951) (relying on the authority/sovereignty rationale); *Board of Educ. of Community Unit School Dist. v. Redding*, 32 Ill. 2d 567, 207 N.E.2d 427 (1965) (same); *City of Manchester v. Manchester Teachers Guild*, 100 N.H. 507, 131 A.2d 59 (1957) (same).

39. 699 P.2d at 842, 214 Cal. Rptr. at 431.

40. *Id.* The California Supreme Court first rejected the sovereignty argument in *Muskopf v. Corning Hosp. Dist.*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961) (the rationale is "an anachronism without rational basis").

would be unable to respond to strike pressure because the legislature sets employment terms.⁴¹ The court noted that statutes granting collective bargaining rights to government employees terminated the legislature's exclusive role in setting public employment terms.⁴²

Third, the court rejected the policy argument that because public services are essential, employers would make excessive concessions to avoid a strike.⁴³ The court simply noted that many government services are nonessential. In addition, other economic factors limit the bargaining power of striking employees.⁴⁴

In examining the fourth policy consideration, the concern for public welfare, the court distinguished between "essential" and "nonessential" public services.⁴⁵ The court held government employers could prohibit strikes by employees providing "truly essential services"—principally police officers and firefighters.⁴⁶ However, government employers could not prohibit strikes by employees providing nonessential services, such as the *County Sanitation District No. 2* sanitation workers, unless the employer established that the strike created "a substantial and imminent threat to the health or safety of the public."⁴⁷

41. 699 P.2d at 843, 214 Cal. Rptr. at 432. This theory states that because the legislature sets the terms of public employment, public employers are powerless to respond to strike pressures. *See City of San Diego v. American Fed'n of State, County & Mun. Employees*, 8 Cal. App. 3d 308, 87 Cal. Rptr. 258 (1970); *City of Los Angeles v. Los Angeles Bldg. & Constr. Trades Council*, 94 Cal. App. 2d 36, 210 P.2d 305 (1949).

42. 699 P.2d at 843, 214 Cal. Rptr. at 432.

43. *Id.* This argument is based on the belief that public demand for these services would force employers to make abnormally large concessions to workers, resulting in higher taxes and a redistribution of resources among government services. For further explanation of this theory, see H. WELINGTON & R. WINTER, JR., *THE UNIONS AND THE CITIES* 167, 195-96 (1971); *see also City of New York v. DeLury*, 23 N.Y. 2d 175, 243 N.E.2d 128, 295 N.Y.S. 2d 901 (1968), *reh'g denied*, 396 U.S. 8721 (1969).

44. 699 P.2d at 843-45, 214 Cal. Rptr. at 432-34. The other factors that would control employee bargaining power include lost wages by public employees during a strike, public concern over increased tax rates necessary to pay higher salaries, and public employer ability to subcontract with the private sector for these services. *Id.* at 844-45, 214 Cal. Rptr. at 433-34. *See also* Burton & Krider, *supra* note 36, at 425-27.

45. 699 P.2d at 845-46, 214 Cal. Rptr. at 434-35. The court noted that in contemporary industrial society, the government has undertaken many services that are not absolutely essential. *Id.* at 845, 214 Cal. Rptr. at 433.

46. *Id.* at 850, 214 Cal. Rptr. at 439. The court noted that this limitation would control concerns of "excessive bargaining power" and "interruption of essential services." *Id.* at —, 699 P.2d at 846, 214 Cal. Rptr. at 435.

47. *Id.* at 850, 214 Cal. Rptr. at 439. The court stated that the permissibility of these strikes would be determined on a case-by-case basis. The court concluded that statutory standards used by other states could guide the lower courts. *See supra* notes 12-19 and accompanying text (analyzing

The California Supreme Court failed to recognize judicial limitations when it embarked upon this policy analysis, an analysis that all other jurisdictions have reserved for the legislature.⁴⁸ Unlike the statutory schemes in effect in other states, the court's holding does not provide for prestrike resolution procedures⁴⁹ or define "truly essential" services.⁵⁰ As a result, many public employees will not know whether they can legally strike until after they strike, their employer seeks injunctive relief, and a court determines whether the employees provide "truly essential" services.⁵¹ In addition to putting the employment security of striking employees at risk, this lack of certainty makes a strike an ineffective bargaining tool.⁵²

Although good reason may exist for permitting public employee strikes, the legislature is in the best position to weigh the competing interests of public sector employees and their employers in determining

statutory schemes). The court, however, provided its own standard to guide the lower courts: "strikes by public employees are not unlawful at common law unless or until it is clearly demonstrated that such a strike creates a substantial and imminent threat to the health or safety of the public." *Id.*

The court reserved decision on whether the right to strike is constitutionally protected. *Id.* at —, 699 P.2d at 851-54, 214 Cal. Rptr. at 440-43. A concurrence, however, argued that the right to strike is a constitutionally protected liberty interest. Only when a strike presents an immediate and serious threat to public health and safety is the state interest compelling enough to infringe on the employees' liberty. *Id.* at 865-66, 214 Cal. Rptr. at 454-55 (Bird, C.J., concurring).

48. *See supra* notes 20-26 and accompanying text. The dissent argued that only the legislature should depart from the general common-law prohibition, stating that the legislature's role is to engage in the "delicate and complex balancing process" necessary to formulate comprehensive regulatory schemes. The dissent contended that the court's standard would create "disruption and chaos" with each interruption in governmental services. *Id.* at 867, 214 Cal. Rptr. at 456 (Lucas, J., dissenting).

49. The court does not require any attempt at resolving a dispute before employees may strike. *Id.* at 868, 214 Cal. Rptr. at 457 (Lucas, J., dissenting).

Legislation providing resolution procedures reflects a balance between the competing interests of employers and employees, forcing the parties to attempt resolution prior to a strike. *See supra* note 15 and accompanying text (discussing resolution statutes).

50. The court suggested that firefighters and police officers provided "truly essential" services. The court, however, did not state if these were the only truly essential services. The court directed the lower courts to examine other state statutes for guidance, but these statutes differ in defining truly essential service. *Id.* at 849, 214 Cal. Rptr. at 438.

51. Employees will not always know when a strike is unlawful or when a strike, lawful at its inception, will become unlawful because of its threat to public health and safety. *See id.* at 868, 214 Cal. Rptr. at 457 (Lucas, J., dissenting).

52. Some state statutes provide no more guidance and certainty than that provided by the California Supreme Court. Nonetheless, the legislative standards must withstand public scrutiny, and the legislature has the capacity to reevaluate its guidelines if necessary.

when a strike is permissible.⁵³ Other state courts should not follow *County Sanitation District No. 2*, but should defer to legislative assessment of the public employee strike issue.

D.P.H.

53. See *supra* notes 20-26 and accompanying text (discussing cases that recognize the legislature's unique ability to determine conditions for permissible strikes).