St. John's Law Review

Volume 21
Issue 2 *Volume 21, April 1947, Number 2*

Article 18

July 2013

Amendment to the Civil Service Law Prohibiting Strikes by Public Employees

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registered under Section 417 of the Real Property Law,[45] but no case has been decided which holds that the vendee's lien may be recorded there, although there appears to be no reason for opposing its registration. One objection which might be advanced is that the lien is a part of a judgment and will be docketed as such. But it is submitted that it will be enforced, not by execution, but by a foreclosure sale. Although these problems will not affect a vendee in the usual case where he has become entitled to a lien, they do show that less than complete relief is occasionally given in a rescission action.

LENORE BENARIO.

AMENDMENT TO THE CIVIL SERVICE LAW PROHIBITING STRIKES BY PUBLIC EMPLOYEES.—At the 170th session of the New York Legislature a bill was enacted amending the Civil Service Law by inserting, therein, a new section to follow section twenty-two, to be known as section twenty-two-a. This section declares that a public employee who strikes loses his civil service protection, and if reemployed does not regain it for five years. To remove any possibility of profit from his wrongful act, his compensation may not be increased for three years.[1]

With the enormous growth and expansion of the labor movement we have had a parallel development of the right to strike, and as the strength and size of the unions have increased, the right to strike has gained greater recognition from the courts. It has become increasingly evident that there is a conflict of interests—the workers' interest in protecting the right to strike as against the general interest in the public health, welfare and safety. The necessity of preserving and insuring our national economy, as the superior duty of our legislative officers, has stirred them into action both in the state and national legislatures. One aspect of this great problem was before the New York Legislature and the solution offered was the amendment under discussion. It was necessary to distinguish the public servant from all other workers or employees and to take the precaution of denying to these employees the right to strike in order to preserve this general interest in the public health, welfare and safety.

This addition to the Civil Service Law, *i.e.*, section twenty-two-a, raises several questions:

1. Does the New York Anti-Injunction Act (C. P. A. 876-a) apply where the employee is a public employee?

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[45] Laws of 1916, c. 547, § 11.

[1] N. Y. CIVIL SERVICE LAW § 22a.

2. Did the State Labor Relations Act deprive the civil service employee of the right to strike prior to the passage of this section, *i.e.,* section twenty-two-a?

3. Does this section constitute involuntary servitude?

The growing labor movement with its concomitant right to strike necessitated such labor legislation in the State of New York as the New York Anti-Injunction Act [2] and the State Labor Relations Act.[3] The Anti-Injunction Act was patterned after the Norris-La Guardia Federal Anti-Injunction Act [4] and provided that no temporary or permanent injunction shall be issued in any case involving or growing out of a labor dispute, except after an observance of certain procedural requirements, including a hearing. Did the public employee have the protection of this section where no express exemption of public employees was made?

The State Labor Relations Act was passed in recognition of the fact that protection of the rights of employees to organize and bargain collectively removes certain recognized sources of industrial strife and unrest. Section 715 of the Labor Law specifically exempts from the provisions of this Act the employees of the state or employees of charitable, educational, or religious associations or corporations.[5]

Did the reservation contained in Section 715 of the Labor Law suggest that a public employee could not strike because this section exempts public employees from the provisions and benefits of the Labor Law? The courts have not squarely met this issue of the right of the public employee to strike. They have indicated that the Anti-Injunction Act of New York could be interpreted as excluding employees devoted to serving the public. They have considered Section 876-a of the Civil Practice Act and the State Labor Relations Act together and have held that the Anti-Injunction Act was not intended to include charitable institutions.[6] Since such a rule applies to charitable institutions, it is probable that a similar rule would apply to public institutions and employees, owing to the fact that members of charitable institutions are grouped together with employees of the state under Section 715 of the Labor Law, and would, therefore, probably be grouped together in being excluded from Section 876-a of the Civil Practice Act.

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[2] N. Y. CIVIL PRACTICE ACT § 876a.

[3] N. Y. LABOR LAW §§ 700-716.

[4] 47 STAT. 70, 29 U. S. C. § 101 *et seq.*

[5] N. Y. LABOR LAW § 715: ". . . this article shall not apply to . . . employees of the state or of any . . . subdivision . . . or to employees of charitable . . . associations or corporations."

[6] Jewish Hospital of Brooklyn v. "John Doe", 252 App. Div. 581, 300 N. Y. Supp. 1111 (2d Dep't 1937); Society of New York Hospital v. Hanson, 185 Misc. 937, 942, 59 N. Y. S. (2d) 91, 96 (Sup. Ct. 1945).

No case has interpreted Section 715 as denying public employees the right to strike. Apparently the issue has not been taken to an appellate court.

Several judges have expressed the view as *dicta* that public employees do not have the right to strike in construing the intent of Section 715. It is suggested that these groups—public and charitable employees—are clearly placed in a special category. "They are persons who have chosen to work for the public and for public-supported and public-serving employers. In many cases their work is so closely connected with the public welfare that any interference with their functions would be intolerable. Indeed in some instances, as in the case of the police, sanitation, fire and water departments, such interference might well constitute criminal conduct. . . . The right to strike has proven to be of such proper potency to labor in our industrial history that this court will not curtail it in any respect except for the most impelling of reasons. But there are some contravening considerations which can be of even greater importance to the public interest as a whole." [7] In New York State it is a criminal offense to endanger the public health and welfare.[8]

It is suggested that civil service employees have no need to strike. ". . . as Civil Service employees they have obtained a security of position and other satisfactory related benefits, which make union membership unnecessary." [9]

It is again suggested that a strike by public employees is contrary to statutory law. Civil service employees are exempt from the Labor Law because they are responsible to the people of the state, and are given in other provisions of the law adequate safeguards. Rights given to employees and unions ". . . presuppose a situation where the employer is free to contract with such union, regardless of restrictions imposed either by the Constitution or statute. The City is not at liberty to act in derogation of the provisions of the Constitution and Civil Service Law. . . ." [10]

In reference to the State Labor Relations Act the New York Court of Appeals said, "The exclusion of some categories of employees from the application of the statute constitutes a legislative determination that the 'public policy of the state' as 'declared' . . .

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[7] Society of New York Hospital v. Hanson, 185 Misc. 937, 941, 942, 59 N. Y. S. (2d) 91, 94, 96 (Sup. Ct. 1945).

[8] N. Y. PENAL LAW § 580, subd. 6 (conspiracy to commit an act injurious to public health); N. Y. PENAL LAW § 1910 (endangering life by refusal to labor—no cases reported of prosecution under this section).

[9] Petrucci v. Hogan, — Misc. —, 27 N. Y. S. (2d) 718, 720 (Sup. Ct. 1941).

[10] *Id.* at 726.

would not be promoted by 'encouraging the practice and procedure of collective bargaining' by government employees." [11]

Again it was said, "Some fields of endeavor so directly involve the public safety that the individuals engaged therein are not possessed of the right to strike as a means of increasing their wages or improving their working conditions. . . . they have, in assuming that obligation, surrendered rights possessed by those seeking employment in enterprises operated for profit, not so directly involving the public interest." [12]

In a recent New York case, *Railway Mail Ass'n v. Murphy,*[13] it was said as *obiter dictum,* "To tolerate or recognize any combination of civil service employees of the government as a labor organization or union is not only incompatible with the spirit of democracy, but inconsistent with every principle on which our government is founded. Nothing is more dangerous to public welfare than to admit that hired servants of the State can dictate to the government the hours, the wages and conditions under which they will carry on the essential services vital to the welfare, safety and security of the citizen. To admit as true that government employees have power to halt or check the functions of government, unless their demands are satisfied, is to transfer to them all legislative, executive and judicial power. Nothing would be more ridiculous.

"The reasons are obvious which forbid acceptance of any such doctrine. Government is formed for the benefit of all persons, and the duty of all to support it is equally clear. Nothing is more certain than the indispensable necessity of government, and it is equally true that unless the people surrender some of their natural rights to the government it cannot operate. Much as we all recognize the value and the necessity of collective bargaining in industrial and social life, nonetheless, such bargaining is impossible between the government and its employees, by reason of the very nature of government itself. The formidable and familiar weapon in industrial strife and welfare—the strike—is without justification when used against the government. When so used, it is rebellion against constituted authority." [14]

The right to strike whenever a lawful purpose is contemplated, without regard to the incidental harm that may result, has gained judicial acceptance.[15] Such a principle may well be followed in pri-

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[11] Railway Mail Ass'n v. Corsi, 293 N. Y. 315, 322, 56 N. E. (2d) 721, 724 (1944), *aff'd,* 326 U. S. 88, 89 L. ed. 2072 (1945); 162 A. L. R. 1107 (1945).

[12] Beth-El Hosp. v. Robbins, 186 Misc. 506, 509, 60 N. Y. S. (2d) 798, 800 (Sup. Ct. 1946).

[13] 180 Misc. 868, 44 N. Y. S. (2d) 601 (Sup. Ct. 1943).

[14] Railway Mail Ass'n v. Murphy, 180 Misc. 868, 875, 44 N. Y. S. (2d) 601, 607 (Sup. Ct. 1943).

[15] Bossert v. Dhuy, 221 N. Y. 342, 117 N. E. 582 (1917).

vate industry, but if applied to public employees would have dire consequences. One need only refer to the recent strikes in the school system of various cities and the threatened transport workers' strike in the City of New York to become aware of the havoc that could be wrought if such a privilege were extended to public employees.

While no case has been found in New York squarely holding that a public employee does have the right to strike, the *dicta* in the cases in which the problem arose indirectly indicate several sound reasons for denying the right to strike to public employees and these declarations suggest that if the issue ever arose in New York the courts would probably decide that such employees did not have the right to strike.

As a result of this state of the law and the increasing threat of public service strikes, the legislature was warned that reliance should not be placed on any presumed but unsettled common law that public servants cannot strike, or on any inferences drawn from the legislative wording of statutes protecting and extending the strike privilege, and the legislature has responded with an enactment to fully cover the situation by defining the rights of the public employee and their duties to the public. While a civil service employee possibly did not have the right to strike prior to the passage of section twenty-two-a, yet there had been no judicial conclusion to that effect and this section properly settles an issue which had not been determined previously by the courts of New York.

The last problem, that of involuntary servitude, may be easily disposed of. Such servitude involves the element of compulsion whereby a person is forced to do services for another or placed under constraint to work for or to remain in the service of another. The essence of involuntary servitude is control of one man by another by which the personal services of one man is disposed of or coerced for another's benefit.[16] The present amendment does not trespass upon the right of the individual to terminate his employment. It is aimed only at concerted activities to bring about and support a work stoppage, and thus apply pressure on the officer or official charged with supervision of the workers. The individual retains the right at all times to end his employment without prejudice. It is true that he may suffer by such action but each state employee is expressly bound by the terms and conditions of employment as defined by the New York State Constitution and the Civil Service Law. When he accepts employment, his employer is ultimately the people of the state and he consents to be guided by the conditions as established by the representatives of the people in proper session.

Section twenty-two-a now clearly distinguishes between the public employee and the employee of a private person or concern. He has been denied the right to strike because his continuous service is

[16] Bailey v. Alabama, 219 U. S. 219, 55 L. ed. 191 (1910).

so necessary to public health and welfare—to the maintenance of the very government which is responsible for the enforcement of the right to strike wherever possible and proper.

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PLEADING AND PRACTICE—BRINGING ADDITIONAL PARTIES INTO AN ACTION.—The principles of adjective law concerning the bringing of additional parties into an action have been radically changed. Chapter 971 of the Laws of 1946, effective September 1, 1946, amended five of the sections of the Civil Practice Act dealing with this subject.[1] One section was completely repealed [2] and several sections added in its place.[3] The necessary Rules of Civil Practice have been amended as well.[4] The legislation was enacted as recommended by the Judicial Council.[5] The recommendation had been fortified by an excellent and exhaustive analysis of the defects of the law of New York prior to the enactments, the need for the amendments, and a detailed account of what would be accomplished by the new legislation.[6]

A. Addition of Parties Indispensable and Conditionally Necessary

Parties are now classified as proper, conditionally necessary, and indispensable. The former term "necessary parties" has been subdivided. Confusion occasioned by decisional law as to what was meant by a "necessary party" has been eliminated. A person whose absence will prevent an effective determination of the controversy or whose interests are not severable and would be inequitably affected by a judgment rendered between the parties before the court, is an indispensable party; a person who is not an indispensable party but who ought to be a party if complete relief is to be accorded between those already parties is a conditionally necessary party.[7] The ter-

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[1] N. Y. CIV. PRAC. ACT §§ 180, 192, 264, 278, 474. The amendments to Sections 264 and 474 are not here discussed. They merely transpose the provisions of the repealed Section 193 (2) to those sections where they logically belong. Section 192 (2) related to cross claims by the impleaded party against the original plaintiff.

[2] N. Y. CIV. PRAC. ACT § 193 prior to 1946 amendment.

[3] N. Y. CIV. PRAC. ACT § 193-a, 193-b, 193-c. § 193-c is not here discussed. It is merely the former 193 (5) transposed.

[4] N. Y. RULES OF CIV. PRAC., 102, 105, 54.

[5] 12 REP. JUDICIAL COUNCIL (1946) 43-47.

[6] *Ibid.* pp. 163-236.

[7] N. Y. CIV. PRAC. ACT § 193 (1).