STRIKELESS STRIKES BY TEACHERS

By David Selden

In the Fall of 1964, a surge of teacher militancy swept across the nation, resulting in a rash of ~~school~~ work stoppages in Pawtucket, Louisville, Oklahoma City and a dozen other school districts. Despite the fact that in some cases teachers were away from their classrooms for as long as two weeks, few of these work stoppages were termed strikes by either the participants or others. They were called "holidays," "recesses," "disputes," -- anything but what they often were.

Much of this reluctance to call a strike a strike undoubtedly reflected a feeling by many teachers that they were doing something naughty. But there is a much sounder reason ~~in most states~~ to avoid the term. Most teacher strikes are illegal. If they are not expressly forbidden by state law, they are easily enjoinable under the common law powers of the state and its agencies. Not using the term does not make a work stoppage any less a strike, but it does avoid the direct public challenge which could force an otherwise hesitant politician to crack down on the offenders.

Refusal to work does not necessarily constitute a strike. No one can be legally forced to work under conditions he deems unsatisfactory. There are Constitutional restrictions against involuntary servitude. If the number of teachers involved is big enough, and their discipline and determination strong enough, any legal problems involved in a work stoppage tend to solve themselves. But in most cases the basis of the strike is far too shaky for such head-on tactics. Hence the strikeless strike.

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The traditional aversion of teachers toward engaging in work stoppages is now rapidly changing to lively interest, partly as an outgrowth of the nationwide trend toward collective bargaining and its pale substitute, the NEA's so-called professional negotiations. As teachers get into a collective negotiation stance, they are forced to face up to the corollary proposition of good faith bargaining: the right not to work.

The ability of employees to refuse to work if salaries and working conditions are not satisfactory is absolutely essential to meaningful negotiation. If a Board of Education knows that its teaching staff will continue to teach regardless of the outcome of negotiations - if, indeed, there are any negotiations - the Board has little incentive to extend itself in providing improvements. In the absence of the ability to strike, teachers must either rely on the good will of the Board of Education, or limit their offensive power to nuisance activities such as public demonstrations, informational picketing, newspaper ads and the like.

There have been a number of interesting attempts by teachers to evade the legal entanglements involved in a work stoppage. One of the first of these, in recent times, at least, occurred in New York City in February of 1959. After fruitless attempts to resolve a pay dispute through negotiation with the Superintendent of Schools, some 900 evening high school teachers announced that they had resigned from their positions.

The action of the night school teachers looked like a strike. Large picket lines were set up at each of the 16 night high schools. Daily communiques were issued to the press by both the Board of Education and the Evening High School Teachers Committee. However, prior to the walkout, "resignation sheets" had been circulated among the teachers. These carried a simple statement at the top to the effect that the undersigned indicated their intention to resign if a satisfactory settlement was not reached. Spaces for signatures were arranged in two columns. The teacher's signature in the first column was a statement of intention - a pressure device; the resignation supposedly became operative when the teacher signed a second time, in the second column.

New York's Condon-Wadlin Act, which forbids strikes by public employees, calls for automatic dismissal of any employee engaging in a work stoppage for the purpose of improving his wages or working conditions - but how can you dismiss anyone who has already resigned? The school officials made a show of pointing out that a resignation could not be effective unless it was transmitted to the employer, and the EHSC engaged in frolicsome by-play by stating that the resignations had been placed in escrow in a bank vault, but the fact remains that the work stoppage continued for a month.

Settlement of the night school work stoppage was by negotiation directly between school officials and representatives of the teachers. The settlement included salary increases, seniority provisions, and a "no reprisals" agreement.

The whole evening high school work stoppage was well-executed. It was never really subjected to any legal challenge, and it resulted in an agreement satisfactory to both sides.

Despite the success of the night school teachers, when the leadership of the United Federation of Teachers (AFT Local 2) tried to induce the day school teachers to follow the same plan, the union membership refused to go along. Instead, they voted to continue to rely on an outright strike, despite the fact that the Board of Education had obtained a restraining order which had terminated the one-day strike of April 11, 1962.

Unlike day school teaching positions, the night school jobs were part-time, without tenure, pension, or other vested rights. Furthermore, the 900 evening high school teachers were a much more homogeneous group than the 45,000 day school teachers. Resignation from a daytime teaching position seems to have a doomsday quality about it which does not adhere to moonlighting jobs. Then, too, the union was much smaller and less well organized at the time of the April 11, 1962 strike than it was a year later, when the mass resignation idea was rejected. The teachers had acquired greater confidence in their ability to maintain a strike in the face of legal restraint.

An interesting variation of the mass resignation technique occurred in New York City during the summer of 1964. Some 2,800 playground and recreational teachers working for the Board of Education decided to stop work in July. The UFT had been representing the teachers in negotiations with the Board, but without the status of recognized bargain-

ing agent and without any effective organization among the teachers themselves.

Only half the teachers involved were employed in the school system during the school year; the rest were college students earning a little extra money. Although most of the regular teachers were members of the UFT, there was little internal structure or organization on which to base an effective strike mechanism. Fearing that a losing strike in the summer playgrounds might undermine UFT strength in the up-coming negotiations in the day schools, the UFT leadership advised against a work stoppage - but also stated that if the teachers were still determined to go ahead, the union would lend its support if the stoppage was based on mass resignations.

The teachers accepted the challenge and announced that they had resigned en masse. Picketing was carried on at most of the more than 500 recreational centers. The picket signs read: "We Reject Substandard Salaries and Conditions - WE RESIGN." The UFT began collecting signed resignations from those involved only after the stoppage had begun.

The work stoppage began on Thursday, July 22nd, and was settled at 2:00 a.m., Tuesday, July 27th. Although there were negotiations between the Board and the union almost every day, no charge of illegality was made until Monday evening, July 26th. During the evening negotiating session the Superintendent stated that he had been informed by the Corporation Counsel that the action of the playground teachers constituted a strike. He pointed out that he had not received a single resignation from any teacher.

The union countered by stating that the teachers had served public notice of their resignation - a position which the union negotiators knew to be somewhat lacking in legal merit. The Superintendent then stated that in the absence of any actual resignations, he would have to consider the stoppage a strike, and that he, therefore, could not negotiate until the teachers had returned to work. He asked the union representatives to order the teachers back to their jobs.

After a caucus the union negotiators informed the Superintendent that they intended to submit the individual resignations they had on hand, and to call upon other teachers to submit their. When the Superintendent was faced with the possibility of real resignations there ensued an hour or so of hard bargaining, at the conclusion of which a memorandum of agreement was signed. On the basis of this, the negotiating committee called a meeting of all playground teachers for the following morning. They, in turn, voted to accept and the stoppage was over.

The crucial point in connection with this stoppage is that the teachers conducted a three-day work stoppage and took a fourth day for meeting purposes without any application of the state anti-strike law. The attitude of the public officials seemed to be that if the teachers had in fact resigned, the law did not apply. In other words, officials are as eager as teachers to find a way out of the legal straight-jacket which restricts collective bargaining between boards of education and teachers.

Two months after the New York City summer playground strikeless strike, another step in the same direction occurred in Pawtucket, Rhode Island.

Most of the Pawtucket teachers were members of AFT Local #930, the Pawtucket Teachers Alliance. The local had been recognized as the exclusive bargaining agent for the teaching staff since 1951, with a written agreement between the Committee and the Union renewed every one or two years.

In 1957 there occurred an impasse in negotiations, and the Alliance called a strike, as it had on two previous occasions. The School Committee, after a week of fruitless wrangling, obtained an injunction. The union, on advice of Counsel, terminated the work stoppage pending appeal of the injunction to the Rhode Island State Supreme Court. In due course the court rejected the plea of the union and upheld the School Committee. The strike was broken.

From 1957 to the spring of 1962, the contract, with revisions, remained in force, although the union felt itself severely handicapped in bargaining. In 1962, however, negotiations ran into another impasse. The School Committee, on advice of the corporation counsel, took the position that the arbitration clause which was the final step of the grievance procedure, was illegal. The union refused to renew the contract.

Negotiations of a sort were held in 1963 and again the spring of 1964. In each case, however, when the deadline for submission of the School Committee's budget to the city counsel was reached, the Committee submitted its budget - and teacher salary schedule - to the city authorities without concurrence by the union. In 1964, however, the union denounced the school committee for its unilateral action, and for seven months, union representatives endeavored futilely to bring about a resumption of negotiations.

Finally, in the last week of September, the president of the Alliance sent a letter to all members outlining the situation. In a postscript he added that the weekend of October 1st would be a good time to catch up on class records, and he advised teachers to take the necessary books home. A negotiating session Sunday evening, October 3rd, failed to bring about agreement, and before school hours the next day more than 400 of the 500 teachers met to "reject the report of the negotiating committee."

The precautions against use of the term "strike" were somewhat offset by the pickets stationed at each school, the establishment of a union headquarters in a motel just across the state line in Massachusetts, and the publication of a mimeographed bulletin called "The Crisis."

Attempts to reach agreement Monday and Tuesday were unsuccessful. On Wednesday the School Committee announced that it had obtained a temporary restraining order against picketing and other strike activity. The union then called a press conference on the steps of City Hall to accept service on the court order. The order was served by the sheriff on the president of the local union as television cameras recorded the scene.

Following the signing of the legal papers, the union president stepped to the microphone and declared that "so far as the union is concerned there is no strike." The teachers turned in their picket signs on the spot, and the president then continued as follows:

> "Although there is no strike, neither is there any settlement of the dispute which led to this interruption of services. I, for one, as an individual, will not return to my teaching duties until this dispute is satisfactorily resolved."

On the following day only a handful of teachers returned to work. On Friday the stoppage continued undiminished. Over the week-end the Superintendent of Schools sent letters to all absent teachers warning them that they were placing their positions in the school system in jeopardy, but there were no further desertions when schools "reopened" October 13th, following the Columbus Day holiday.

On October 14th, ten days after the work stoppage began, both sides were summoned to the Governor's office. Personal mediation by the Governor succeeded in bringing the two sides together after three hours of give-and-take bargaining. The settlement was hailed as a great victory at a meeting attended by more than 400 teachers that evening. Again, in Pawtucket as in New York, the strikeless strike had proved effective in winning a settlement satisfactory to the teachers.

The legal refusal to work as a means of forcing boards of education to correct conditions unsatisfactory to the teachers involved seems to be the underlying purpose and justification for the "sanctions" policy of the NEA.

The AFT regards NEA sanctions as more harmful and disruptive to educational services than an out-and-out work stoppage. The idea of "sanctions" is to put a sort of boa constrictor squeeze on a board of education by making it hard for the board to fill vacancies resulting from resignations, death and retirements. Ultimately, according to NEA policy, teachers would refuse to come back in the fall, presumably placing their goods and chattels on their backs and moving to another locality -- a vengeance which may be harder on the avenger than the

avengee -- and thus a little difficult to carry out. The sanctions process is extremely attenuated -- and in the meantime school conditions remain unimproved.

There is also a suspicion that the NEA may be a little tongue-in-cheek when it talks about sanctions. At least many Utah teachers had a feeling that their request that sanctions be imposed on that whole state in 1963 was greeted by NEA officialdom with something less than enthusiasm. An "out of court" settlement of the Utah dispute avoided a showdown on the issue. Even in Utah, however, there was a two-day "recess" in the spring of 1964.

It remains to be seen whether the strikeless strike becomes a trend. Many of the work stoppages which opened the 1964-65 school year could hardly be dignified by the term "strike" - strikeless or otherwise. For the most part they involved absences by sporadic groups of teachers with ill-defined aims and little internal structure which would permit a negotiated settlement, but they did show two growing realizations by teachers: (1) the right not to work is as vital to teachers as it is to other employees, and (2) legal restrictions of teacher work stoppages are something less than airtight.

Certainly the strikeless strike - an injunction-proof form of work stoppage - deserves intensive study. The road to a fair labor relations policy for teachers cannot by-pass the "impasse" problem. Somehow or other this problem must be surmounted if we are to have good faith negotiations between school boards and their teachers.

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