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ILLINOIS PUBLIC SCHOOL EMPLOYEES' RIGHT TO STRIKE—CONSTITUTIONAL CONSIDERATIONS

James L. Fletcher*

Illinois court decisions have clearly established the right of public school employees to collectively bargain. What has not been judicially or legislatively determined is the right of public school employees to strike. Mr. Fletcher maintains that a serious question is raised as to whether public school employees can be given the right to strike without an amendment to the Illinois Constitution of 1970.

THE establishment of a rational and structured method of school board employee conflict resolution is, in Illinois, a matter of private initiative at the local school district level combined with a variety of specific court decisions. While it has been judicially established in Illinois that public school employees have the right to organize,¹ that school boards have the right to bargain with their employees,² and that public school employees may not strike,³ much of the collective bargaining conducted in Illinois is, necessarily, a result of ad hoc encounters between unions and school districts throughout the state.

In order to remedy what many consider an undesirable condition,⁴ numerous bills have been introduced in the Illinois General

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1. *McLaughlin v. Tilendis*, 398 F.2d 287 (7th Cir. 1968).

2. *Chicago Div. of the Ill. Educ. Ass'n v. Board of Educ.*, 76 Ill. App. 2d 456, 222 N.E.2d 243 (1st Dist. 1966).

3. *Board of Educ. of Community Unit School Dist. No. 2 v. Redding*, 32 Ill. 2d 567, 207 N.E.2d 427 (1965).

4. See, e.g., GOVERNOR'S ADVISORY COMM'N ON LABOR-MANAGEMENT POLICY FOR PUBLIC EMPLOYEES, REPORT AND RECOMMENDATIONS (1967); ILLINOIS COMM'N ON LABOR LAWS, REPORT AND RECOMMENDATIONS (1971, 1973); Shaw & Clark, *The Need for Public Employee Labor Legislation in Illinois*, 59 ILL. B.J. 628 (1971); see also Goldstein, *Current Trends in Public Employee Labor Law in Illinois: Alice-in-Wonderland Revisited?*, 1972-1973 Survey of Illinois Law, 23 DEPAUL L. REV. 382 (1973).

Assembly advocating various collective bargaining frameworks within which school boards and their employees may function.⁵ While these legislative proposals contain any number of features that are the subject of debate,⁶ one of the most controversial subjects of dispute is the issue of the public school employee's right to strike.

During the past decade of legislative activity in Illinois, 22 bills have been introduced which either were silent with respect to the issue of striking or granted public school employees a qualified right to strike.⁷ Each of these proposals implicitly presumed the constitu-

5. See note 7 *infra* for collective bargaining measures which included provisions for public school employees and which have been introduced in the General Assembly during the 1963-74 period.

6. In considering the passage of any collective bargaining legislation, the manner in which the following issues are legislatively resolved will have considerable impact upon future school district-employee relations: scope of coverage (who is permitted to organize), units of organization (what is the definition of an appropriate unit), method of selection of employee representation (petition requirements, instances in which elections are or are not required, instances of recognition without election), election mechanics (who is permitted on the ballot, the number of votes necessary to elect representative organizations, the agency authorized to conduct and supervise the election), organizational stability following election, bargainable issues, delineation of unfair labor practices, impasse procedures.

7. During the legislative period of 1963-74, the collective bargaining bills that addressed themselves to the question of public school employee collective bargaining took varied postures with respect to the strike issue. Bills which were silent as to the issue of striking:

- S.B. 1391, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 17, 1973).
- H.B. 2599, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 17, 1974).
- H.B. 1652, 78th Ill. Gen. Assembly (1973) (Introduced Apr. 26, 1973).
- H.B. 517, 77th Ill. Gen. Assembly (1972) (Introduced Feb. 17, 1971).
- H.B. 1, 77th Ill. Gen. Assembly (1972) (Introduced Jan. 6, 1971).
- H.B. 778, 76th Ill. Gen. Assembly (1969) (Introduced Mar. 4, 1969).
- H.B. 831, 75th Ill. Gen. Assembly (1967) (Introduced Mar. 15, 1967).
- H.B. 512, 75th Ill. Gen. Assembly (1967) (Introduced Feb. 15, 1967).
- H.B. 1355, 74th Ill. Gen. Assembly (1965) (Introduced Apr. 22, 1965).
- H.B. 992, 74th Ill. Gen. Assembly (1965) (Introduced Mar. 24, 1965).
- H.B. 965, 74th Ill. Gen. Assembly (1965) (Introduced Mar. 22, 1965).
- H.B. 298, 73d Ill. Gen. Assembly (1963) (Introduced Feb. 19, 1963).

Bills which permitted a qualified right to strike:

- S.B. 929, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 14, 1973) (prohibits employment of persons to replace striking employees).
- S.B. 897, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 14, 1973).
- S.B. 852, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 12, 1973).
- S.B. 1112, 77th Ill. Gen. Assembly (1972) (Introduced Apr. 20, 1971).
- H.B. 2700, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 24, 1974).
- H.B. 448, 78th Ill. Gen. Assembly (1973) (Introduced Feb. 28, 1973).
- H.B. 3632, 77th Ill. Gen. Assembly (1972) (Introduced Oct. 14, 1971).
- H.B. 650, 77th Ill. Gen. Assembly (1972) (Introduced Feb. 26, 1971).

tional power of the General Assembly to grant the right to strike to public school employees. If the General Assembly has been denied such power by the Illinois constitution, the passage of a provision which would grant public school employees the right to strike is fruitless because it would be held as void when challenged under the applicable provisions of the state constitution.

I. THOROUGH AND EFFICIENT

Consistent with the philosophy underlying state constitutions generally, the Illinois constitution is deemed to grant powers to the executive and judicial branches of government while only limiting the powers of the legislative branch.⁸ The Illinois General Assembly may exercise all powers which are not denied it by the state or federal constitutions.

Under the 1870 Constitution of the State of Illinois, article VIII, section 1 provided that: "The general assembly shall provide a thorough, and efficient system of free schools, whereby all children of this state may receive a good common school education." Since, absent such a provision, the General Assembly would have possessed the inherent power to provide a system of schools for its inhabitants incident to the legislature's general powers to act in the area of education,⁹ the Illinois Supreme Court has frequently interpreted this

H.B. 1235, 76th Ill. Gen. Assembly (1969) (Introduced Mar. 26, 1969).

H.B. 298, 75th Ill. Gen. Assembly (1967) (Introduced Jan. 25, 1967).

Bills which forbade striking:

S.B. 1000, 78th Ill. Gen. Assembly (1974) (Introduced Apr. 14, 1973).

S.B. 109, 78th Ill. Gen. Assembly (1974) (Introduced Jan. 31, 1973).

S.B. 87, 77th Ill. Gen. Assembly (1972) (Introduced Feb. 10, 1971).

S.B. 18, 76th Ill. Gen. Assembly (1969) (Introduced Jan. 8, 1969).

S.B. 1987, 75th Ill. Gen. Assembly (1968) (Introduced Mar. 4, 1968).

S.B. 1595, 75th Ill. Gen. Assembly (1967) (Introduced May 1, 1967).

S.B. 452, 75th Ill. Gen. Assembly (1967) (Introduced Feb. 22, 1967).

Bills which permitted an unqualified right to strike:

None.

Prior to the Illinois Supreme Court's decision in *City of Pana v. Crowe*, 57 Ill. 2d 547, 316 N.E.2d 513 (1974), one might have considered the passage of a collective bargaining bill, while silent regarding the issue of striking, to be sufficient to bring those employees, covered by the bill, under the protection of the Illinois Anti-Injunction Act, ILL. REV. STAT. ch. 48, § 2(a) (1973).

8. *People v. Francis*, 40 Ill. 2d 204, 239 N.E.2d 129 (1968); *People ex rel. City of Chicago v. Barrett*, 373 Ill. 393, 26 N.E.2d 478 (1940).

9. *Sloan v. School Directors of Dist. No. 22*, 373 Ill. 511, 26 N.E.2d 846 (1940); *People v. Moore*, 240 Ill. 408, 88 N.E. 979 (1909); *People ex rel. Bibb v.*

language of section 1 of article VIII in a restricted fashion.¹⁰

As has been previously indicated, the 1870 Constitution required that the system of free schools, provided by the General Assembly, be "thorough and efficient." The question of whether or not the phrase "thorough and efficient" represented a constitutionally imposed limitation upon the General Assembly was comprehensively reviewed by the Illinois Supreme Court in *People v. Deatherage*.¹¹ In considering whether or not the "thorough and efficient" clause of the state constitution prohibited the General Assembly from permitting the organization of community unit school districts, the court ruled:

We must first ascertain whether this court has the duty and the power to determine whether a specific school system is thorough and efficient. Where issues before this court involve the constitutionality of statutes permitting the creation of school districts, the court is necessarily limited in decision to a narrow field. This is true because of the inherent power of the legislature and section 1 of article VIII of the constitution. The section simply operates as a mandate to the legislature to exercise its inherent power to carry out a primary, obligatory concept of our system of government, *i.e.*, the children of the State are entitled to a good common-school education, in public schools, and at public expense. Prior decisions of this court have held the section to also place upon the legislature two limitations when implementing that concept: the schools established, *i.e.*, the system, must be free and must be open to all without discrimination [citations omitted]. This court has consistently held the section to impose the two limitations, and no more.¹²

With one possible category of exceptions,¹³ and ignoring, for the present, a discussion of the cases to follow, the holding in *Deatherage* clearly made the question of "thoroughness and efficiency" a legislative issue which was largely outside the purview of judicial scrutiny.

Mayor and Common Council of Alton, 193 Ill. 309, 61 N.E. 1077 (1901); *People ex rel. Longress v. Board of Educ. of Quincy*, 101 Ill. 308, 40 Am. R. 196 (1882).

10. The following cases are illustrative of the historic tendency of the court to place a restricted interpretation upon the scope of limitation contained in article VIII, § 1: *Smith v. Board of Educ. of Oswego*, 405 Ill. 143, 146, 89 N.E.2d 893, 895 (1950) (right to negotiate contracts for building school facilities); *Sloan v. School Directors of Dist. No. 22*, 373 Ill. 511, 515, 26 N.E.2d 846, 848 (1940) (employment of teachers for a term of three years); *Keime v. Community High School Dist. No. 296*, 348 Ill. 228, 234, 180 N.E. 858, 860 (1932) (powers of local taxation).

11. 401 Ill. 25, 81 N.E.2d 581 (1948).

12. *Id.* at 30-31, 81 N.E.2d at 586.

13. *People ex rel. Community School Dist. v. Decatur School Dist.*, 31 Ill. 2d 612, 203 N.E.2d 423 (1964).

II. THE PANA CASES¹⁴

There would seem to be little question, based upon the holding of *Deatherage* and related cases, that article VIII, section 1, of the 1870 Illinois Constitution restricted the powers of the General Assembly in only two respects.¹⁵ Nonetheless, a recent series of Illinois Supreme Court decisions seems to suggest that the requirement of "efficiency" may have assumed added constitutional significance with respect to the power of the Illinois General Assembly to grant public school employees the right to strike.

In 1925, the Illinois General Assembly enacted the Anti-Injunction Act.¹⁶ In a pertinent part, this statute provides as follows:

No restraining order or injunction shall be granted by any court of this State . . . in any case involving or growing out of a dispute concerning terms or conditions of employment.¹⁷

As is evident from the clear language of the statute itself, the General Assembly drew no apparent statutory distinction, in 1925, between "employment" in either the public or the private sector. To a large extent, the *Pana* cases reflect the Illinois Supreme Court's reconciliation of the Anti-Injunction Act's express language with the right of public employees to strike. It is the court's rationale, with respect to the question of the constitutional power of the General Assembly to grant public school employees the right to strike, to which the following analysis will address itself.

A. Board of Education v. Redding¹⁸

On September 2, 1964, thirteen custodial employees of the Board of Education of Community Unit School District No. 2, incident to a labor dispute with their employer, failed to report for work and, instead, set up picket lines at each of the schools which were under the school board's direction and control. The school board filed its

14. The author refers to the cases under analysis as such because the cases discussed below culminated in *City of Pana v. Crowe* this year.

15. That is, "the schools established . . . must be *free* and must be *open* to all without discrimination." *People v. Deatherage*, 401 Ill. 25, 30-31, 81 N.E.2d 581, 586 (1948) (emphasis added). See text accompanying notes 12 and 13, *supra*.

16. ILL. REV. STAT. ch. 48, § 2(a) (1973).

17. *Id.*

18. *Board of Educ. Unit School Dist. No. 2 v. Redding*, 32 Ill. 2d 567, 207 N.E.2d 427 (1965).

complaint for injunctive relief against the striking public school employees but the complaint was dismissed; the trial court refused to enjoin either the strike or the picketing incident thereto. On appeal, the Illinois Supreme Court reversed this decision.

In its opinion, the Illinois Supreme Court made reference to the maxim that municipal employees possess no inherent right to strike against their governmental employer; however, this does not appear to be the basis of the court's decision. Instead, by characterizing the custodial employees as agents of the state, the court concluded that, as a matter of constitutionally declared public policy, these employees were duty-bound not to impede or frustrate that declared and express policy. The court said:

Our own constitution impresses the General Assembly with the duty to "provide a thorough and efficient system of free schools," (Const. of 1870, art. VII, sec. 1) and we believe it logically follows that those who, under the implementing statutes, become the agents to fulfill the will of the people in such respect are themselves charged with a duty to refrain from conduct which will render our schools less efficient and thorough. The drastic remedy of organized strikes against employing school boards is in direct contravention of such duty.¹⁹

The court went on to say that

[a]part from [the fact that the picketing at issue was for the purpose of fostering an unlawful strike], however, the effect of the influences exerted by the picketing was to impede and obstruct a vital and important governmental function—the proper and efficient education of our children—making its curtailment necessary to protect the patently overriding public interest.²⁰

In effect the court in *Redding* held that the constitutional phrase, "to provide a thorough and efficient system," was not merely hortatory in design and effect; rather, this phrase imposed a duty upon the General Assembly and the agents of the state to provide and maintain a system of education which insured two ascertainable attributes: thoroughness and efficiency. Without attempting to define the perimeters of these two attributes, the court concluded that an organized strike, and its incident picketing, engaged in by agents of the state, is in "direct contravention" of this duty, and, hence, impermissible as a matter of constitutionally declared policy.

Although the Anti-Injunction Act was in effect at the time the court

19. *Id.* at 572, 207 N.E.2d at 430.

20. *Id.* at 575, 207 N.E.2d at 432.

rendered its decision in *Redding*, its applicability to public school employees was neither raised nor ruled upon. Instead, the court addressed itself to this question, by way of dicta, in two separate opinions in 1969 and 1970 when resolving the right of private and public hospital employees to strike.

*B. Peters v. South Chicago Community Hospital*²¹ and
*County of Peoria v. Benedict*²²

The cases of *Peters* and *Benedict* are concerned with the striking and picketing of hospital employees. Both *Peters*, relating to employees of not-for-profit Illinois hospitals, and *Benedict*, relating to employees of public hospitals, consider one issue: whether the public policy of the State of Illinois prohibits the employees of either a public or private hospital from striking despite the seemingly clear inclusion of such employees within the language of the Anti-Injunction Act. In both cases the hospital employees appealed from adverse lower court rulings which essentially held that the strikes of these employees were against public policy and, accordingly, were not entitled to the protections found in the Anti-Injunction Act. In both instances²³ the Illinois Supreme Court reversed the lower court ruling and found such conduct covered by the Act.

In finding that the provisions of the Anti-Injunction Act did apply to the strikes of hospital employees, the court in *Peters* emphasized that the Act made no exception for hospitals. Accordingly, the court reasoned, it was incumbent upon the General Assembly to enact such an exception if hospital employees were to be precluded from striking.²⁴

21. 44 Ill. 2d 22, 253 N.E.2d 375 (1969).

22. 47 Ill. 2d 166, 265 N.E.2d 141, *cert. denied*, 402 U.S. 929 (1970).

23. The *Benedict* decision simply acknowledges and accepts the ruling and rationale of *Peters* as applicable to employees of a public hospital. *Id.* at 169-70, 265 N.E.2d at 143-44.

24. *Peters v. South Chicago*, 44 Ill. 2d at 27-28, 253 N.E.2d at 378.

The language of the statute is clear and it makes no exceptions for hospitals. This is the only legislative expression of public policy which touches on the labor relations of these not-for-profit hospitals. As we have mentioned, the General Assembly has failed to enact legislation which would govern these labor relations otherwise than as expressed in the anti-injunction statute

For the foregoing reasons, we hold that hospitals are not exempt from the Anti-Injunction Act and that the legislature must grant such exemption if it is to be granted. . . . *Id.*

Although it could be similarly argued that the Anti-Injunction Act made no exception for the public schools and that this Act was the only legislative expression of public policy that touched on the labor relations of the public school system, the court did not attempt to modify or reverse its holding in *Redding*. Instead, the *Peters* court reaffirmed *Redding* by observing that it is the Illinois constitution itself that excludes public school employees from the protections of the Anti-Injunction Act.²⁵

It would appear that at the close of the *Redding*, *Peters*, and *Benedict* decisions, the Illinois Supreme Court had concluded that public school employee striking was not merely illegal but constitutionally impermissible. It is because of this rationale that the court was able to conclude that, notwithstanding the inclusive language of the Anti-Injunction Act, such language could not apply to strikes by public school employees. Simply put, the *Redding-Peters* court

25. The court, in *Peters*, specifically said:

It is true that this court in *Redding* . . . held that the proper and efficient education of children is an overriding public interest of such importance as to transcend the right of custodial workers to strike or picket a public school. However, the public policy to "provide a thorough and efficient system of free schools" is expressly stated in section 1 of article VIII of our constitution. . . . Thus, it was not this court that declared the public policy, as did the appellate court in this case, it was the constitution that declared the public policy. . . .

. . . Unlike *Redding* there is no overriding expression of public policy here such as the constitutional mandate that the General Assembly shall "provide a thorough and efficient system of free schools."

Id. at 26-27, 253 N.E.2d at 378.

As of the present time, only one appellate court decision has had the opportunity to interpret and construe the *Peters* rationale. In *Allen v. Maurer*, 6 Ill. App. 3d 633, 286 N.E.2d 135 (4th Dist. 1972), the court held that, under *Redding*, *Peters* and *Benedict*, the Anti-Injunction Act could not include public school employee striking:

[T]he State has a constitutional duty to provide and the public has a right to receive an efficient, high quality educational system. This duty is discharged by the State through local boards of education who are primarily responsible for fulfilling the constitutional mandate.

The Appellate Court [in *Peters*] relied upon *Redding* in determining that the strike in *Peters* was violative of public policy However, the Supreme Court, in analyzing its decision in *Redding*, commented that the decision was based upon the "public policy" that was mandated by the Illinois Constitution. . . .

Hence, the decision enunciated by the Court in *Redding* is bottomed upon the constitutional duty to provide public schools. . . . The implementation of this mandate is not subject to the provisions of the Anti-Injunction Act.

Id. at 640, 643-44, 286 N.E.2d at 140, 142-43.

appears to hold that a legislative enactment (such as the Anti-Injunction Act), which, on its face, permits or grants the right to strike to public school employees, is invalid, to that extent, precisely because such conduct is proscribed by and inimical to the constitutional mandate imposed upon the General Assembly and the agents of the state, to provide a "thorough and efficient system of free schools."

C. City of Pana v. Crowe²⁶

In March of 1974, the Illinois Supreme Court considered the question of the applicability of the Anti-Injunction Act to a strike by municipal employees in Pana, Illinois. The strike encompassed all of the employees of the city, including sewer and water employees, as well as members of the police department.

While distinguishing those public hospital employees previously considered in *Peters* and *Benedict*, the court held that the Anti-Injunction Act was not applicable to any other public employees because of 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 [A]nti-[I]njunction [A]ct."²⁷

Despite its reiteration of the "constitutional duty" imposed upon the General Assembly by the education article of the constitution, article VIII, section 1, the court, in *Pana*, tempers the purely constitutional rationale it previously announced in *Redding*, *Peters*, and *Benedict*.²⁸ While characterizing the strikes of the public employees as "unlawful," the court was careful to emphasize that this finding was not based upon a constitutional declaration of public policy, as was the case in *Redding*, but rather upon a declaration that is judicial in nature.²⁹

26. 57 Ill. 2d 547, 316 N.E.2d 513 (1974).

27. *Id.* at 552, 316 N.E.2d at 515.

28. See text accompanying notes 18-25, *supra*. The *Pana* Court stated:

The [*Redding*] court rested its opinion flatly upon the unlawfulness of a strike by governmental employees, saying: "Although this is a case of first impression in a reviewing court of this jurisdiction, it is, so far as we can ascertain, the universal view that there is no inherent right in municipal employees to strike against their governmental employer, whether Federal, State, or a political subdivision thereof, and that a strike of municipal employees for any purpose is illegal."

57 Ill. 2d at 550, 316 N.E.2d at 514.

29. *Pana* said:

Apparently because this court's opinion in the *Redding* case referred to

While somewhat ambiguous, the court in *Pana* does not appear to have modified its previous holding that striking by public school employees is not only illegal but also prohibited by the constitution as a matter of public policy. Instead, it appears to have enunciated, through its decisions from *Redding* to *Pana*, two distinct rationales upon which it has determined the inapplicability of the Anti-Injunction Act to public employees other than those employed by public hospitals:

- 1) violation of constitutionally declared public policy (public school employees);
- 2) unlawfulness of striking which removes such conduct from the intended scope of the Act (all other public employees).

This difference in rationale is significant with respect to future legislation in the area of collective bargaining for public employees. For those categories of employees who are presently prohibited from striking because judicially declared public policy makes those strikes illegal, the General Assembly certainly has the inherent power to declare those strikes as being in the public interest and, hence, legal. If, however, the court has determined that striking is constitutionally prohibited in a given sector of public activity (as *Redding*, *Benedict*, and *Peters* seem to indicate is the case with public school employees); then it is beyond the power of the General Assembly to overcome that constitutional prohibition through the passage of a law.

III. ILLINOIS CONSTITUTION ARTICLE X, SECTION 1 (1970)

The *Redding*, *Peters*, and *Benedict* cases were decided under the 1870 Constitution. Since then Illinois has adopted a new constitution and a new education article. The continued vitality of the court's announcement of a constitutionally imposed prohibition against public school employee striking depends, to a large degree,

the constitutional duty imposed upon the General Assembly to "provide a thorough and efficient system of free schools," the plaintiff has felt it necessary to refer to article XI of the Constitution of 1970, which asserts "[t]he public policy of the State and the duty of each person" to provide and maintain a healthful environment. It is therefore appropriate to repeat what has often been said before, that the public policy of the State is not found solely in the provisions of the Constitution.

Id. at 552, 316 N.E.2d at 515.

upon the similarity between article VIII, section 1 of the 1870 Constitution, and article X, section 1, of the 1970 Constitution.

The Illinois Supreme Court, in *Peters*, emphasized that the ground for its distinction between public school employees and hospital employees was based upon the constitutional duty, or mandate, imposed upon the General Assembly by article VIII, section 1 of the 1870 Illinois Constitution.³⁰ A review of both the express language of article X, section 1 of the 1970 Constitution, as well as the Education Committee Report and Convention debates, indicates that this mandate for state guaranteed efficiency in the educational sector was reaffirmed by the framers of the present constitution.

The second paragraph of section 1 of article X of the 1970 Constitution reiterates, in language similar to that used in the 1870 Constitution, the mandate for educational efficiency: "The State shall provide for an efficient system of high quality public educational institutions and services." In its report, the Committee on Education specifically recognized that section 1 of article X of the constitution did not constitute a grant of powers to the General Assembly.³¹ Nonetheless, the Committee elected to insert this language and pointedly characterized paragraph 2 of section 1 of article X as imposing a mandate³² upon the state legislature. The term "efficient" is specifically referred to by the Committee in its report, which opines that the term is a useful constitutional characteristic for inclusion in the education article.³³

The Committee favorably cited comments made by George D. Braden and Rubin G. Cohn, regarding the constitutional limitations inherent in the use of the term "efficient":

30. "The general assembly shall provide a thorough and efficient system of free schools. . . ." ILL. CONST. art. X, § 1 (1970).

31. It has been pointed out that this Section 1 granted no new powers to the General Assembly, for if the Constitution were silent on the subject, it would certainly be within the power of the legislature to establish a public school system, as in fact was done prior to 1870. However, every state now provides some constitutional language which endorses support for education: SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, 6 RECORD OF PROCEEDINGS 232 (1970).

32. *Id.* at 237.

33. The concept of the efficiency of the system (already contained in the present Constitution) has been used by the courts as a guide to the validation of district boundary changes. The Committee believes it useful to continue this concept and to add the notion of high quality. *Id.* at 234.

As a general matter, the Court has refused to intervene in school reorganizations on those grounds [i.e., arguments that certain reorganizations will render a school system less thorough and efficient], if the reorganization conformed to statutory requirements. It has said that the "thorough and efficient" requirement was solely a matter for legislative discretion and the courts will not look into it However, one recent case has invalidated annexation proceedings which left the remaining district in three separate islands of territory on the grounds that this violated the constitutional requirement of efficiency.³⁴

This Committee, in its specific reference to the Braden-Cohn analysis, appears to have recognized and approved the possibility, at least within the area of school district reorganization, that the term "efficient" may be construed, in certain instances, as a limitation upon the powers of the General Assembly. Neither the Committee nor Braden and Cohn discussed or expressly considered the *Redding*, *Peters*, and *Benedict* decisions. It would appear difficult, however, to maintain, from a reading of both the Committee Report and the Braden-Cohn analysis, that the Committee specifically intended to modify or reverse the supreme court's holding regarding the significance of the term "efficient" as found in the *Redding* and *Peters* decisions.

CONCLUSIONS

Apart from the question of the power of the General Assembly to grant public school employees the right to strike, the *Redding* decision has held that such employees are constitutionally precluded from striking because such conduct is in direct contravention of the constitutionally imposed duty upon them, as agents of the state, to provide an efficient system of education. The Illinois Supreme Court, in *Peters*, appears to have extended this constitutional duty of efficiency to the General Assembly itself. In either case, the exercise of the right to strike or the assertion of the power to grant such a right must be weighed against the express language of section 1 of the education article of the 1970 Illinois Constitution as it may be construed by the court.

Notwithstanding the *Pana* cases, the issue of public school employee striking in Illinois is, as yet, unresolved.³⁵ However, until

34. G. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* 400-01 (1969).

35. There is little question that the *Pana* cases have not resolved this issue fully. Section 1 of the education article of the new constitution was not before the court

the General Assembly attempts to vest such power in the public school employee sector and such attempt is judicially resolved, the continued vitality of *Deatherage* must remain in question.

in either *Redding* or *Peters*. Legislation which provides for a qualified right to strike, with its attendant safeguards, may well be deemed sufficient to meet the standard of efficiency notwithstanding the paucity of public harm shown in the facts presented in *Redding*. Finally, even if the court were to maintain that the duty of efficiency prohibited public school employee striking, that very conclusion, distinguishing public school employees from all other types of public employees with respect to their right to strike, would certainly be subject to scrutiny under the equal protection clause of the Federal Constitution.