"A Rite of September: " Rhode Island Teachers' Unions & the Right to Strike

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To My Parents & the Woonsocket Teachers’ Guild
for all their help in pursuing this topic.

Figure 1: Back to School Sale
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In August 1975, the *Woonsocket Teachers' Guild News* posed the question, “Why must public employees always have to be the ones to take it on the chin?”\(^1\) When my father, the union’s vice-president, penned these words he was referring to a dispute between his union and the city’s school committee. The five hundred local teachers faced an imminent strike after negotiations with the school committee reached an impasse. In this small Rhode Island community, it was evident that government workers were treated differently than their private sector counterparts in regard to their legal rights to take action against their employers. However, this tension was not confined solely within this one school district. Rather, the question regarding the treatment of public sector workers touched on a deeply rooted division between public and private sector workers which has troubled the American labor movement. With public sector workers growing ever more central to the labor movement in the last quarter century, their unusual status and history have become particularly critical.

Labor in the United States has been commonly associated with images of industrialism, factories, and skilled craftsmen. However, this narrow vision of labor ignores the millions of Americans employed by the federal, state, and local governments. Both private and public sector employees struggled against their employers, the legal system, and the community for the legal rights to organize and employ labor’s greatest weapon, the strike. Though private and public sector labor engaged in similar battles, they traveled on two divergent paths with very different timetables. Since the 1930s private sector labor has been granted legal protections making the distinction between private and public sector labor unions apparent. The question of why public

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sector labor law developed differently from that of the private sector is an interesting and largely forgotten topic, but one that spurred my curiosity and led to this project.

The first challenges by private sector workers against their employers and the legal system appeared in the early nineteenth century. The earliest organized labor strikes prompted charges of conspiracy from the legal community. In 1842, the Massachusetts Supreme Judicial Court set a remarkable precedent and allowed workers to unionize. However, the conspiracy theory did not disappear. From 1890 to 1932, private sector unions fell under the scrutiny of the Sherman Anti-Trust Act which when applied by the courts to labor unions labeled them an illegal “conspiracy in restraint of trade.” The heyday of private sector activism occurred in the early 1930s as massive strikes were launched across the nation. The turning point in the struggle of private sector labor transpired during the New Deal when Congress took the debate over labor unions out of the court system. By 1940, the Supreme Court had affirmed the right of unions to strike. The key pieces of New Deal legislation and judicial support gave private sector unions the legitimacy needed to become crucial players in the American economy.

In the 1960s and 1970s, when social and economic conditions motivated an increase in public sector activity, government workers would not fare as well. Their attempts to unionize and strike were denied legitimacy on two grounds. First, in the absence of the profit motive and an exploitive employer, unions were seen as unnecessary in the public sector. Second, the concept of governmental sovereignty played a key role in the opposition. Sovereignty, a carryover of English common law, provides the government with complete independence and power. Unionization and strikes by workers threatened the state’s control over its employees, which led many officials to withhold their support from public sector workers. For example, President Franklin Roosevelt was a liberal politician, a great crusader for the rights of American
laborers, and signed key pieces of New Deal legislation strengthening the rights of the private sector worker. However, in 1937, Roosevelt stated, “a strike of public employees manifests nothing less than an attempt on their part to prevent or obstruct the operations of government until their demands are satisfied. Such action, looking toward the paralysis of government by those who have sworn to support it, is unthinkable and intolerable.” Due to this opposition by government officials and the community, public sector employees’ rights developed independently of their private sector counterparts. The rights to unionize and strike were never included, nor prohibited, in any of the federal laws passed during the New Deal. Their exclusion goes down as one of the great historical ironies for the most union friendly period in U.S. history completely resisted public-sector militance. Instead separate legislation developed, but this at first only governed federal employees. State and local government workers were left in the hands of judge-made law and state ordinances. These judicial decisions and legislation would deny public sector unions the basic rights afforded to their private sector counterparts, including the right to strike.

In the absence of a national law to define the rights of all public sector labor unions, the battles fought by government workers must be examined at the state and local level. The first states to tackle the public sector labor question “tended to be strong two party states with active and powerful organized labor.” Rhode Island fit this definition perfectly. The history of Rhode Island and the labor movement are integrally linked. Local labor historian Paul Buhle concluded that organized labor lies at the heart of a Rhode Islander’s identity for “every worker in a state as compact and labor-conscious as Rhode Island has felt the impact of labor’s tradition- if not in his

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or her own life, then in the lives of family and friends.” As a native Rhode Islander, organized labor has played an important role in the life of my family. My parents have been active members and officers in the Woonsocket Teachers’ Guild, a local of the American Federation of Teachers, AFL-CIO, all of their adult lives. This deeply rooted relationship between the state of Rhode Island, its citizens, and organized labor has allowed the state to serve as a haven for organized labor when most of the nation fought vehemently against it. The long history and tradition of organized labor in Rhode Island provides the perfect environment in which to examine the struggles of public sector unions against the courts, legislature, and public opinion, to obtain the rights to organize and strike.

Teachers’ labor unions, as one of the more active professional organizations in the public sector, provide the best example of the long and arduous battle public labor unions would have to fight in order to gain recognition and certain rights. In Rhode Island, teachers’ organizations were among the first groups to actively take a stance against their public employers. Prior to the 1950s, teachers’ unions were relatively docile groups taking little action against their employers. Unlike many of their New England neighbors, Rhode Island teachers have used the strike steadily since the 1950s as a tool for change. In 2001, a journalist noted that a teachers’ strike is so “incredibly common in Rhode Island that residents forget how rare it is across the United States. Just next door, in Connecticut, entire generations of children have never seen their teachers on the picket line.”

While Rhode Island quickly embraced private sector organized labor and supported workers’ rights, the enthusiasm did not readily transfer to public sector workers when they began to struggle for the same rights. Across the country, the first pieces of public sector legislation

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and laws passed were an attempt to abolish strikes. Rhode Island became one of the first states
to legally and formally limit the rights of public sector workers. Due to the fact that teachers
were among the most militant state workers, early developments in Rhode Island public sector
labor law dealt primarily with the issue of teachers’ strikes.

In the last fifty years, public sector labor law has been probed many times by a variety of
scholars. However, most of the published studies examine the development of public sector
labor law at the national level. Sterling Spero’s Government as Employer, published in 1948,
became the first comprehensive survey of public sector labor law. However at the time he wrote
his work, only federal workers had taken action against their employers. The scope of this work
did not extend to the law governing state and local workers. Similarly, Kurt Hanslowe’s The
Emerging Law of Labor Relations in Public Employment was also published too long ago, in
1967, to cover the bulk of the public sector labor battle. Richard Kearney’s Labor Relations in
the Public Sector, from 1984, does a wonderful survey of developments across the nation, but
does not focus on any particular state and, therefore, misses the truly local influences which
shaped the rights of government workers. Finally David Colton and Edith Graber’s Teachers
Strikes and the Courts paints a complete picture of the evolution of teachers’ strikes, but again is
limited to the national trends and fails to pay attention to the local aspect of public sector labor
law. This study instead examines the truly local nature of public sector labor law by focusing
primarily on legal developments in Rhode Island. At the same time, however, I will attempt to
show Rhode Island’s place in the larger scope of the labor movement by continually reflecting
how national developments paralleled local changes.

This work will trace the development of public sector labor in Rhode Island from its early
beginnings in the 1950s until the present day. Chapter 1 will briefly explore Rhode Island’s long
tradition of supporting organized labor and the rights guaranteed to union members by state courts and national legislation. An examination of this strong tradition is crucial for it will serve as a point of comparison for the struggle of Rhode Island public sector employees. Chapter 2 focuses on the development of national federal legislation, state legislation and case law governing public sector unions, from its initial appearance in the early 1950s until public sector activism climaxed in the mid-1970s. Chapter 3 provides a detailed examination of the development, the issues, the participants, and the eventual resolution of a teachers’ strike conducted by the Woonsocket Teachers’ Guild during the highpoint of teacher activism in 1975. Chapter 4 will examine the status of public labor today, recent legislation and case law, and labor’s prospects for the future.

In the last decade a paradox has emerged within the state. Even though labor remains a powerful force in Rhode Island, the treatment of labor by the courts has radically shifted in the last ten years. Nationwide there has been a slight decrease in public sector union membership in the last decade. However, Rhode Island has remained immune from this phenomenon. Instead, public sector unionism has actually risen in the last ten years providing Rhode Island with the second highest percentage of public sector unionism in the country. This trend would seem to suggest that Rhode Island has remained a hospitable environment for labor. However, at the same time, the Supreme Court of Rhode Island has withdrawn much of its support from labor and begun issuing rulings in favor of management. According to research conducted by the state’s largest public sector union the Rhode Island Brotherhood of Correctional Officers, the Supreme Court has ruled in favor of management in twenty of twenty-three cases brought before the bench in the last decade.6 New legal interpretations by recently appointed judges, the growing power of corporations, and the declining power of the Democratic Party in the state are

seen as partially responsible. At the moment, Rhode Island has not lost the distinction of being one of the most labor friendly states in the nation; however these recent judicial rulings suggest a significant change might be just around the corner.
CHAPTER 1:  
A Brief History of Organized Labor: The Rise & Fall of Rhode Island Private Sector Unions

In October 1891, Samuel Gompers proclaimed, “wherever people enjoy most liberty, trade unions are most formidable.” In this one brief statement, Gompers captured the essence of the American labor movement for, in a country founded upon the notion of freedom, logic dictates that industrialized workers come together to seek added rights which would ensure their liberty. During the nineteenth century, the growing disparity in power between individual workers and their employers began an increasing movement towards unionization by labor in an attempt to protect itself against the abuses of big business. As a result, the development of the labor movement and the legislation governing its operation comprise one of the most complex and troubled relationships in American history.

While national labor legislation in the twentieth century would set the trend in private sector labor across the country, the true character of labor is best observed at the state level. Organized labor and the history of Rhode Island are so intertwined that to neglect the development of the state’s labor movement would leave gaping holes in the history of American labor. Rhode Island labor history is unusual for nowhere else in this country could one find a state so deeply saturated with the struggle for rights by organized labor. Since the state’s founding in 1636 as a heretic colony, Rhode Island has represented an oddity among the traditional Puritan colonies of New England. The “independent, otherwise minded character” of the state asserted itself foremost in the labor arena as Rhode Island became home to the first textile mill and the first textile strike.

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7 Samuel Gompers, “Trade-Unions: Their Achievements, Methods, and Aims,” The Journal of Social Science, 28 (October 1891), 400.
I. Laying the Groundwork: Industrialization in Rhode Island

The colony of Rhode Island began as seaport where ocean borne commerce was the key to the economic success of the colony. By the beginning of the nineteenth century, however, the state turned away from the ocean and began a rapid period of industrialization.

For Rhode Island historians, “the fundamental question is…why did the state become the most industrialized state in the nation?”9 The territory had very few deposits of iron, coal, and other materials associated with manufacturing. Rhode Island, as the smallest state, had limited land that hindered market and population growth. In addition, the transportation systems which existed in the early nineteenth century gave the state access to only Worcester, New York, and Boston. The varied weather of the state, from summertime droughts to frozen rivers in the winter, was not ideal for water-powered factories. However, the declining ocean trade led the state to develop textile, metal, and jewelry industries.

Industrialization began with Samuel Slater, who, in December 1780, arrived in Rhode Island with the plans for British embargoed textile machinery memorized. Slater was hired by Almy & Brown to build a factory in Pawtucket. On December 20, 1780, Slater’s mill began producing cotton yarn, and thus, “Rhode Island had given birth to cotton manufacturing in America.”10 The textile industry did not remain solely in Pawtucket. By 1809, twenty-five textile mills had been built in nine different towns. Six years later, there were one hundred mills scattered over twenty-one towns. By the Civil War, the textile industry in Rhode Island was valued at twenty million dollars, a large sum at that time, and employed 15,739 people.11

Metal and jewelry were also key to Rhode Island’s industrial success. The metal industry developed at a slower rate than textiles. Before the dawn of the Civil War, over one hundred

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9 Ibid., 63.
10 Ibid., 57.
11 Ibid.
metal working factories appeared. In addition, the tiny state was home to four of the “Five Industrial Wonders of the World,” which included the largest tool, file, steam engine, screw, and silverware factories in the nation.\textsuperscript{12} The growth of the Rhode Island jewelry industry, based in Providence, outpaced that of major cities such as New York and Philadelphia, making Providence the nation’s jewelry capital. As a result of this industrial growth, skilled labor became key to the economic success of the state. The development of Rhode Island was shaped by labor and industry as “Providence, Pawtucket, Woonsocket, and a host of mill villages gained supremacy and dictated the direction of the state for the next century.”\textsuperscript{13}

II. Labor’s Ups & Downs: National & Rhode Island Labor Movements, 1800-1900

Early opponents of organized labor believed that a group could inflict a greater level of damage in the business world than the individual.\textsuperscript{14} This belief led to a fear of organized labor. The earliest labor union, The Federal Society of Cordwainers, faced difficulties. As the trade market expanded and goods from different parts of the world flooded into the United States, the small shoemakers of Philadelphia struggled to compete in this international market. As the supply of shoes on the market increased and demand for local goods decreased, storeowners reduced the amount they paid to their workmen, the cordwainers. The Federal Society of Cordwainers worked collectively to reverse this trend by staging several strikes in Philadelphia in the late eighteenth century. In 1805, in \textit{Commonwealth v. Pullis}, the members of the cordwainers’ union were charged with the common law crime of “conspiracy to raise their wages.”\textsuperscript{15} The common law definition of conspiracy held that “a conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or to

\textsuperscript{12} Ibid., 59
\textsuperscript{13} Ibid.
accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means. If the purpose be unlawful, it may not be carried out, even by means that otherwise would be legal; and although the purpose be lawful, it may not be carried out by criminal or unlawful means.”

Under this definition, the cordwainers were found guilty of conspiracy and required to pay a heavy fine. Organized labor did not fare well in its first encounter with the law.

Organized labor, once again, faced off against the legal system in the Massachusetts case Commonwealth v. Hunt in 1842. Benjamin Hunt, president of the Boston Journeymen Bootmakers’ Society, and his fellow union members refused to work for any employer who hired non-union journeymen. In September 1840, business owner Isaac Wait disregarded the union’s warnings and hired a non-union man, Jeremiah Horne. Consequently all of his workers threatened to quit. Faced with the destruction of his enterprises, Wait dismissed Horne. The union members were prosecuted under the definition of conspiracy for depriving Wait and other employers of their ability to conduct business.

At the first trial, the workers were found guilty; however, the Massachusetts Supreme Judicial Court, under the leadership of Justice Lemuel Shaw, would use this case to set an important precedent in regard to the rights of unions. Instead of finding unions contrary to law, Shaw ruled, “that associations may be entered into, the object of which is to adopt measures that may have a tendency to impoverish another, that is, to diminish his gains and profits, and yet so far from being criminal or unlawful, the object may be highly meritorious and public spirited.” Shaw set forth the belief that every labor case must be decided on its own merits. Even with this vindication, unions were not given complete free rein in the business world. The courts, before

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17 Ibid., 134.
determining the legality of a union, had to look at the means by which it achieved its goals. Only if the means were legal were the unions legal.

This initial endorsement of unions did not last for very long. In 1890 Congress passed the Sherman Anti-Trust Act. This legislation was designed to stop the concentration of industries, such as steel and oil, from falling into the hands of a few companies. This legislative policy declared “every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among several States, or with foreign nations”\(^{18}\) illegal. However, as time would show, there were two ways in which to interpret the Sherman Act and what constituted interstate commerce. A narrow interpretation of interstate commerce and the act eventually allowed big business to defeat governmental regulation. However, a broad interpretation of commerce and the Sherman Act would allow the anti-trust legislation to be applied to labor unions even though the act contained no language dealing with labor. The vague wording of the Sherman Act left the interpretation, application, and enforcement of this act to the courts in the United States.

Less than five years after Congress passed this legislation, the Sherman Act became a device by which government and business could suffocate the expanding labor movement. The first attempt to expand the meaning of the Sherman Act to include labor occurred in 1895 during In re Debs. The Pullman Company of Chicago, in the early 1890s, cut the wages of its workers by twenty percent. In 1894, the American Railway Union, led by Eugene V. Debs, went out on strike in protest of the harsh wage cuts. A secondary strike quickly began and soon no railway workers would handle Pullman cars on any line. The large extent of this strike stopped all transportation in and out of Chicago. Eventually the federal government asked for an injunction forcing the Pullman workers back to their jobs because the strike had become a public welfare

issue by stopping the shipment of U.S. mail. Debs and the other union members refused to comply with the injunction. When brought before the Federal Circuit Court on contempt charges, Debs and his attorneys maintained that the injunction was beyond judicial power. The Circuit Court judge would take a novel approach to this labor problem by invoking the Sherman Anti-Trust Act, claiming the railway workers were conspiring to restrain trade through their strike.

The Supreme Court, in its unanimous 1895 ruling in the Debs case, refrained from using the Sherman Anti-Trust Act to stop the union strike. In an opinion by Justice Brewer, the Court stated clearly “we enter into no examination of the [Sherman] act…upon which the Circuit Court relied mainly to sustain its jurisdiction…we prefer to rest our judgment on the broader ground which has been discussed in this opinion believing it of importance that the principles underlying it should be fully stated and affirmed.”\(^\text{19}\) Nonetheless, the Court upheld the ruling of the lower courts establishing the strike as a restraint on commerce. The Court cited the Constitution as giving the court and government control over interstate commerce, mail delivery, and highway operation. As Brewer stated, “the strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce.”\(^\text{20}\) While the Supreme Court did not feel it necessary to use the Sherman Anti-Trust Act in this encounter with labor, it set forth some very basic views that would later be used to directly link the Sherman Act and labor unions. The Court took a very broad view of what constituted commerce when including labor in this instance. Later court rulings would use this same broad approach, in conjunction with anti-trust legislation, to stop the activities of unions.

\(^{19}\) In re Debs, 158 U.S. 564, 599 (1895).
\(^{20}\) Id. at p. 582.
Rhode Island labor bucked the national trend for the state’s labor movement fared well in its first opposition to big business. As soon as the first textile mills in Rhode Island opened their doors, conflicts between workers and employers emerged. Labor in Rhode Island was always independent and rarely gave in to the demands of the mill owners. Men would walk out of the factories without notice, parents would remove their children from factories for no reason, and workers would routinely refuse to perform certain tasks. Despite this independent streak, workers saw the use of concerted activism in the 1820s with the founding of the state’s first union, the New England Association of Farmers, Mechanics, and Other Workingmen. While across the nation early unionization movements and strikes were crushed by legal technicalities, the organized labor movement in Rhode Island initially met success.21

The struggles between management and labor began in a most fitting location, the birthplace of the textile industry, Pawtucket, RI. The town had changed tremendously in the thirty-years since Samuel Slater’s mill opened. By the 1820s, the town was home to eight different mills and the rapid growth of the mills had created a rift with the emergence of two distinct social classes, the mill owners and the textile workers. On May 24, 1824, mill owners held a meeting and decided to operate the factory for one additional hour each day and to implement a twenty-five percent wage reduction for certain categories of workers, especially those composed of women. For mill owners, these were practical and necessary actions in order to maximize the profit they could earn. Between 1820 and 1824, productivity in the factories increased tremendously. This, in turn, inundated the market with fabric, thus decreasing the price of the textiles. At the same time, the price of raw cotton increased dramatically. The actions of the Pawtucket mill owners are understandable because labor was the only economic

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factor in their business which they could control. In addition, the mill owners believed that since women were new to the workforce they would not protest the wage cuts. They were wrong. Five hundred workers at the Pawtucket Cotton Manufacturing Company, also known as the Yellow Mill, began the first strike in the American textile industry and the first strike ever to include women.

The female weavers and their male counterparts joined forces in what the press referred to as a turnout, not a strike. On May 31, 1824, the *Manufacturers’ and Farmers’ Journal* reported,

“when the laboring part of the community learned of the result of this meeting, they were generally determined to work only the usual hours; and when the bell rang to call them to their employment, they assembled in great numbers, accompanied by many who were not interested in the affair, round the doors of the mill, apparently for the purpose of hindering or preventing the entrance of those willing to work, no force, however, was used.”

During the week-long protest, a mob of workers and townspeople rioted through the streets of Pawtucket. The group surrounded the homes of the factory owners and spent the evening shouting at their bosses; however, little property damage was done. Toward the end of the turnout, the workers became more violent for, on June 1, 1824, one mill was set on fire. Five days later the *Providence Journal* announced, “the Pawtucket mills are again in operation, and a compromise settlement between the employers and the employed” had been reached. The compromise settlement provided Rhode Island laborers with a tremendous victory because at a time when labor strikes often did not provided the desired results, this victory demonstrated the power of organized labor and its ability to force sanctions upon their employers.

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Following the strike of 1824, unions emerged in only a few skilled trades such as carpenters, weavers, and brewers. These groups were successful in achieving wage increases and improving working conditions for themselves, but did little for unskilled laborers and the labor movement as a whole. The Knights of Labor attempted to form a union for both Rhode Island’s skilled and unskilled workers in 1882. However, the union fell apart before the turn of the century because the Knights could not convince skilled and unskilled workers to join forces with the Irish immigrants who led the Knights. Between 1875 and 1930, French Canadians were the dominant immigrant group composing over half the city’s population and a majority of laborers in northern Rhode Island. As a result, the success of any labor union required the cooperation and recruitment of the local French-Canadian workers. Unfortunately for the early labor movement, these immigrants were not receptive to the message of labor unions. The French-Canadian immigrants strove to protect their traditional culture, religion, language, and customs. As a result, they remained fairly isolated from the rest of the community. It seemed that these workers “cared less about improving their economic condition than about maintaining their French-Canadian culture.”24 By 1900, only ten percent of Rhode Island workers had unionized. This small membership rendered the unions weak and unable to bring improvement to the workers.

III. Downward Spiral: Rhode Island’s Labor Disasters, 1900-1930

The new immigrants in Rhode Island were not the only portion of society hostile to organized labor. By the turn of the century, the smallest state in the country was home to one of the strongest corrupt networks of politicians in the country. Republican United States Senator Nelson Aldrich, businessman Marsden Perry, and General Charles Brayton joined forces to

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control all major businesses in Rhode Island. Aldrich commanded so much power in the Senate, he was nicknamed the “Boss of the United States.” In 1905, muckraking journalist Lincoln Steffens exposed the government’s corruption in his article, “Rhode Island: A State for Sale” published in *McClure’s Magazine*. According to Steffens, “Rhode Island never was a democracy.” The corrupt political machine controlled by Aldrich bought votes in local and state elections to keep the Republican Party in control. Republicans, nationwide and in Rhode Island, maintained a strict government-business partnership, which left labor helpless. The wealth of the Republicans made it nearly impossible for Rhode Island Democrats “to get control long enough to make the needed changes without more money than they can raise in the state.”

While Nelson and Brayton controlled state politics, Perry assumed control of Rhode Island business. Within just a few years, Perry dominated all of the state’s utility companies including electric, waterworks, and gas. In addition, he consolidated all of the state’s railroads under his Union Railway Company.

Labor could effect no change when big business owners controlled the state government. Yet at the same time, the organized labor of Rhode Island still tried to further its cause. Small labor struggles emerged in the early twentieth century and “although these local upheavals never attained the notoriety of national strikes, their sheer number and similarity demand attention as a key to unraveling citizen frustration at the dawn of the twentieth century, a time when private trusts wrestled with public interest.”

The Carmen’s Strike of 1902 provides the perfect example of the struggle of organized labor against the Republican political machine. Marsden Perry, himself, provoked the

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26 Ibid.
27 Ibid.
Amalgamated Association of Street and Railway Employees to strike. In the spring of 1902, the Rhode Island legislature passed a law limiting the hours worked by the railroad carmen to ten hours a day. The law was to go into effect on June 1, 1902. However, Perry refused to honor the law, arguing that it was unconstitutional to limit the hours of those who wanted to work longer hours. On June 4, the “wage disparity, and the sense of political betrayal after two years of hard work at the statehouse, exploded into the most momentous civil disruption in Rhode Island since the Dorr War of 1842.”29 The carmen strike would grow to encompass seven hundred workers, spread to two cities, Providence and Pawtucket, and last for five weeks.

Initially, the Carmen demonstrated great restraint with their actions against their employer. Car operators crowded the streets to see how many of their coworkers would break the strike. That evening only twenty-four of the one hundred and thirty-seven cars were in operation. In Providence the strike quickly gained notoriety. Most notable about this strike was the popular support it gained from local residents. On June 6th, hundreds of carmen and conductors marched to the beat of a military band from Providence to the neighboring town of Olneyville and back while twenty thousand townspeople cheered from the roadside. While support emerged from the people, the press reacted in divergent ways to this event. The Evening Telegram, which favored labor, reported “enthusiasts jammed the business section of the city and gave rise to an outburst of popular feeling that has no parallel in the city’s history.”30 On the other hand, headlines in The Providence Daily Journal took the side of management describing a very different scene of “Cars Destroyed, the Switches Plugged, Motormen and Conductors Hooted at and Terrorized and the Police Officers Stoned.”31

29 Ibid., 133.
30 The Evening Telegram, June 6, 1902 quoted in Molloy, Trolley Wars: Street Car Workers On the Line, 133.
31 Providence Daily Journal, June 6, 1902, quoted in Molloy, Trolley Wars: Street Car Workers On the Line, 134.
While the stance of the press differed, the government quickly opposed the workers. By June 11th, Governor Charles Kimball was forced to call in over six hundred Rhode Island militiamen to quell the strike. On July 5th, the militia finally defeated the strikers by forcing them to end their demonstrations and marches. As a result, the local Providence union was forced to vote to end its strike. Pawtucket resisted for a few days, but on July 8th, the local ended its strike. It would take organized labor decades to recover from this devastating setback.

IV. Labor’s New Deal: Transformation in the 1930s

The 1930s became a period of tremendous change for the United States. When the Stock Market crashed in October, 1929, America was plunged into a period of despair unrivaled by anything in the country’s history. The ensuing depression caused a dramatic decline in business and commerce impacting unions tremendously. In 1929, there were 3.5 million union members nationwide, but by 1933 this total dropped by fifteen percent.32 Transportation and construction unions were once the heart of the American labor movement; however, the Great Depression temporarily stopped the expenditures needed to build roads and railroads. A lack of capital also ended all new construction endeavors. Understandably many unemployed Americans dropped out of the unions for they felt the union could not offer them any assistance.

Despite declining union membership, the general anti-union sentiment began to change during the 1930s. In the years before the Great Depression, businessmen were the leaders of the country. When depression struck the country, the American people turned towards these men to repair the damaged economy, but to no avail. Business could not save the country this time. As a result, President Roosevelt and the country increasingly focused on the laboring man.33 Many in the New Deal began to recognize the merit of unions and the possibility that these

organizations could help pull the country out of its economic slump. Congress soon began a campaign in support of unionized workers.

The national legislature took the first steps to protect unions in the 1930s with the passage of two pieces of legislation, the Norris-La Guardia Act of 1932 and the Wagner Act of 1935. Senator George W. Norris of Nebraska and Representative Fiorello H. La Guardia of New York devised the Norris-La Guardia Act. The 1932 legislation declared,

“The individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment…it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor…”34

The Norris-La Guardia Act went on to limit the use of injunctions by federal courts in both violent and nonviolent strikes. The legislation confirmed that unions would no longer be held as conspiracies in restraint of trade under the Sherman Act of 1890. It also prevented employers from making their workers sign or punishing employees for breaking, “yellow-dog contracts,”35 agreements that assured that workers would never join a union. Following the passage of this legislation, many states followed suit and passed their own versions of the Norris-La Guardia Act.

The Wagner Act of 1935 is formally known as the National Labor Relations Act. Senator Robert Wagner of New York initiated this bill to protect employees from their bosses. The act stated,

“Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest… It is declared hereby to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce.”

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commerce.”  

In order to safeguard the rights of the employee, the act created the National Labor Relations Board. The NLRB, composed of three members, was given the power to regulate labor relations in any industry involved in interstate commerce.

IV. “The Quintessential New Deal State:” Rhode Island Labor Law, 1930-1955

The 1930s represented a decade of tremendous change not only for the nation, but also for Rhode Island. The combination of a new Democratic government, New Deal legislation, and a change in attitudes among Rhode Island’s immigrants allowed a new era to dawn for Rhode Island labor.

At the beginning of the Great Depression, through the work of Belgian unionists, the Independent Textile Union (ITU) made its entrance into Rhode Island. The Belgians “knew that the ability of textile workers to win significant and lasting control of their lives was more than a dream.”  

Under the leadership of Joseph Schemts, the ITU was founded in Woonsocket in hopes of unionizing all textile workers. The new union “preached solidarity, constructive activity, pride in labor and labor’s participation in society.”

The problems previously faced by labor unions in Rhode Island, including the hostility of the French-Canadian community and yellow dog contracts, vanished in the 1930s. By the 1920s, the French-Canadian isolation policy began to erode. The economic hardships created by the Great Depression were enough to break down the walls surrounding these immigrant workers and make them more receptive to the ideas of organized labor. During the 1930s, the ITU would “successfully tap the French-Canadian working class, thereby enlisting a vibrant ethnic solidarity

38 Buhle, Working Lives, 35.
into the service of the union.” 39 Secondly, many mills had previously prevented their workers from joining labor unions via yellow dog contracts. However, the Norris-LaGuardia Act outlawed these contracts in 1932, thus opening the way for the ITU.

September 1934 proved to be a pivotal moment for the ITU. On September 1, the United Textile Workers called for a nationwide strike in response to Southern companies refusing to honor collective bargaining rights. Across the nation, 400,000 workers immediately followed and went on strike. One week later, by a vote of 1756 to 84, Woonsocket’s ITU joined the strike and closed down all but one mill, the Woonsocket Rayon Company. It took an additional four days of fighting company guards in the streets before this mill closed. On September 12, a mob of ten thousand ran through the streets of the city. The state government was forced to call in the National Guard to quell the riot. Unfortunately, the troops opened fire on the crowds and killed two teenagers and wounded twelve others. By the next morning over $100,000 in damage had been done to the city. 40

Even though labor was defeated in the nationwide 1934 textile strike, these actions, in the end, strengthened labor’s position in Rhode Island. In 1934 the ITU had 1500 members. Two years later it doubled, and by 1939 the union was over 10,000 members strong operating locals for not only textile workers, but also barbers, electricians, office workers, plumbers, store clerks, and shoe repairers. 41 The strike also gave the ITU a larger role in the city for “as the ITU encompassed more and more of the workers in Woonsocket, its perception of its role changed. No longer content to fight for recognition and better working conditions, it assumed the responsibility of a community organization. It became active in city and state politics,

advocating a series of reforms ranging from day-care centers for working mothers to public housing projects.” ⁴² New Deal legislation, such as the Wagner Act, allowed unions, such as the ITU, to successfully negotiate for progressive contracts that capped the number of hours worked per week, guaranteed overtime pay, established grievance procedures, and formed closed shops. As a result, this would be the last major strike in Rhode Island for many years to come.

As Rhode Island unions sought increased rights through massive strikes such as the Great Textile Strike of 1934, Rhode Island law attempted to keep up with the demands for increased protection of laborers. As a result, the boom of labor legislation was not confined to the national scene. While legislation such as the Norris-LaGuardia Act and the National Labor Relations Act dictated policy and set forth general guidelines across the country, state legislation affording rights to organized workers began to emerge. Due to the increasing protection provided to Rhode Island’s workers, historians have deemed the nation’s smallest member “the quintessential New Deal state.” ⁴³

Rhode Island courts began to affirm the rights of the state’s private sector workers in 1931 with the Supreme Court ruling in Samuel Bomes vs. Providence Local No. 223 of the Motion Picture Operators of the United States and Canada. The facts of this case are fairly simple, yet an important decision formed as a result. Beginning in 1927, the relationship between the unionized motion picture operators and the owner of the Liberty Theatre began to sour. Members of the union attempted to force the theater’s owner into employing only unionized men at his facility by picketing the establishment. Union men wore placards proclaiming, “This theatre does not employ union moving picture machine operators affiliated

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⁴² Ibid., 167.
with the American Federation of Labor.” 44 Additionally, the picketers stopped patrons who were trying to enter the theater. In order to deter business, moviegoers were accosted and told “I know you won’t go into a scab place, a non-union place.” 45 The picket was successful and the theater began to rapidly lose money.

The ensuing court case began however hesitantly, the Rhode Island judiciary’s protection of labor’s rights. The trial judge found in favor of Bomes and issued an injunction to prevent further picketing by the union directly in front of the theater. On appeal a mixed result was achieved. The Supreme Court rightly acknowledged that this was a new frontier for state law, because no plaintiff had ever challenged the right to picket a business establishment. After a vain attempt to find precedent elsewhere in the nation, the opinion noted, “the decisions on that question in the State and Federal courts and the reasons therefor are many and conflicting. We think that much of the uncertainty and confusion in the reported decisions results from the attempt to establish a general rule of law which shall govern in every labor controversy.” 46 While the Supreme Court refused to set a definitive rule governing pickets, the three to two ruling affirmed the absolute right of labor unions to picket in a peaceful manner without using any form of coercion. Nonetheless, in this specific case, the court ruled that the injunction was warranted because the picketing obstructed the public use of the street since moviegoers were directly confronted.

While the Motion Picture Operators union lost the strike and their legal battle, an important precedent was achieved because unions secured the right to publicly protest unfair labor practices. Two justices dissented in the case further demonstrating the judiciary’s

44 Samuel Bomes vs. Providence Local No. 223 of the Motion Picture Operators of the United States and Canada, 51 R.I. 499, 501 (1931).
45 Id. at p. 501.
46 Id. at p. 503.
sympathy towards organized labor. The two dissenters argued that the pickets were not an obstruction, but rather were a “lawful and proper” demonstration necessary to inform the public that union labor was not employed at the theater.

In the early 1940s, Rhode Island workers scored a tremendous victory as the legislature passed the Rhode Island State Labor Relations Act. The 1941 Act reaffirmed two crucial rights for the state’s private sector workers. Section 1 reaffirmed a worker’s right to unionize by proclaiming,

“Employees shall have the right of self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion from any source.”48

A later section in the state’s Labor Relations Act reiterated a union’s right to strike:

“Nothing in this act shall be construed so as to interfere with, impede or diminish in any way the right of employees to strike or engage in other lawful, concerted activities.”49

Although the act’s language is virtually identical to that of the National Labor Relations Act, it covers workers not included in the federal legislation. Additionally, it provided workers an extra layer of protection against the abuses formerly endured by guaranteeing basic rights. Although this statute has been revised several times, it remains the guiding principle in Rhode Island labor law to this day.

In 1951, the Legislature amended Rhode Island General Law to provide an anti-injunction statue designed to further protect workers’ rights. The new law stated, “No court of this state shall have jurisdiction to issue a temporary or permanent injunction in any case involving a labor dispute, except after hearing the testimony of witnesses in open court, with

47 Id. at p. 505.
48 Rhode Island Labor Relations Act, Rhode Island General Law, Title 28, Chapter 28-7, sec. 12 (1941).
49 Ibid., sec. 14.
opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto.\textsuperscript{50} Courts could no longer halt a union strike without giving workers their day in court to present their side of the argument.

Five years later, the Rhode Island Supreme Court reviewed the anti-injunction law in \textit{Lindsey Tavern, Inc. v. Hotel and Restaurant Employees, Local 307}. In August 1955, employees at the tavern began to organize and form a new local. However, the owners of the bar did not approve of these actions and the lead organizer, a bartender, was fired. On September 29, 1955 the tavern’s workers went out on strike for increased wages, better hours, and job security. The workers asked the Hotel and Restaurant Employees Union, a division of the American Federation of Labor, to represent their interests, even though not all of the striking workers had joined the union. A legal question arose when a Superior Court judge issued an injunction to stop the picketing before he heard testimony from either party. The trial judge issued the injunction even though he felt, “the picketing appears to have been peaceful for the most part… The picketing that is being done is for \textit{organizational purposes}.\textsuperscript{51}” The judge’s choice to issue an injunction in spite of the circumstances was an ironic move because, according to the \textit{Bomes} case, picketing in a peaceful manner without obstructing business was legal. On appeal, the Supreme Court overturned the injunction and reaffirmed Rhode Island’s anti-injunction law. The Supreme Court argued that as long as the workers were not directly trying to exert economic pressure on the tavern or customers, the strike was legal. This action further strengthened the rights of union workers within the state.

\textsuperscript{50} \textit{Rhode Island Public Law}, Chapter 2748, sec. 1 (1951).
\textsuperscript{51} \textit{Lindsey Tavern, Inc. vs. Hotel and Restaurant Employees, Local 307}, 85 R.I. 61, 68 (1956).
VII. Moving Out: The Decline of Private Sector Labor in Rhode Island, 1950-Present

While the Great Strike of 1934 and the subsequent legal developments initially strengthened labor’s position in Rhode Island, it also hastened the downfall of Rhode Island’s most prominent industry and employer— the textile mill. Thomas Geoghean, in his study of the decline of industrial labor in Chicago commented, the “people in South Chicago thought the mills would last forever. They thought of them in public utilities.”52 Rhode Islanders, too, incorrectly thought the mills would last forever.

Following World War II, mills and factories began closing at an alarming rate. Without the wartime contracts, large companies such as Franklin Machine and Foundry immediately went out of business. Also, the end of the war decreased the need for cotton, thus reducing the business of the textile mills. In October and November 1945, labor unions went on strike in most mills demanding closed shop policies and the continuation of the high wartime wages. Mills were unable, or chose not, to meet the demands of northern labor and began to close. By 1953, nineteen mills had been shuttered.53 Guerin Mill in Woonsocket, one of the largest textile mills, closed after workers refused a wage cut resulting in the loss of over a thousand jobs. The following year, the former “Industrial Wonders of the World” began to relocate. Nicholson File Company moved its facilities out of state after a five-month strike damaged its business. By 1982, the textile industry labor force had decreased seventy-five percent and 43,000 workers had lost their jobs.54

In the modern era, cheap overseas and southern labor provided industry with alternatives to northern labor and opportunities to earn more profit. With these options, management gained power and labor unions lost their place of prominence. Large business demanded that state

53 Keller and Lemons, Rhode Island, 143.
54 Ibid.
Figure 2: Pictorial Illustration of the Rise and Fall of Rhode Island’s Textile Industry. Top picture shows the Lippett Woolen Mill in 1875. The bottom picture highlights the same facility, in a dilapidated state, as it existed in 1981.

legislatures repeal strikers’ benefits, reduce workers’ compensation rates, and lower taxes. However, even the threat of further unemployment did not deter the strong willed Rhode Island laborers.

On March 22, 1982, industrial workers at the Browne & Sharpe machine tool workers company in North Kingstown went on strike. This strike “signaled the end of two decades of labor and management cooperation.” During this strike labor overestimated its power. Strikers lined their cars along the entrance road, stood outside the factory, threw rocks at scabs, and sang “We Shall Not Be Moved.” Despite the efforts of labor, the strike was unsuccessful. Rhode Island labor historian, Paul Buhle called 1982 the “end of the Craftsmen’s era.” John Coen, a machinist at Browne & Sharpe and an officer in the International Association of Machinists, explained the strike’s failure. He said, “when you bring in a whole new generation of workers, and they hadn’t been involved in the original organizing or the hard fights to get contracts…you’re going to get a very small percentage that are really going to feel, you know, what unionism is all about and what it means.” The old feeling of unionism in the private sector was gone in both Rhode Island and across the nation.

Today, labor unionism and activism in the private sector has greatly diminished. In Rhode Island “the architectural landscape throughout the state is dotted with hulking ghosts of abandoned buildings, with gables and belfries staring down on the deteriorating mill villages that will never recover except as suburban sprawl.” In the last two decades, for the few remaining private sector unions both in Rhode Island and nationwide, “it has been insane to go on strike. Every strike ends in disaster. The members go out, roaring mad, like in the old days. Then they

56 Ibid.
57 Ibid.
58 Ibid., 128.
watch the ‘crossovers’ add up, day by day, watch until they reach the magic number, tip the balance, and the company can start up again, nonunion, and bust the strike.”

The 1980s held the potential for a resurgence of labor when wages fell and the gap between the rich and the poor increased; however, the revival never occurred.

Due to the independent character of Rhode Island laborers and their desire to push for rights, even after years of defeat and setbacks, the country’s smallest state has one of the largest and richest labor histories. One hundred and eighty years ago, Rhode Islanders launched the first strike in the textile industry and successfully achieved their goals at a time when labor movements were usually crushed. Today, labor in Rhode Island continues to defy the odds and the legacy of organized labor remains a potent force in the state. As organized private sector labor has declined, the state’s public sector employees have picked up the slack to continue Rhode Island’s quest for increasing labor rights.

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59 Geoghean, Which Side Are You On?, 5.
CHAPTER 2:  

Law & Legislation Concerning Public Sector Labor Unions

George Meany, the first president of the AFL-CIO declared during a postal workers strike in 1970, “employees of the government have exactly the same desires and aspirations as do employees in the private sector.” Police officers, fire fighters and teachers, just like skilled craftsmen and factory workers seek a safe working environment, adequate compensation for their services, and fair treatment by their employers. In order to protect their interests, workers in all industries routinely seek the right to organize and strike. However, public sector workers have faced prolonged opposition to their struggle to unionize and strike even greater than that confronting their private sector counterparts.

The rights of public employees have been under debate, for over a century, because their interests were often placed subservient to the operation of the government and their demands marginalized. National legislation, which during the New Deal clarified the rights of private sector workers, never materialized for all government workers. As a result, the legal rights of millions of Americans were left in a state of flux and subject to “a hodgepodge of statues, ordinances, attorney general opinions, and court decisions.” Through these actions, public employees were granted a limited set of rights which were far more restrictive than those existing in the private sector. Examining the legal developments of public sector labor regarding the right to organize and strike, paints a clear picture of the long and arduous battle fought by government employees.

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61 Kearney, Labor Relations in the Public Sector, 39.
I. Encounters with the Law: Public Sector Employees & the Law, 1900-1912

From the nineteenth century until the New Deal, mention of public sector labor rights was conspicuously absent from legislation conferring rights to private sector workers. However, the absence of the public sector does not imply that government workers were ignored. Instead right from the start, public employees’ attempts to expand their rights were vehemently opposed. Public sector workers, particularly federal workers, first clamored for increased rights in the early nineteenth century, but achieved little success. For example, in 1835, mechanics at the Navy shipyards in Washington, DC demanded a reduction in hours from twelve to ten hour work days. The Secretary of the Navy refused this demand and all workers returned to their jobs under the previous working conditions.62

At the opening of the twentieth century, activism increased, labor organizations expanded, and the government took swift action to curtail their efforts. Workers employed in government owned factories and shipyards were able to belong to the private sector unions governing the particular occupation.63 When the largest group of federal workers, the postal carriers, demanded increased pay and rights, their efforts were quickly stopped by the government. This difference in treatment first highlighted the atypical nature of government employment in fields where there was no private sector counterpart. Beginning in 1895, the Postmaster General put forth rules restricting the actions postal workers could take to improve their wages and working conditions. One particularly restrictive rule prohibited postal workers from lobbying Congress under any circumstances. Postal workers continually tried to assert increased power by forming several different groups, including the National Association of the Post Office Clerks of the United States, the United Association of Postal Clerks, and the National

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62 Spero, Government as Employer, 79.
63 Ibid. 105.
Association of Letter Carriers in 1896. However, their efforts to improve wages and working conditions met very limited success.  

By 1901, the Postmaster General’s rules fell by the wayside in a fervor of postal worker activism. The National Association of Letter Carriers, unhappy with the laws governing the salaries of its members, lobbied Congress for improved wages. President Theodore Roosevelt, who had promised to aid mail carriers during his campaign, came out in opposition to the union because it continually ignored the anti-lobbying rules and aggravated the members of Congress. Under pressure from the U.S. Post Office and Congress, Roosevelt put forth the first presidential order limiting the rights of government employees. On January 31, 1902, in his infamous gag order, Roosevelt prohibited federal employees from “directly or indirectly or through associations” seeking legislation on their own behalf. He instituted a strict penalty of job dismissal for anyone who undertook these actions. Four years later, the President expanded the scope of his gag order. The new order decreed,

“All officers and employees of the United States of every department, serving in or under any of the Executive Departments or independent Government establishments, and whether serving in or out of Washington, are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase of pay or to influence in their own interest any other legislation whatever, either before Congress or its Committees, or in any way save through the heads of the Department or independent Government establishments, in or under which they serve, on penalty of dismissal from the Government service.”

Limiting the rights of American workers to belong to associations and advocate for improved working conditions runs contrary to the basic tenets of American democracy and denies federal...

64 Ibid.
66 President Theodore Roosevelt, Executive Order 402, 25 January 1906 in Lord, Presidential Executive Orders, 42.
workers their constitutional right to petition the government. The “dubious constitutionality” of these gag orders immediately came under siege from the labor community.

The American Federation of Labor (AFL), under the leadership of its president Samuel Gompers, took an early interest in the struggles of government employees. Leaders of the AFL felt “there is a law of growth, progress, and evolution in the labor movement as sure as the law of life.” This belief obliged the national union leaders to aid federal worker unionization efforts. At the AFL’s national convention in 1905, the organization made attempts to draw federal labor unions into the national movement. The AFL selected five federal labor union representatives to serve on the newly established Committee on Federal Labor Unions. The purpose of this committee was to propose a series of ways in which the AFL platform could accurately and adequately reflect the needs and interests of federal workers. On March 26, 1906, the Executive Board of the AFL drafted a letter expressing labor’s grievances with recent governmental policies regarding their own employees. The letter was sent directly to President Roosevelt and the presiding officers of the U.S. Senate and House of Representatives. It asserted that remedies to their grievances went hand in hand with the “progress and development made necessary by changed industrial conditions.”

Public sector labor law is a history of inaction on the part of the national government. Despite the protests of the AFL, neither the President nor Congress addressed the rights of federal employees. Indeed, three years later President Taft issued his own gag order denying federal employees the right to directly respond to any inquiries regarding their employment made

by members of Congress. At the annual conference of the American Federation of Labor in 1912, Gompers reflected on the impact these gag orders had on American workers. In a speech before the membership he said, “the departmental Government employes were gagged and their hands tied, without any means of redress.” Employees were forced to seek aid regarding any and all problems from their department heads which were often the cause of the problem. Many federal workers, especially the postal workers, turned to the AFL for assistance in remediying their dire situation. However, as the AFL began to intervene, employers exerted pressure on these men and forced many to seek other positions outside of government service. The AFL persisted because Gompers believed that “the American people are not yet ready to take the position that because an individual accepts employment from the Government he thereby forfeits his rights guaranteed to him by the Constitution of the United States.”

Outright persecution of federal employees by the executive branch ended in 1912 when Congress passed the one and only piece of national legislation enhancing the rights of public sector workers. As a result of intense lobbying by the American Federation of Labor, Congress adopted the Lloyd-LaFollette Act of 1912 which stated,

“the membership in any society, association, club or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or propose in assisting them in any strike, against the United States, having for its object, among other things, the improvements in the condition of labor of its members, including the hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said postal service, or the presenting by such any person or groups of persons of any grievance or grievances to the Congress or any member thereof shall not constitute or be cause for reduction in rank or compensation or removal of any person or groups of persons from said service.”

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70 President William Howard Taft, Executive Order 1142, 26 November 1909 in Lord, Presidential Executive Orders, 103.
72 Ibid.
Despite the AFL’s support in pursuing the Lloyd LaFollette Act, little was published by the organization after it was passed. The group was conspicuously silent about this large step forward for public workers. However, the United Postal Clerk did report in August 1912 that Gompers approved the final language of the act. Those who opposed this legislation did not remain silent. The coverage in The New York Times, an anti-labor paper in 1912, announced, “there were inspired intimations that the President would veto the bill.” Since the veto was never issued, this piece of legislation advanced the standing of government workers by overturning the harsh restrictions imposed by the gag orders and allowed workers to affiliate with outside labor organizations. The act, although restricted to postal workers, was seen by federal workers as a precursor to a broader piece of legislation which would formalize these rights for all government workers.

II. “Strike Against Public Safety:” The Boston Police Strike of 1919

Any possible advantage offered to public workers through the Lloyd-LaFollette Act was curtailed by the Boston Police Strike of 1919. Although this was a local strike, the actions of the Boston police made the conflict between government and their employees clear for the entire nation to see. For months, the Boston police had been advocating for a pay increase, but to little avail. On August 9, 1919 the Boston police force applied to the American Federation of Labor for a charter in order to be formally recognized as a union. For twenty years, the AFL had opposed the unionization of policemen. However, after seeing the struggles occurring in Boston and cities across the nation, at their national convention in 1919 the AFL lifted its ban on police unions. President Samuel Gompers reflecting on this change in policy said, “The policemen have appealed to me, coming clandestinely and secretively for fear they might be seen and

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spotted and victimized, as many of them have been, to try and get some relief in a way that they cannot get in their existing form of organization.”  

Police department rules prohibited the officers from forming connections with any outside organization. The conflict escalated when the Boston police formed Local 16, The Boston Policeman’s Union, of the AFL. In late August, Police Commissioner Edwin U. Curtis began trying union officials for violating police regulations. On September 8, nineteen police officers were suspended. As a result, 1,117 police went on strike the following day. Residents of Boston took advantage of the weakened police presence in the city and a crime spree erupted, store windows were broken, merchandise was stolen, and people gambled in public. Under the supervision of Governor Calvin Coolidge, the Massachusetts State Guard was called in to end the riots and, in the process, killed five people. The Police Commissioner broke the strike when he hired an entirely new police force.

The aftermath of the Boston police strike hindered the progress of public sector workers for years. Essentially this strike highlighted the differences between public and private sector workers. The police believed they were striking for increased benefits from their employers much like their private sector counterparts had done in the past. In the eyes of the press and government officials, the Boston police strike was not a labor dispute, but rather was an attempt to create political unrest and harm the government. From the Boston police strike emerged the natural assumption of why government employees needed to be treated differently from their private sector counterparts. Government employees such as police, teachers, and firefighters were concentrated in fields which directly impacted the health, safety, and well being of the general population. As a result, it was felt that government employees must be held to a higher

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75 Hearings, Committee on the District of Columbia, United States Senate, 66th Congress, 1st Session, September 1919, quoted in Spero, Government as Employer, 256.
standard than manual laborers. Governor Coolidge expressed this concern succinctly when he announced, “there is no right to strike against the public safety by anybody, anywhere, any time.”76 The 1919 event associated public employee strikes with civic unrest and upheaval. Following the strike, “judges could not imagine giving public workers such rights.”77 This marked the opening of a period of judicial opposition, at the state and national levels, to public employee strikes.

In the coming years, the Lloyd-LaFollette Act degenerated into a toothless piece of legislation because the courts would not enforce the penalties and sanctions prescribed by the act. A 1939 case before the U.S. District Court for the District of Columbia proved the ineffectiveness of the law. Jonathan Levine, a union worker employed at the New York Post Office, was dismissed from his position because he wrote newspaper articles lobbying for increased job protection after a co-worker was unjustly fired. Levine asserted that his actions were covered under the Lloyd-LaFollette Act. As a union member, he felt he was guaranteed the right to lobby for improved working conditions. The three judge panel denied and trivialized his assertion by claiming that “the printed volumes of our reports are full of cases where aggrieved government employees have sought mandamus either to compel reinstatement or to correct their official status.”78 In Levine v. Farley, the court failed to uphold the prescriptions and rights guaranteed by the Lloyd-LaFollette Act. Following this case, the act was nothing more than “mere moral remonstrances, unenforceable if the employing authorities choose to circumvent them.”79 Once again workers were left at the mercy of their employers for the United States Supreme Court refused to examine this issue on appeal.

78 Levine v. Farley, 107 F.2d. 186, 190 (1939).
79 Spero, Government as Employer, 43.
Despite the weakness of the Lloyd-LaFollette Act and the setback dealt by the Boston police strike, public sector workers continued their struggle. Government workers, from 1912 to mid-century, began an intense campaign for the same legal rights afforded to private sector workers. These years saw the rapid expansion of public sector unions. The American Federation of Teachers was founded in 1916. Several umbrella unions, such as the National Federation of Federal Employees, formed in 1917. The International Association of Fire Fighters was founded in 1918. Local police organizations began affiliating with the AFL in 1919. The American Federation of Government Employees and the National Association of Government Employees started within a few years. Not only did new unions emerge, but union membership quickly increased. For example, the American Federation of Teachers, at its founding in 1916, had just 4,500 members in the Chicago area, but had grown to 32,000 members nationwide within 15 years.80

III. “Not a Simple Task:” Creation of a National Federal Employee Policy, 1947-1962

Despite the increasing unionism, government workers were virtually ignored by the law for thirty years following the Lloyd-LaFollette Act. The New Deal legislation which cemented the rights of private sector workers to organize, bargain, and strike did not impact the legal rights of public sector workers. Instead, the legislation solidified the divide between public and private sector labor and launched government workers on their own crusade for increased legal rights. By granting the private sector explicit rights, the legislature made it clear that private sector workers were in class apart from the public sector. The silence of Congress regarding the future of the public sector labor movement left government employees in a capricious position for many years. However, during the 80th Congress (1947-1948), public sector labor was delivered a direct blow. The Labor-Management Relations Act, more commonly known as the Taft-Hartley

Act, reaffirmed the rights of private sector workers to unionize, participate in collective bargaining, and be free from coercion. The act, also, became the first piece of federal legislation to jointly mention public and private sector workers. Section 305 of the act proclaimed,

“it shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency, who strikes, shall be discharged from his employment, and shall forfeit his civil service status.”

The Taft-Hartley Act represented a setback for public sector employees. However, it reaffirmed basic rights of the NLRA, but came down hard on government employees. The passage of this legislation was deeply resented by the American Federation of Labor for they felt, “the post-war years have seen a concerted employer-led drive to weaken the labor legislation enacted during the New Deal era. The Taft-Hartley Act in 1947 was the first breach.”

A slow but steady change in sentiment began to take hold in the government. The Rhodes Johnston Bill, first proposed in 1949, attempted to define and regulate the labor-management relationship in the federal public sector. The bill included many provisions, such as giving officers of national unions the right to present the grievances of their members before the appropriate body; requiring union officers and management representatives to work collaboratively in regards to safety in the workplace and grievances; development of clear regulations allowing government unions to conduct any lawful activity, but excluding the right to strike; forcing unresolved disputes into binding arbitration; and, finally, the establishment of a Civil Service Commission to oversee all aspects of this relationship. Despite several years of study by Congress, the bill’s failure during the 1950s, demonstrated that the country was still not quite ready to legally define the rights of all public sector workers or treat the government like any other industry.

While Congress was not ready to pass legislation benefiting public sector labor unions, the executive branch took action. President John F. Kennedy revolutionized the rights of government workers and initiated a period of substantial growth early in his term. Organized labor had been a staunch supporter of President John F. Kennedy throughout his campaign. As a result, Kennedy rewarded labor’s efforts by commissioning the Task Force on Employee-Management Relations in the Federal Sector. On June 22, 1961, in establishing the task force, he stated,

“I know this is not a simple task. The diversity of federal programs, the variety of occupations and the skills represented in federal employment, the different organizational patterns of federal departments and agencies, and the special obligations of public service complicate the task of formulating government-wide policy guidance. Nevertheless, this important subject matter requires prompt attention.”

Members of this committee included key figures such as Defense Secretary Robert McNamara, White House Chief Counsel Theodore Sorenson, and the Secretary of Labor Arthur Goldberg. For over a year, the Task Force conducted public hearings with representatives from a variety of federal departments and invited every federal department to submit written recommendations regarding a federal employee policy.

Kennedy’s challenge to create a nationwide policy was met on November 30, 1961. The Task Force’s report proclaimed, “It is improper for government to fail to extend to its employees the same privileges enjoyed by employees of private industry as the result of government intervention.” The report also concluded that labor unions strengthened rather than weakened or threatened the government. With little explanation, however, the Task Force denied public sector workers the right to strike. The report only said, “it is evident that the recourses open to

84 Ibid., 6.
private employers and employees such as strike action are not available to their counterparts in government.”85

Kennedy’s first executive order on this issue, in 1962, took rudimentary steps to ensure the fair treatment of labor. The order called for “safeguards to protect employees against arbitrary and adverse actions.”86 The second order, Executive Order 10,988 entitled “Employee-Management Cooperation in the Federal System” supplemented the Lloyd-LaFollette Act by proclaiming, “employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity.”87 While the issuance of this order marked a monumental achievement for federal employees, it also clearly stated the right to join a union “shall not include any organization which asserts the right to strike against the Government of the United States or any agency thereof, or to assist or participate in any such strike, or which imposes a duty or obligation to conduct, assist or participate in any such strike.”88 For the first time, increasing the rights of government employees was warmly received by the public because these orders provided as the New York Times noted, a “framework for a more efficient civil service in the interest of 185,000,000 employers: the people of the United States.”89

IV. “States as Laboratories:” State Based Public Sector Labor Law & Education

Federal government workers made significant steps forward in the first half of the twentieth century, yet the struggle by public sector workers did not cease. Kennedy’s executive

85 Ibid., 18.
88 Ibid.
orders only protected the rights of federal government workers to unionize. Unfortunately for 74.5 percent of the public sector workforce\(^9^0\) which, in 1962, were employed by state and local governments, the law still did not define their legal rights to organize or strike. At the state level the question of public sector workers was often left to the state judiciary. Each state was forced to develop their own ways to cope with public activism and “although it may be trite to speak of the states as laboratories experimenting with different approaches to problems, that characterization aptly applies to public sector impasse resolution.”\(^9^1\)

State policy developed based on local conditions and the size of the local public sector labor force. Additionally, most relevant law was judge-made which emerged only in direct response to a local crisis or strike by public sector workers. Some judges would quickly ban organized labor all together, others limited the actions of unions, and some states took relatively little action. For example, following a 1920 strike by firefighters, the Texas Court of Appeals in *McNatt v. Lawther*,\(^9^2\) upheld a law preventing firefighters from unionizing. In a 1947 case, *City of Springfield v. Clouse*,\(^9^3\) a Missouri court allowed workers to unionize, but not engage in collective bargaining. On the other hand, Virginia courts, until the 1990s, did not address public sector labor unions. The diverse reactions arose primarily due to a misconception as to what exactly constitutes a union. The courts immediately linked unionization with strikes for in the private sector the two actions developed simultaneously. No one could imagine a union which would not eventually wage a strike. While not entirely off the mark, this automatic link formed


\(^9^2\) 223 S.W. 503 (1920).

\(^9^3\) 206 S.W.2d 539 (1947).
between unions and strikes when added to the notion of governmental sovereignty, stimulated an immediate opposition to public sector labor unions.94

During the mid-twentieth century, public education represented “the new frontier of organized labor.”95 Public labor law, in many states, often developed around the most active labor organizations, teachers’ unions. However, it is puzzling why academia became one of the hotbeds of organized labor. On average, teachers composed 35 percent of government employees.96 Teacher unionization faced two problems. Samuel Gompers and the AFL saw a distinct difference between “brain workers”97 and manual laborers. Additionally, educational concerns “seemed distant, feminine, and radically alien from bread-and-butter unionism.”98

In the period between 1900 and 1950 a radical transformation occurred within the educational arena. Teaching changed from a “stopgap occupation”99 to a true profession. Increased unionism and activism emerged as a direct result of this fundamental shift in education. For many years, teaching was not considered a true profession. Female teachers were often young unmarried women who were seeking to earn some money before they got married. In many communities, married women were not allowed to teach. Male teachers often taught only until they had saved enough money to pursue their real goals, such as law school or engineering. Additionally, communities maintained inane social regulations regarding dress codes, the company they kept, where teachers lived, and the activities pursued in leisure time. This transient aspect of the job and strict local control made it difficult for teachers to gain rights

96 Union Membership and Coverage Database; available from www.unionstats.com; Internet; accessed 29 April 2004.
98 Ibid
99 Spero, Government as Employer, 297.
and improved working conditions from their employers. The teachers’ unions which existed at this point in time, served only as means to achieve pay raises.

During the 1930s, a transformation in the teaching field was underway which would change teaching from a temporary position into a true vocation. Until the 1930s, teachers did not even have to possess a high school diploma. The Great Depression made teaching jobs difficult to acquire and, therefore, allowed school administration to become more selective in the individuals they hired. By 1937, thirty-two states were requiring a high school diploma and one to four years of college. The moral and social restrictions were dropped during this period.

The professionalization of American teachers reshaped the role of the teachers’ union. By turning teaching into a profession the bond between teachers and community leaders was broken. As a result, the union emerged as a means to bridge the gap between the new profession and the communities in which they worked. Teachers began to seek increased salaries and working conditions that were commensurate with their education levels. Also, teaching was one of the few professions which was open to women and minorities right from the start. However, for much of American history, women and minorities were not treated equally with their white male counterparts. The growing professionalism of teachers created a problem for “inherent in the professionalism idea was the triumph of merit.” Unions were a means for these two groups to ensure their equality in the workplace and guarantee that merit, not gender or race, led to advancement in this field. Consequently, women and minorities often took on leadership roles in teachers’ unions which were unprecedented in any other field.

In many states across the nation, teachers’ unions became the most active challengers of the law and their government employers. The strike evolved to be the means by which the

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100 Murphy, Blackboard Unions, 34.
101 Ibid., 261.
unions asserted their power. At the state level, the right to organize was not opposed by the government. Rather, states often first took action in response to strikes by public sector workers. Across the United States, in the 1950s, “teacher strikes were mere curiosities, occurring so infrequently that most policy makers rightly dismissed them as accidents or aberrations unworthy of close analysis.” Teachers’ strikes were few and far between during this decade because, as the baby boom generation entered school in the 1950s, there was great demand for qualified teachers which increased the salary of the average teacher. As long as working conditions were good, levels of discontent remained low. Teachers’ strikes averaged only three per year.

Although there is a distinct difference between teachers and typical unionized manual laborers, the struggle of teachers’ unions against their employers can serve as a microcosm of the public sector labor dispute at the state level. The actions taken by teachers would eventually be mirrored in other state level government agencies.

V. Militant Teachers: Emergence of the Rhode Island Public Sector Labor Law

As a state with a firm tradition of organized and active labor, Rhode Island provides a perfect environment in which to examine the development of state public sector labor law. In the early 1970s, Rhode Island ranked number one in the nation for the percentage of unionized government employees. In this state all public sector labor law developed around teachers for they were the most active organized group in Rhode Island. The actions taken by the Rhode Island courts to define the rights of public school teachers illustrates the long and arduous battle other public labor unions would eventually fight. At the same time, these actions revealed the

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102 Colton and Graber, Teachers Strikes and the Courts, 1.
103 Ibid.
attitudes of the courts and other government officials’ attitudes towards public sector unionization.

The law regarding public sector unions in Rhode Island developed ahead of the national trend because Rhode Island teachers began early to seek additional rights. Organized labor activism in Rhode Island, in both the public and private sector, always preceded the national trend. In the late 1940s, a few brief strikes were launched by Rhode Island teachers. These events, like many early teachers strikes, were virtually ignored. On December 5, 1946, Superintendent of Schools in Providence, Dr. James Hanley, in an attempt to dissuade future opposition, made the city’s position clear in a memo issued to all city teachers which read,

“Teachers are government employees. Government employees are expressly excepted in the National Labor Relations Act and the State Labor Relations Act which regulate collective bargaining and the right to strike in the private industry...a strike by teachers is entirely different from a strike by workers in private industry. The School Committee is a public body, a government agency, representative of the citizens of Providence and a strike against the School Committee, therefore, is a strike against the public, a strike against the Government.”

Providence teachers did not heed Hanley’s warning and began to take aggressive action against the city in the late 1940s. Beginning in 1946, a salary dispute between the teachers and the Providence School Committee emerged. The Providence Teachers’ Union formed as a result of this salary dispute. City teachers had always belonged to an informal organization, the Providence Teachers’ Association. When this group could not solve the salary dispute, the union was founded in 1947 and membership rapidly grew until the union was the dominant teachers’ organization in the city. The Providence Teachers’ Union engaged in a one day strike in 1948 regarding the disputed salary scales. However, this brief strike resolved nothing and tensions between Providence teachers and the city continued to escalate. In 1952, the relationship

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between the teachers and the school committee reached its breaking point. On March 8, 1952, over seven hundred members of the Providence Teachers’ Union took to the streets after their call for a $400 raise was denied by the school committee. Their actions closed sixty-nine schools leaving twenty-six thousand students out of school. This time the administration noticed and was left wondering “if there was any other city in the country where the teachers had struck twice.”

It was during this strike that Rhode Islanders, both in the government and among the public, began to seriously debate whether or not teachers had the right to strike. While the actual ten-day strike was not particularly interesting, the reaction to the strike demonstrates the divided opinion of teachers, government officials, and the public over the nature and legal rights of public sector workers. Newspaper coverage and a series of interviews conducted after the strike clearly illustrate the diverse opinions. Providence teachers were split over the work stoppage. Seven hundred teachers may have walked out, but two hundred teachers remained part of the separate entity, the Providence Teachers’ Association, which believed “teaching is a profession and is not to be equated with that of a laborer.”

These divided opinions reflect the division among this profession whether they should join unions and strike. A unionized teacher remarked “a strong teachers’ union is the only salvation of the teachers who individually are at the mercy of the public, the press, and the school committee.” In regards to the strike, this teacher felt “that regardless of whether one is a public servant or not, when legitimate requests are ignored by those in power a strike is justified to secure some action on part of the public officials.” On the other side, Association leader Theresa Trifari opposed the strike, because “for the sake and

108 Ibid., 72.
109 Ibid.
welfare of everyone and the welfare of the children”¹¹⁰ the schools must be kept open. This group put forth an alternative plan which asked for a smaller pay increase. Trifari believed the teachers of the city would accept her plan because the teachers “are willing to sacrifice personal gain for the good of all.”¹¹¹

Teachers were not the only group to have different opinions over the right to strike. Several government officials adopted the same anti-public sector union stance that had developed in opposition to federal workers. Dr. Hanley again warned teachers that “they may hurt themselves in public favor if they strike. A strike by teachers is not like a strike by an industrial group…because too many parents and their children are affected.”¹¹² Also, James Gallogly, chairman of the School Committee, labeled the strike “unwarranted, unlawful, a challenge to a legally constituted authority, a serious disservice to the people of the city and a threat to the welfare of the teachers themselves.”¹¹³ Not all local government officials opposed the strike. In fact many, including the union counsel, Assistant Superintendent, and the union negotiator, cited the apathetic attitudes of the community and school committee as just cause for a strike. Additional support was garnered from members of the community. On March 11, 1952, the Parent-Teacher Association marched on City Hall, where President Tancredi Paolino announced, “we are behind the teachers and we deplore the condition that brought about the strike and urge that negotiations be reopened in good faith.”¹¹⁴ While this strike began the debate over teachers’ legal rights, the dispute was kept entirely out of the court system. Negotiations continued throughout the summer of 1952 until an acceptable solution was reached providing the teachers with a slightly lower salary increase than they had desired. Therefore, no

¹¹¹ Ibid.
significant legal measures were created to define the rights of teachers and unions. As a result, the debate would continue for many more years.

In 1957, Rhode Island public sector labor law began to take shape as yet another teachers’ strike erupted. On March 26, 1957 teachers in the city of Pawtucket threatened to strike unless a new contract agreement was reached. Union members did not relish this idea, but according to the union’s president, a strike was the “only effective means we have of dealing with these people (the School Committee) and getting any salary relief.”115 When relief was not found by the fall of 1957, four hundred teachers failed to report for work on the first day of the 1957-58 school year.

Once again no uniform view of the strike emerged. Providence Journal reporter Joseph Kelly took a harsh swing at teachers with his article, “Why a Strike?” published on September 8, 1957. He claimed the public’s sentiment was shifting away from the teachers. For the previous ten years, parents tended to side with teachers in their contentions that City Hall treated government employees unfairly. In 1952, blame for the Providence strike was split between the teachers and the school committee. However, during this strike, Kelly argued, the fault rested entirely on the teachers because the public was left wondering “what teachers hope to gain by a strike that would offset the loss of wages, prestige, professional standing, and the respect of a large part of the community?”116 On the other hand, a Pawtucket family with four school-aged children was interviewed by The Providence Journal. Both parents clearly regretted the delay in their children’s education, but they favored giving teachers the right to strike. Alice Prescott observed, “if a person goes through college, it takes both time and money. Most graduates get

$7,000 when they start work. By comparison a $3,000 figure looked very small.” 117 As a result, she understood the teacher’s willingness to strike for equitable benefits. Harold Prescott concurred with his wife and added “they’ve got the right to strike. I won’t deny that to anyone.” 118

The Rhode Island judiciary entered a public sector labor dispute for the first time, as Judge Mullen of the Rhode Island Superior Court was brought in, but not in a judicial capacity, to facilitate negotiations three days into the strike. The entrance of the legal system marked a sharp departure from the past and demonstrated that the issue of the right to strike was now so controversial that problems could not be resolved in private meetings between teachers and city officials. However, Mullen’s attempts to mediate the strike failed and the teachers were taken to court by the school committee. The union president attacked this decision to call upon the power of the courts because “if a disheartened bunch of teachers are sent back to their classrooms by the order of the court, then education in Pawtucket will be a corpse.” 119 He understood the ramifications that would follow if the teachers’ strike was halted by the court. As one of the first teachers’ strikes in the nation to be brought to court, many who witnessed the unfolding events felt “teachers throughout the country are watching the Pawtucket teachers’ struggle to emerge from being treated as third class citizens in a profession probably more important than any other for the future of our country.” 120

With the eyes of the educational community on the Rhode Island courts, teachers were thoroughly disappointed with the trial judge’s ruling delivered on September 13, 1957. Judge Frederick Frost declared the eight day strike illegal. He drew a parallel to the Boston Police

117 Francesco Cantarella, “Family Regrets Teachers Strike,” The Providence Journal, 8 September 1957, p. 34.
118 Ibid.
Strike of 1919 where that public employee strike was crushed as a threat to public safety. Frost claimed teachers’ strikes “embody a principle that is as potent now as then.” Government employees were explicitly prohibited by court order from striking in the state of Rhode Island because of the potential cost to the community at large. Frost recognized that the damage caused by teachers was more subtle than the potential risks of a police strike; nonetheless, he felt that “to close the school is giving the children a push towards juvenile delinquency.” As a result, while he personally hoped the teachers’ demands would be met, he ruled the strike illegal. Although they returned to the classrooms, Pawtucket teachers continued to fight Frost’s ruling. Groups throughout the state called on the union to seek a state Supreme Court ruling which would officially define the legal rights of public school teachers. On review by the state Supreme Court in 1958, the Superior Court’s ruling was affirmed. This legal opinion became a crucial element in Rhode Island labor law for it would set precedent for years to come.

Several important trends in state public sector law emerged as a result of the Supreme Court ruling. First, the unanimous opinion handed down by five justices of the court, in City of Pawtucket v. Pawtucket Teachers’ Alliance, demonstrated the power judges had in the field of labor law. This case made it very clear that public sector workers were explicitly denied several rights granted to Rhode Island private industry employees. The first right denied to public employees was protection from injunctions. According to Chapter 299 of the Rhode Island Constitution, injunctions cannot be used to end labor disputes. The anti-injunction provision had been upheld in the private sector in the defining case of Lindsey Tavern, Inc. v. Hotel & Restaurant Employees, Local 307. Against the teachers, the Supreme Court affirmed the

121 “Return of Teachers to School in Doubt,” The Providence Journal, 14 September 1957, p. 10.
122 Ibid.
injunction issued by the lower court denying public sector workers this fundamental protection. The explicit distinction made between private and public sector rights was clearly evinced when the Justice ruled that the anti-injunction rule would have held “true in the case at bar if respondents were not governmental employees performing a government function.”

Another crucial right regarding the ability to stage picket lines came under fire in this teachers’ case. Rhode Island had a law allowing peaceful picketing outside an establishment guaranteed to private sector employees by the case, Bomes v. Providence Local. Teachers were denied the right to picket outside their school. The court again made it evident that government workers were treated differently for “if the instant dispute were one between the respondents and a private employer, there is no doubt that the activities of the respondents would be lawful.”

Throughout the opinion in City of Pawtucket v. Pawtucket Teachers’ Alliance, the court repeatedly asserted the notion of governmental sovereignty to justify their treatment of public sector workers. Sovereignty provides the government with complete independence and freedom for external control by any other entity. Unionization and strikes by workers threatened the state’s control over its employees which led many officials to oppose public sector strikes. Teachers were clearly agents of the state and exercised a portion of the state’s sovereign power for the Rhode Island Constitution stated, “the diffusion of knowledge through the use of the public school system so that the advantages and opportunities afforded by education will be made available to the people is the constitutional responsibility of the state.”

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126 Bomes v. Providence Local No. 223 of the Motion Picture Operators of the United States and Canada, 51 R.I. 499 (1931).
128 Rhode Island Constitution (1956), art. 12, sec. 1.
inclusion, a teachers’ strike against their employer was deemed as an attack on the operations of government.

The opinion in the Pawtucket case provides a second key insight into the Justice’s feelings towards public sector unions. In the section which declared government employee strikes illegal, no precedent was given. This marks a sharp departure from usual judicial rulings which cite as much precedent as possible to reinforce the legitimacy of the decision. Essentially, the court created law through this ruling. This highlighted one of the fundamental problems in state and government public labor law. Due to the fact that judges often invented the law, each state law emerged as a conglomeration of the individual judge’s personal opinion and local sentiments. Judge-made law became the root of the ills of state and local public sector laborers.

While the repeated strikes of public school teachers drew additional fire from the judiciary, the Rhode Island General Assembly came to realize that teachers needed a way to settle their disputes without launching a strike. On May 19, 1965, the legislature approved Resolution Number 45, H1834 creating a “special commission to study the need for mediation and arbitration disputes involving school committees and certified school personnel in the public schools” 129 An eleven-member committee was appointed to study the relationship between school committees and the rights of teachers. Senator Julius Michaelson, committee chairman, submitted a “Report on the Commission to Study Mediation and Arbitration” in February 1966. This report had two primary goals: to bring public employee rights closer into line with those in the private sector and to guard the public interest from further disruptions in school operations. The report recommended legislation bearing a striking similarity to the National Labor Relations Act, but designed to fit the needs of public sector employees.

The School Teachers’ Arbitration Act, locally known as the Michaelson Act, declared, it is

“the public policy of this state to accord to certified public school teachers the right to organize, to be represented, to negotiate professionally, and to bargain on a collective basis with school committees covering hours, salary, working conditions, and other terms of professional employment; provided, that nothing contained in this chapter shall be construed to accord to certified public school teachers the right to strike.”

Additionally, the act contained further language establishing arbitration as the preferred means of settling disputes in the school system.

The passage of this piece of legislation cast Rhode Island into a group of just sixteen states to have “sophisticated updated Wagner/Taft Hartley type acts for public employees.”

Granting local and state public employees the right to organize and engage in collective bargaining was a monumental step forward for organized labor much like the Wagner and Taft-Hartley Acts had been for private sector laborers in previous years. The Wagner Act had allowed private sector workers to unionize and the Taft-Hartley Act had reinforced this right. By extending the right to unionize to school teachers, Rhode Island afforded their public sector workers a privilege found in relatively few other states. The right to unionize conveyed a sense of legitimacy on local teachers’ unions which they had previously been denied. Additionally, the right to collective bargaining was a huge step forward for state and local government workers because it offered them a means short of a strike to voice their discontent. At the same time, denying teachers’ unions the right to strike further reinforced the fundamental difference between public and private sector labor. This measure still did not end the teachers’ assertion that the right to strike belonged to all employees. The vague language of the Michaelson Act stated only that the law did not give teachers the right to strike, but, at the same time, it did not

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strictly prohibit strikes. In the coming years, this law would be interpreted by both local unions and the Rhode Island Supreme Court according to each side’s outlook on the right to strike.

While this piece of legislation was in development, teachers continued to challenge the law. The Pawtucket Teachers’ Alliance again went on strike stopping school for eight days in the fall of 1966. The Superior Court, once again, issued an injunction ordering the teachers back to their classrooms. This time the teachers refused and were held in contempt of court. Teachers argued that they had a First Amendment right to strike. The judge, citing a benchmark United States Supreme Court case, United Mine Workers of America v. Coronado Coal Company, stated, “this is not the sort of freedom of speech which is guaranteed and protected.” No substantial legal clarifications emerged from this case for it simply reaffirmed the 1958 ruling, but it clearly toughened the court’s negative attitude towards public employee strikes. The court declared, for what it hoped to be the last time, “in this state the law is settled that a strike by public school teachers is illegal.” Following the court opinion, the teachers returned to their classrooms. By 1966, the issue of teacher strikes in Rhode Island appeared to be settled; however, it would not be long before this issue was again brought before the court.

VI. “Public School Pedagogy:” Increasing Teacher Activism & the Rhode Island Judiciary

The 1970s marked a period of increasing public sector activism. Naturally, union membership in this sector quickly skyrocketed by 135.5 percent to over two million. In Rhode Island, teacher activism rapidly increased due to the changing power and position of teachers in society. Throughout this decade, the number of students in schools declined leaving many schools overstaffed. The surplus of teachers caused their salaries to drop and their level of

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134 Id. at p. 252.
discontent to rise. As a result, the number of strikes across the nation skyrocketed to one hundred and thirty a year during the 1970s. In September 1972, Rhode Island teachers began to make headlines for eleven teacher organizations were threatening to go out on strike if negotiations did not yield an acceptable compromise. Rhode Island saw its first epidemic of militant teachers creating “a true crisis for the schools with the outcome now in the hands of the union membership.”

Of the eleven threatened strikes, the actions and subsequent court case involving the teachers in the town of Westerly proved to be the most important. Westerly teachers initiated their strike on September 5, 1972 maintaining the position of “no contract, no work.” The teachers, like their predecessors, were brought before the Superior Court. However in this instance, Judge Roberts lifted the retraining orders and allowed the strike to continue. His actions indicated a possible shift in labor relations because he could have quite easily followed precedent and ruled the strike illegal. Labor leaders throughout the state hailed “Judge Roberts’ move…as a possible landmark case that could carry broad implications particularly if the high court does rule that teachers have the same rights as other unions.”

The Supreme Court, in a four to one ruling, did not concur with Judge Roberts. His ruling was overturned on appeal in 1973. A majority ruled that the “the need of preventing governmental paralysis justifies the ‘no strike’ distinction we have drawn between the public employee and his counterpart who works for the private sector within our labor force.” The ambiguity of the Michaelson Act also came under fire in this case for teachers were using the law to justify their strike. Since the act did explicitly ban strikes, the teachers interpreted strikes

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136 Colton and Graber, Teachers Strikes and the Courts, 1.
138 The Providence Journal, 7 September 1972, p. 3.
139 School Committee of the Town of Westerly v. Westerly Teachers Association, 111 R.I. 96, 100 (1973).
as still being a viable action. The Court declared “if the Legislature wishes to give public school pedagogues the right to strike, it must say so in clear and unmistakable language.”\textsuperscript{140}

The voice of public sector labor was not completely ignored in this case. Chief Justice Roberts of the Rhode Island Supreme Court, in his dissent, went on record defending the right of teachers to strike. First he believed the right to strike did not have to be conferred by legislation because, throughout history, the right to strike arose from years of struggle, not from a piece of legislation. Any law which emerged simply protected the rights labor unions had earned. Roberts believed the right to strike was essential to survive in the modern industrial world. As a result of this belief, the right to strike “must be subsumed in the right to organize and bargain collectively...for the collective bargaining process, if it does not include a constitutionally protected right to strike, would be little more than an exercise in sterile ritualism.”\textsuperscript{141} Furthermore, Chief Justice Roberts asserted the, at times, certain private sector strikes, such as those by hospital workers, threaten the safety and welfare of the community more than any teacher strike. He mockingly mentioned that “it could be extremely difficult to conjure up such a threat to the public interest arising out of a strike of the employees of a recreation department of a municipality or of the clerical staff of a state agency.”\textsuperscript{142} He dismissed this argument as the catch all reason to ban public sector strikes. Finally, he refuted the argument of government sovereignty for it was a piece of archaic tort law that should have been previously dismissed. He did not believe a strike by teachers threatened the security and power of the state.

The unique situation of state and local public sector laborers left them in a precarious position. Federal employees, across the nation, were governed by one uniform code established by pieces of national legislation. However, the treatment of state and local government

\textsuperscript{140} Id. at p. 102.
\textsuperscript{141} Id. at p. 106-107.
\textsuperscript{142} Id. at p. 110.
employees was determined by the state judiciary and legislature. As a result, the location of a local government strike determined the course of action which would be taken. In 1975, the AFL-CIO founded a Public Employee Department to push for the development of a national law because according to the leaders of the new department, “some states have good laws and good rights, but others are still living in the jungle, like we were back in the 1950s.” By the mid-1970s Rhode Island had emerged from the jungle. Even though state law still denied government workers the right to strike, laborers in Rhode Island had many more legal protections than the average public worker. The legally protected right to unionize and bargain collectively protected unions from any arbitrary state actions.

CHAPTER 3:  
A Wave of Teacher Militancy: An Up-Close Portrait of a 1975 Rhode Island Teachers’ Strike

The Roberts’ Dictionary of Industrial Relations defines a strike as “a temporary work stoppage or concerted withdrawal from work by a group of employees of an establishment…to express a grievance or to enforce demands affecting wages, hours and/or working conditions.”¹⁴⁴ This definition, so stark and clinical, strips a strike of its intrigue and excitement. In a municipal union strike, individual personalities, regional politics, and community opinions play an integral role in the development and character of a strike. To understand the true nature of this phenomenon, an up-close examination of a local union strike is necessary.

I. Testing the Limits: Woonsocket Teachers, School Committee, & the Limits of Collective Bargaining

During the fall of 1975, Rhode Island became the state hardest hit by the growing wave of teacher militancy. Strikes loomed in thirteen of the thirty-six school districts, including all the major cities in the state. The current President of the American Federation of Teachers, Edward McElroy, who in 1975 served as the president of the Rhode Island Federation of Teachers, attributed this wide spread phenomenon to “an overall depressed national economy that resulted in budget cuts that became problematic. As a result, aid to school districts was limited and these cuts made for serious problems. In addition, in a number of communities there was a fledgling taxpayer revolt -- all of this made it difficult to reach a contract agreement.”¹⁴⁵ Labor union lawyer, Richard Skolnik credited the wide spread strikes to the natural “competing interests between unions and school committees. Many unions took the position that they wanted more and more, and I am not criticizing them. It was salary. It was fringe benefits and health insurance. And obviously if a teachers’ union gets a benefit for its membership, it has to cost

¹⁴⁵ President of the American Federation of Teachers Edward McElroy, interview by author, 1 October 2004.
somebody something, and it’s not the union.” 146 Union teacher and former Vice-President, Richard DiPardo compared the overwhelming number of strikes to a “kid trying to test his limits in a growing relationship.” 147 By 1975, Rhode Island teachers had possessed the right to collective bargaining for almost a decade and like any new process it took time for problems to arise. Additionally, a majority of the thirteen districts with strikes looming were organized by the American Federation of Teachers which “always had a much more militant philosophy than the National Education Association which controlled other unions in the state.” 148

The longest and most dramatic strike occurred in city of Woonsocket. This small city has a long standing tradition of organized labor since its first textile mill opened in 1810 and, at the peak of the labor movement between 1933 and 1945, the city was home to approximately forty union locals. The Woonsocket Teachers’ Guild emerged as one of the largest and most influential unions in this small city. Founded in 1947, by a group of World War II veterans, the Guild replaced the ineffective Woonsocket Teachers’ Association. According to Woonsocket, Rhode Island: A Centennial History, these veterans hoped to “play a positive role in the Woonsocket educational system and also secure salaries commensurate to their level of education.” 149

Initial support for the newly formed union was not overwhelming. Many teachers were hesitant to join a union and the city feared having to deal with a union. However, eighty-one teachers became charter members of the union. Additionally, the Guild immediately became affiliated with the American Federation of Teachers as Local 951. In the union’s early years, the organization had very little power or influence because the laws of collective bargaining had not

148 Ibid.
149 Fortin, Woonsocket, Rhode Island, 233
yet been established. Essentially, “Woonsocket teachers could only gain what the School Committee granted.”

In a fashion similar to teachers’ unions across the country, the 1960s and 1970s were a period of radical change for the Teachers’ Guild. Membership skyrocketed to over five hundred and the new young teachers “imbued with the new attitude and activism of the sixties…became articulate, vocal and eventually militant Guild members.”

In 1966, the passage of the Michaelson Act gave the union the power of collective bargaining. The following year the teachers signed their first written contract with the local School Committee which finally recognized the teachers as being equal to the School Committee in the negotiating process.

Relations between the School Committee and the Teachers’ Guild deteriorated in the summer of 1975. According to former RIFT President, Edward McElroy, this problem was not unusual, but emerged from “the normal issues which separated the teachers from the school committee: salary, benefits, working conditions and the professional rights of teachers.”

However, union Vice-President Richard DiPardo took a different stance. He felt, “it had nothing to do with money, but rather it was our opinion that the School Committee was determined to cause a strike and provoke a union reaction.”

A year earlier, the union had signed a two-year contract with the School Committee which included a provision allowing either side to reopen negotiations in regards to salaries and benefits in the second year. Negotiation difficulties were common in the city for in 1974 it had taken nine months to develop this two-year contract. During the summer of 1975, the teachers exercised their right to renegotiate salaries. Quite simply, teachers’ salaries were not keeping

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150 Ibid.
151 Ibid.
152 McElroy, interview by author, 1 October 2004.
pace with the changing economy in this country. For many years, the city had offered the second highest teachers’ wages in the state, but by 1975, the city ranked eleventh. This decline in competitiveness is clear when one examines the rate of inflation sweeping the state during this period. In 1974, the city provided only a 1.7 percent pay increase; whereas, Rhode Island had experienced an 11 percent inflation rate. 154 During the initial negotiating sessions of 1975, the School Committee proposed only a 3 to 5 percent raise; whereas, the teachers called for a 6 to 10 percent pay increase. 155 A new teacher in 1974-1975 earned $8,450. The School Committee proposed a raise to $8,500; whereas the union asked for $8,900. Several newspaper articles would compare these proposals to the average wage upon which other communities had settled which was $8,597. 156 The union also hoped to address medical insurance, sick leave, substitute teacher policy, child rearing leave, personal days, and the paraprofessionals’ contract. The difference between these two parties appears relatively small in retrospect, but at the time, the union felt their members deserved this raise and that it was worth the intense debate.

By the end of August, the union and the School Committee were on their fourth proposed contract and fourth round of arbitration, yet none achieved the results both sides desired. On August 23, 1975, the dispute was turned over to a mediator, Dr. William Robinson, Assistant Commissioner of the Rhode Island Department of Education. After several months of standstill, these talks brought both parties to the table, but the mediation produced no positive results. Guild President and spokesman, Thomas Flood, claimed the “the School Committee has zeroed in on one item; they don’t want to look at packages” 157 for the city was focusing too much on the salary issue.

155 Ibid.
Two weeks into the strike, it is important to note that only minor concessions had been made by either side. By September 12, 1975, the School Committee increased their proposed starting teachers’ salary to $8,575. The money differences seem insignificant in retrospect and according to the union’s Vice-President, “short of getting every single thing we demanded, which was not going to happen- the union was going on strike. It was not all about money.”\footnote{DiPardo, interview by author, 27 March 2005.} In the end, it had to do with respect and fair treatment of the teachers by their employers.

II. “No Contract, No Work:” The Woonsocket Teachers’ Guild’s First Strike

As negotiations, arbitration, and mediation failed during the late summer of 1975, a strike began to emerge as a very real possibility. By the end of August, union officers were instructing their members on the need for stronger actions. The \textit{Woonsocket Teachers’ Guild News} announced, “the attitude of the school department looks like it will leave us only one option. No contract- no work. Strike. We have never done it before; this may be the first time.”\footnote{“City Teachers Told: Be Ready to Strike,” \textit{The Woonsocket Call}, 7 August 1975, p. 1.} The local newspaper, \textit{The Woonsocket Call}, often took a strong anti-union position. Following mention of a strike, the newspaper reported, “perhaps the strong line taken by the union bulletin is an attempt either to bestir the membership into a more militant posture, or to pose a threat to city officials.”\footnote{“The Union Bulletin’s ‘Hard Line’,” \textit{The Woonsocket Call}, 8 August 1975, p. 8.}

On August 29, 1975, in the basement of Saint Charles Church, the union membership convened to vote on whether or not to strike if no new contract was reached. According to the union’s Vice-President, “the thought of failure never entered my mind. There were no other contingency plans in place. We had prepared our members, we were going to strike, and the vote was to make it official.”\footnote{DiPardo, interview by author, 27 March 2005.} Intimidation was also employed by the union. The leadership...
strategically placed impassioned and loyal members around the hall to make statements in support of the strike and influence those around them into voting favorably. Additionally, voting was not done by secret ballot, but rather in an open vote where all the members could see how their colleagues voted. In the end, the measure passed by an overwhelming majority, for of the total 505 union members, almost 400 teachers were present at the meeting, and only 13 members dissented. Explanations of the mass support differed from person to person. President Flood stated he could not “have our teaching staff reduced to 450 zombies.” One teacher claimed, “it’s a question of professionalism…we can’t degrade ourselves…we must hold onto our points.”

The decision of the Woonsocket public school teachers to strike was a difficult posture to defend. In Rhode Island, teachers’ strikes were illegal after the state Supreme Court had ruled against a teacher’s right to strike in the 1975 Westerly case. Additionally, the teachers also appeared to be in violation of their own contract because Article 12 stated, “The Guild and its agents will not assist or participate in strikes.” The School Committee used these two legal documents to oppose the Guild’s threatened actions. However, the Guild maintained a strict “no contract, no work” position. Flood claimed that “when a portion of the contract is inoperative, the entire is destroyed.” As a result, the no-strike clause of their contract was not valid.

On September 2, 1975, the School Committee made a preemptive attempt to sway public opinion by publishing a full page advertisement entitled, “An Open Letter To The Citizens Of Woonsocket.” Each and every line of the publication was an attack on the city’s teachers. First, the School Committee argued that the teachers were making unreasonable monetary demands

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164 “Article 12,” Contract Between the School Committee of the City of Woonsocket and the Woonsocket Teachers’ Guild, Local 951 American Federation of Teachers, AFL-CIO, September 1, 1974 - August 30, 1976.
Figure 3: The Vote to Strike

considering the city had one of the highest unemployment rates in the entire country. The advertisement highlighted the five latest salary offers made by the School Committee, rejected by the teachers, and the increasing cost to the tax payers. The letter accused the teachers of acting in bad faith, violating negotiating rules, constantly changing their demands, and stalling in order to put the “finishing touches on their strike signs.”

The School Committee concluded that “such irresponsible, illegal acts by the Teachers’ Guild must be resisted. Otherwise, lawlessness could become an expected way of life in Woonsocket. Eventually, this unfortunate, illegal strike will be resolved. The sooner the better. However, the Woonsocket School Committee is prepared to do everything in its power to protect the best interests of the children and taxpayers.”

In the following day’s edition of The Woonsocket Call, union officers called the article “deceptive, misleading and outright wrong.”

The teachers’ threat to strike became a reality on September 3, 1975. The city’s entire teaching force “celebrated Labor Day by picketing the city’s school administration building twice.” At midnight on September 2, 1975, the exact moment the existing contract expired, eighteen teachers gathered for a small demonstration in front of the school department’s headquarters. This “symbolic picketing” lasted for a mere thirty minutes, but it was just a precursor of what was to come. At 7:30 am, the real strike commenced. The School Committee insisted that all public schools would open on time. Technically all nineteen schools did open; however, not one teacher reported to their classrooms. Instead as the city’s 8800 school children arrived at every school, they found their teachers outside marching in picket lines. School administrators were forced to send all students home within an hour of opening, and cancelled

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167 Ibid.
school for the duration of the strike. The insistence that all schools open angered union leaders. Union President Flood asserted, “the fact that the administration opened schools today is viewed by the Guild as a power play, and it never should have happened. It inconvenienced parents, students, and others. They (administration and school board) wanted to see if they could break the strike. It didn’t work.” 171

The teachers’ actions were met with hostility, not only from the School Committee, but also from members of the community, parents, and students. High school students were among the first critics of their teachers and a small group even formed their own picket lines to counter these actions. While students admitted they had little knowledge of labor unions or their functions, several students denounced the strike because they believed the teachers “should be satisfied with what they get. They are plain greedy.” 172 Adults throughout the city also expressed outrage with the actions of the Guild. *The Woonsocket Call* measured the city’s response to the strike by interviewing a random sample of community members. Not one interview published in the paper expressed an ounce of support or understanding for the teachers. Instead, public resentment seemed to be the common reaction. One man interviewed called for the firing of the entire teaching staff for he felt “with so many people out of work, teachers who are employed should be thankful.” 173 Others appealed to the teachers’ sense of duty by claiming, “as educators you have been trusted with our children to build the future generations and the world expects you to meet that responsibility. The educators of the past have sacrificed themselves for the betterment of you. You owe it to them to keep with their good work and feel proud for your contribution to civilization.” 174 While this was a rather lofty appeal, it raised an

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Figure 4: Teachers on Strike

interesting question of whether teachers had the right to strike at the expense of their students’ education.

The School Committee furthered the animosity towards the teachers by taking out another full page advertisement in the newspaper to publish the teachers’ current salaries and the proposed increases. During a period where many Americans were out of work or barely above the poverty line, teachers appeared relatively well paid. The local newspaper, on its own, also fostered hostility against the union for it often paired articles regarding the strike with reports from the Associated Press wires about the rapidly climbing unemployment rates across the country. Rhode Island Federation of Teachers Field Representative Robert Casey, an active participant in the 1975 strike, attributed the overwhelming negative reaction to one item, money. According to Casey,

“Whether it was 1975 or 1995, most of the people in the state earn less than school teachers. Most people in the state and around the country don’t belong to unions. Most people get resentful that they are not in the situation where they can bargain or exercise their economic power against their employer. In most industrialized countries in the western world, we have the lowest participation in union membership. I think that’s in large part due to two things: we don’t live in a country that promotes unionization and the average worker thinks they have more rights than they do, that they are protected by a variety of laws. If you take a look at the average wage in Rhode Island…senior teachers are probably making twice the average wage. Well, the average wage earner doesn’t have a masters degree to do their job and so…it’s how people value other people.”

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Public sector employees have never been embraced by the common man. Flood recognized this fact and announced that “the public has never supported municipal employees. They fight for pay increases in private industry but then view us as some type of indentured servant. I would like to say right now that teachers are not public servants. They are employed by the public but not as servants. Neither is a fireman, policeman, garbageman or janitor a

175 Casey, interview by author, 11 August 2004.
servant. They are employes (sic).” However, even in the face of all the opposition, the union continued the strike. Teachers expressed the belief that they were fighting for a just cause and insisted “we’ll be out here until kingdom come if need be.”

III. Unknown Legal Territory: Woonsocket Teachers’ Guild & the Court

Five days into the strike, tension was building and the two parties were no closer to reaching a new agreement. As a result, the School Committee began to petition the court for assistance through an injunction. An injunction is a common court order forcing a party to cease and desist with an action. However, the injunction is a powerful tool for “the judge can thus, by court order, alter the balance of power and advantage between the parties and dramatically affect the outcome of the dispute.” In order for an injunction to be issued several requirements must be met. First, the strike must cause irreparable harm. Also, the group seeking the injunction must have clean hands and not have instigated the dispute in the beginning. Another crucial element for injunctive relief is that no other legal remedy must exist which could end the dispute in a different manner. Additionally, a “balancing of the equities” must exist. This legal phrase mandates that the injunction cannot cause more harm than the action which is being stopped. Finally, there must be a realistic chance that the injunction can be enforced. While all of these factors are important to the injunctive process, the School Committee based their argument solely on the belief that the strike “was causing irreparable harm to the Woonsocket school children.”

Teachers’ strikes in Rhode Island were governed by the legal precedent set by the 1973 case School Committee of the Town of Westerly v. Westerly Teachers’ Association. This case

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178 Colton and Graber, Teachers Strikes and the Courts, 30.
179 Ibid., 31.
mandated that a restraining order could not be issued without a hearing. However, it did not specify what the hearing must entail. Additionally, this ruling had gone untested between the 1973 and the 1975 strikes. As a result, the teachers of Woonsocket and a few other towns were venturing into unknown legal territory. Their fate was placed in the hands of Judge John Bourcier. The judge had publicly stated his disdain of the teachers’ strikes which were in progress across the state. In a very colorful statement to *The Woonsocket Call*, the judge stated, “At 2p.m. Monday, somebody is going to have a bouquet of roses, and somebody is going to have a broken heart- and I think you all know who is going to have the bouquet and who is going to have the broken heart.”

Beyond this one statement, Boucier’s previous rulings indicated his contempt for the teachers’ actions. The teachers in the neighboring town of Cumberland had recently made their petition before Judge Boucier to justify the strike they were conducting in response to another contract dispute. The judge stated, “if teachers engage in an illegal activity, a strike, I’ve got to step in. I say nothing justifies the use of an illegal act.”

In the Cumberland hearing, the judge stayed true to his convictions by issuing the injunction. He also expressed his unfavorable opinion of the 1966 Michaelson Act which gave teachers the right to collective bargaining which, in the eyes of some, was the root of the epidemic of teachers’ strikes.

Boucier’s hearings for Cumberland, Pawtucket, and Woonsocket unions were prejudicial against the teachers. The judge allowed the teachers’ lawyers to make oral arguments and cross examine witnesses who testified regarding the “irreparable harm” of the students. However, all rebuttals by the union were forbidden. Additionally, the judge refused to accept the claim that the School Committee had bargained in bad faith. With this limited testimony, Judge Boucier

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issued the first restraining order against the Cumberland teachers. Based on the same logic, he would issue a restraining order in Pawtucket.

The teachers of Woonsocket were given a very brief appearance in court. Less than forty minutes into the Guild’s hearing on September 10, 1975, the judge issued a bench warrant ruling the WTG’s strike illegal and ordered the teachers back to their classrooms the following day. A small glimmer of hope emerged the same day because, before the judge formally issued the injunction against the Woonsocket union, the Rhode Island Supreme Court finally interpreted the 1973 Westerly case and formulated the definition of a hearing. The Supreme Court overturned the judge’s earlier ruling in the Cumberland case on the grounds because he had “apparently failed to provide the defendant an effective opportunity to present relevant evidence.” This ruling vacated the restraining orders in Cumberland and Pawtucket and rescinded the bench order against the Woonsocket union. Newspaper accounts describe the judge as “visibly shaken” by this action of the state’s premier court.

Within a day, it became clear that the reversal of the bench order was only temporary. Judge Boucier was not to be deterred from his crusade to stop what he deemed an illegal action on the part of the Guild. On September 11, 1975 the official injunction was issued. It stated, “The defendant, Woonsocket Teachers’ Guild, and each and every member thereof, is hereafter enjoined and prohibited from engaging in any work stoppage or strike in the City of Woonsocket school system from and after this day, September 11, 1975.” In his brief statement in open court, the judge focused on the damage being done to the students. He noted the

“disillusionment of the first graders and the unfortunate position of seniors going out to look for jobs.”\textsuperscript{186}

The story of the Woonsocket Teachers’ Guild strike would have remained in obscurity in Rhode Island labor law if it had ended after the initial injunction was issued. However, for the union officers “to return to work in the face of an injunction is, in effect to abandon to purpose of the strike.”\textsuperscript{187} Therefore on September 12, the picket lines disappeared, but so did the teachers. The union officially claimed the strike was over and that they were not pressuring the teachers into remaining out of work. Instead, it was asserted that all five hundred teachers were acting on their own beliefs. On a later appeal, the Rhode Island Supreme Court would reject this argument on the basis of a principle established in the infamous labor case, \textit{United States v. International Union, United Mine Workers of America} from 1948. In this private sector labor case, the United States Supreme Court ruled,

> “as long as a union is functioning as a union it must be held responsible for the mass action of its members. It is perfectly obvious not only in objective reasoning but because of experience that men don’t act collectively without leadership. The idea of suggesting that from 350,000 to 450,000 men would all get the same idea at once, independently of leadership…is of course simply ridiculous.”\textsuperscript{188}

Also on September 12, Judge Bourcier called for an “11th hour negotiating session.”\textsuperscript{189} While both sides agreed to meet, little was accomplished at the session. Originally the two parties were arguing over a $450,000 difference. By the second week of the strike, this figure had been whittled down to approximately $65,000 to $75,000.\textsuperscript{190} However, no middle ground was reached after a long negotiating session lasting from 9:30pm to 3:30am. This prolonged split over a relatively small amount of money strengthened the Guild’s argument that the strike


\textsuperscript{187} Colton, \textit{Teachers’ Strikes and the Courts}, 5.

\textsuperscript{188} United States v. International Union, United Mine Workers of America. 77 F. Supp. 563, 566 (1948).


\textsuperscript{190} Ibid.
“had to do with more than money. It was about trust. We didn’t trust them (the School Committee). Also, the strike was based on the belief that the union simply had the human right to strike regardless of contractual language or law.”

As a result of the teachers’ defiance, City Solicitor Richard Ackerman, on behalf of the School Committee, asked the court to issue contempt citations against all union officers. When the union officers were brought back to court, the union president quickly and clearly announced his position. He stated, “I have a deep and abiding belief in the collective bargaining process. In deference to the court...I believe if I don’t have a contract, I cannot work.” Presiding Judge Weisberger of the Rhode Island Superior Court did not agree with the union’s plea. On September 12, Judge Bourcier issued citations against eleven union officers forcing them to appear in court early the next morning to begin a new hearing where the officers would be required to “show cause why they should not be judged in contempt of an earlier citation.” As a result, six union officers, including the president, three vice-presidents, the secretary, and the treasurer, were found guilty of civil contempt and sent to Rhode Island’s Adult Correctional Institute on September 18, 1975. Judge Joseph Weisberger dropped the contempt citations against the other five teachers because one held a paid position and the other four were only members of the executive committee and did not hold an elected position. When asked to reflect upon this day in court, the union Vice-President remembered, “we knew walking into the courtroom we were going to get nailed. There were state troopers stationed everywhere to intimidate us.”

These six teachers and members of the Pawtucket Teachers’ Alliance leadership (who were running a concurrent strike), would spend a total of seven days in jail for they repeatedly rejected the court’s offer to appear before a judge and end the contempt citations. When looking back on these events, one incarcerated officer recalled, “it was completely unbelievable how uninformed we were for only Flood was involved in all aspects of negotiations. We simply believed in what we were doing even though we didn’t know the details.”\textsuperscript{195} According to the prison’s public information officer, Lillian Daniel, the teachers took their stay in jail “with relative calmness.”\textsuperscript{196} However, the union members who were in jail remember the events differently. According to the union’s Vice-President, “one guy cracked up, but for the rest of us it was an adventure.”\textsuperscript{197}

Sending the union officers to jail also united the membership. One jailed officer stated, “you hope that the membership was so angered with the jail sentences that they won’t bail on you.”\textsuperscript{198} The unionized teachers did not bail, but rather publicly showed their support for their colleagues as the “festering strike of Woonsocket school teachers blossomed into a candlelight demonstration at the City Hall Minipark.”\textsuperscript{199} According to the Guild’s lawyer, Richard Skolnik, sending people to jail served a purpose for it “really puts pressure on both sides. You have mothers and fathers going to jail and they are separated from their family. Then you have some very reasonable school committee members who don’t want to see teachers go to jail either, but they have to do something to make something happen. And usually what happens…the parties soften their position and ultimately resolve problems.”\textsuperscript{200} Members of the union agreed that

\textsuperscript{195} Ibid.
\textsuperscript{196} “ACI Committed Teacher Seen as ‘Relatively Calm,’” \textit{The Woonsocket Call}, 19 September 1975.
\textsuperscript{197} DiPardo, interview by author, 27 March 2005.
\textsuperscript{198} Ibid.
\textsuperscript{199} “Teachers in Vigil For Jailed Colleagues,” \textit{The Woonsocket Call}, 19 September 1975, p. 11.
\textsuperscript{200} Skolnik, interview by author, 30 July 2004.
sending the union officers to jail put a stop to the bickering and started a countdown as to who would break first.

The pressure on both sides reached its breaking point twenty-four days into the strike. The Superior Court appointed Governor Phillip Noel as a binding arbitrator to end the strike. Field Representative Casey who was present at these proceedings recalled, “I can remember being at the State House, in a conference room in the Senate chamber… I think he listened to just about a ten or fifteen minute presentation from each side upon their issues and he went out. I think he was gone for about a half hour… That was it. It was a way of getting both sides off the hook.”

Noel presented both sides with a contract, and ordered them “to put aside and behind them all hostilities and frustrations.” Noel’s solution put forth 6.1 percent raise in salary and fringe benefits for the teachers. This increased the base salary of teachers from $8,450 - $13,600, in the 1974-1975 school year, to $8,650 - $14,550 for the 1975-1976 year. Noel’s solution appeared to be a compromise for both sides for it fell below the WTG’s demands, but forced the School Committee to agree to a figure higher than their original proposal. Ironically, after this prolonged strike, binding arbitration left the teachers with a base salary extremely close to the original summertime proposal of the School Committee. This relatively disappointing end for the teachers leaves one wondering if teachers’ strikes are worth all of the disruption caused to their communities. To many teachers, the strike did serve a purpose and were a good way by which to achieve change. Vice-President Richard DiPardo recalled, “we didn’t get what we wanted, but neither did they (the School Committee)...but it did lead to a period of peace in future negotiations.”

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201 Robert Casey, interview by author, 11 August 2004.
204 DiPardo, interview by author, 27 March 2005.
While the governor officially ended Rhode Island’s longest teachers’ strike, the Rhode Island Supreme Court would eventually weigh in on the dispute on October 8, 1976. In the case, Albert Menard v. Woonsocket Teachers’ Guild-AFT 951, the Court upheld the injunction issued by the lower court because the strike caused “the Woonsocket public school children irreparable harm” by interfering with the “students’ learning process; the failure to provide free school lunches for needy children; and the disadvantage seniors might experience from an untimely entry into the job market caused by a late school closing.”

The 1975 Woonsocket Teachers’ Guild strike ran concurrently with another identical strike in the city of Pawtucket. The Pawtucket Teachers’ Alliance had the same injunction issued against it and, subsequently, the city’s union officers were jailed along with the Woonsocket teachers. However, an interesting difference appeared on review by the state Supreme Court. Justice Kelleher, who ruled with the majority in the Woonsocket case, reversed his position in the following months. In the Pawtucket case, The School Committee of the City of Pawtucket v. Pawtucket Teachers’ Alliance, Local No. 930, he entered a dissenting opinion which urged a more careful handling of these confrontations between school boards and public school teachers. Kelleher wrote, “I am fully aware that work stoppages of public employees lead to litigation which is usually conducted in a pressure-packed atmosphere…The rush and the anxiety to do something to get the public employees back on the job is understandable, but I trust that we all may profit from what has transpired during the past year as governmental agencies have come to the courthouse to resolve a collective bargaining impasse.” Additionally, Kelleher expressed his inability to support the contempt citations issued against the teachers because

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“As I read the terms of the injunction, it orders the union to end the strike and nowhere does it direct the union officers to exhort the rank and file to return to the classrooms…it is my ineluctable conclusion that those who were incarcerated were imprisoned solely because of their failure to speak to the union membership and advocate a return to the classrooms…The contempt judgment contains a finding that the present controversy falls well within the holding of United States v. United Mine Workers of America. A cursory look at the order entered in that particular case shows that it was far more explicit and detailed than the preliminary injunction that was entered in the Superior Court. A court order should be obeyed. Obedience, however, cannot be demanded of something that is not specifically set forth in the order.”

These divergent opinions in the Rhode Island judiciary have characterized Rhode Island’s attempt to balance its tradition of being a progressive labor state with the national trend to prohibit public sector labor strikes.

IV. Emergence of a True Union: Results & Consequences of the 1975 Strike

The 1975 wave of teacher militancy which swept through Rhode Island highlights the importance of the right to strike. The Woonsocket Teachers’ Guild strike played a crucial role on the local level for while “the strike led to community outrage, anger, and frustration…it made the Guild a true union. When forced to, the Guild used its basic weapon, the strike.” Also, as one union officer put it, “strikes have to happen from time to time to shake up the system.” A shakeup certainly did occur following this strike. The union was “forced to mobilize politically. While the newspaper articles bashed the teachers during the strike, our efforts killed the careers of the School Committee leadership in the following election.” In the elections of 1976, both the Chairmen and Vice-Chairmen of the School Committee were voted out of office. Also, in the months following the strike, the Guild began to call for a symposium with the union, the School Committee, and the city’s Chamber of Commerce on collective bargaining in the public sector and areas of the process which could be improved.

207 Id. at p. 212-213.
In the aftermath of 1975’s wave of teacher strikes, legal attempts were made to prevent future teachers’ strikes. A law proposed by Woonsocket’s School Committee called for a ten day limit on teachers’ strikes. After the ten days had passed, all teachers would be required to return to work, be governed by the previous contract, and enter in binding arbitration with the city. The proposed law also included fines: one day’s pay for each of the first ten days and two days’ pay for every day that followed. Members of the School Committee argued, “the days lost to a teachers’ strike cannot be ‘made up’ because of the demoralizing effect such days have on students, their parents and even the teachers themselves.” No such law was ever passed in Rhode Island. The Teachers’ Guild, during the contract negotiations for the 1976-1977 contract would attempt to delete the no-strike clause. This, too, was an endeavor in futility.

Additionally, this local strike hit at the heart of a larger debate over whether public employees should have the right to strike at all. These events demonstrated that strikes are never the first course of action pursued. Public employees are not “strike-happy” contrary to their portrayal in the media and, often, by the judicial branches. The strike is a union’s weapon of last resort which is used only when all other attempts to end labor disputes have been exhausted. The right to strike debate began long before the Woonsocket Teachers Guild’s first strike and continues decades after this municipal strike ended. Today, Rhode Island public employees, especially teachers, continue the battle for the right to strike.

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211 Smith, “WTG Wants $1.5 Million in Raises,” p. 1.
CHAPTER 4:
The Future of Rhode Island Unions and the Right to Strike

While the 1970s marked the heyday of teacher activism, Rhode Island teachers’ unions have by no means lain dormant for the past twenty-five years. Instead, between 1980 and 2005 there has been a considerable expansion of union membership and its lobbying power. At the same time, the Rhode Island General Assembly, judiciary, and press have not relented from their attempts to rein in the power of not only teachers’ unions, but of all public sector labor unions within the state. This struggle for power between the state’s public sector unions and the government has shaped the face of Rhode Island today.

I. A Lackluster Endeavor: Woonsocket’s Last Teachers’ Strike:

Less than five years after the 1975 strike by the Woonsocket Teachers’ Guild, the city’s teachers would once again find themselves in a precarious and virtually identical position. The contract between the union and the city was due to expire on August 31, 1980. Negotiations had begun extremely early, in February 1980, in hopes to avoid a conflict and possible strike in the summer. However, it would soon become evident that there was no clear resolution in sight.

Both the union and the School Committee were firmly entrenched with their contract proposals. The union initially asked for a 9 percent raise with added pay supplements governed by the state’s cost of living. The School Committee, on the other hand, proposed only a 2.8 percent raise for the teachers. However, the city’s proposal denied this raise to all teachers who were currently paid on the top step of the salary scale. This was extremely problematic for, like most teaching staffs, a majority of Woonsocket’s teachers had been hired in the early 1970s during the education boom. As a result, of the city’s 450 teachers, over 300 had enough seniority to be paid on the top salary scale. Another obstacle in the negotiations dealt with a proposal to

increase the amount of planning time given to elementary school teachers. The union proposed adding forty-five minutes of unassigned time to each of the city’s elementary teachers. The union deemed this time necessary for the teachers to prepare for classes and, also, to give the students added time for gym and art courses. The city flat out refused this proposal. A study conducted by the School Committee indicated that to grant these unassigned periods would require the hiring of twenty new teachers at a cost to the taxpayers of $175,000 to $250,000.214

A second contract proposal emerged from the School Committee on August 15, 1980. This new contract proposal which included a 6 percent raise to all teachers, but only a commission composed of Guild and School Committee members to study the unassigned periods.215 Other items were thrown into the negotiations during the summer of 1980. For example, the School Committee wanted to deny all teachers the right to leave their school buildings on errands during their break periods. Also, the Guild was asking for increased compensation for vocational school teachers based on their amount of practical work experience. By the end of the summer the union had dropped their demand for cost of living pay, but increased their proposed raise to 12 percent. While the topics of negotiation are reminiscent of the 1975 strike, members of the union, School Committee, and press observed one notable difference. Union president George Lacouture commented, the union “is pleased negotiations have been done in a ‘calm atmosphere’ without ‘the shouting’ that once prevailed in the past.”216

Nine days before the slated opening of the city’s schools, whisperings of another strike began to appear. The union officers again espoused the principle of “no contract, no work.” With the 1975 strike still fresh in the minds of the community, the threat of another strike put added pressures on all parties involved. On August 27, 1980, the Rhode Island Department of

214 Ibid.
216 Ibid.
Education stepped in to mediate the dispute. Under the guidance of Donald Driscoll, contract talks were scheduled for 1:30 to 5:30 pm and, also, 10:30 pm to 4:30 am. According to Driscoll, “if time is the answer, we’re putting in the hours.” However, time was not the answer. Teachers’ orientation day was slated for September 2, but on that day pickets, not teachers, emerged outside of every school.

As the school bells rang on September 3, 1980, the city’s teachers once again choose to strike instead of return to the classroom. During this strike meeting opposition was virtually absent for only 2 or 3 teachers out of the entire membership voiced a “no” vote. Lacouture, the union’s president, expressed his disbelief explaining, “the union has thus far shown ‘more solidarity than anything else,’” and admitted to being “kind of shocked’ that not much objection was shown by members to the work stoppage.” It is an interesting point of fact that Woonsocket was again not the only Rhode Island school district on strike, but was joined by Cumberland and Westerly in the fall of 1980.

The public’s reaction to yet another teacher’s strike was not entirely negative. City Councilman Francis Lanctot, who would later become mayor, emerged as a vocal opponent of the strike, but placed the blame entirely on the School Committee, not the teachers. In a harsh statement to *The Providence Journal*, Lanctot remarked, “the School Committee insulted people by pretending it was negotiating since January. This is the same game that is played every year. The committee could best serve the community by resigning.” Beyond just criticizing the School Committee, Lanctot expressed a level of sympathy with the teachers asserting, “I don’t blame the school teachers for fighting for more money because that is what unions are for.”

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Regular citizens expressed certain levels of disgust with the teachers’ actions. One area resident, interviewed by *The Woonsocket Call*, stated, “Every year they think they can keep pushing for more and more just because they have a union. They don’t work that much and I don’t think they deserve it.”\(^{221}\) This sentiment bears a striking similarity to interviews conducted in 1975.

Negotiation is often a long and drawn out process which, for the teachers in 1980, would last for nine more days. On September 3, slight progress was made as the city increased their salary proposal to 8 percent and the union decreased their demand to 10 percent.\(^ {222}\) Although this third proposal brought the parties extremely close together, the negotiations would stagnate for the next four days. This breakdown in negotiations left the newspapers with little activity to cover; as a result, the local newspaper simply ran articles recapping the past days’ events. It is important to note that even several days into the strike, newspaper reporters were commenting that “it thus far lacks the bitterness that was immediately evident in the teachers’ strike of 1975.”\(^ {223}\)

The Woonsocket Teachers’ Guild co-opted a tactic employed by the city in the strike five years earlier. On September 6, the Guild purchased a large advertisement in *The Woonsocket Call*, announcing “the Woonsocket Teachers’ Guild regrets that a body of professionals must be forced to withhold its services. Important as these services are, it is equally important that we be treated as fairly as other professional groups in this city and in this state.”\(^ {224}\) Nine days into the strike a tentative agreement was reached which provided the union with a 7.5 percent pay increase. When applied to a teacher’s starting salary it raised wages from $10,250 to $10,866. Additionally, the compromise provided elementary teachers with an additional thirty minutes of

\(^{221}\) William Green, “Most Area Residents Against Teachers Strikes,” *The Woonsocket Call*, 4 September 1980.
\(^ {223}\) Ibid.
planning time. Reaction by teachers was not enthusiastic, prompting some to exclaim, “We got
the shaft.” 225 With 450 of 460 members present at the meeting to ratify the contract, only 15 to
20 vocalized their opposition to the new contract. 226 This lackluster meeting brought an end to
Woonsocket’s last teachers’ strike. It seemed a new era in teacher-school committee relations
had dawned for the two parties were able to settle their disagreements without involving the
court or a need to send participants to jail.

II. “A Rite of September:” Finding the Root of Rhode Island Teacher Strikes

Throughout the nation, but particularly in Rhode Island, teachers’ strikes have become
“as much a rite of September as the reopening of schools.” 227 Although the city of Woonsocket
has not engaged in a strike in the last twenty-five years, it cannot be viewed as representative of
the state’s educational system. Since 1980, six additional cases dealing with teachers’ strikes
have been adjudicated by the Rhode Island Judiciary: Coventry School Committee v. Coventry
Teachers’ Alliance and Rhode Island State Labor Relations Board, 228 Exeter-West Greenwich
Regional School District v. Exeter-West Greenwich Teachers’ Association, 229 School Committee
of the City of Pawtucket v. Pawtucket Teachers Alliance, Local No. 930, 230 Warwick School
Committee v. Warwick Teachers’ Union, Local 915, 231 Warwick Teachers’ Union Local No.
915, AFT, AFL-CIO v. Warwick School Committee, 232 Warwick School Committee v. Warwick
Teachers’ Union. 233 With the exception of the Coventry case, all decisions ruled against the
teachers’ unions, their strikes, and appeals brought before the court.

226 Ibid.
230 510 A.2d 943 (1986).
As Justice Kelleher of the Rhode Island Supreme Court accurately stated in his opinion in the 1986 Pawtucket ruling, “Most Rhode Islanders have become accustomed to the likelihood that when the summer season comes to an end with the setting of the sun on Labor Day, a strike by the public school teachers in one of the state’s municipalities or school districts will take place when the ringing of the school bells announces the opening of another school year.” These six cases barely scratch the surface of the issue in teachers’ strikes in Rhode Island. For every case which reached the court system, dozens were settled without the involvement of the judiciary. Between 1985 and 2005, The Providence Journal published over five hundred articles addressing the issue of teachers’ strikes. This extensive coverage begins to indicate how widespread the phenomena of teacher work stoppages are in the nation’s smallest state.

Rhode Island stands apart from any other state in the country in regard to the number and frequency of teachers’ strikes. The press often observes that “the scene is so common in Rhode Island that we forget how rare it is across the United States. Just next door, in Connecticut, entire generations of children have never seen their teachers on the picket line.” A few statistics clearly illustrate this phenomenon. For example, in 1991 there five strikes in New England and all five were taking place in Rhode Island. Four years later, in 1995, seven teachers’ strikes occurred in the United States of which two were in Rhode Island. A Providence Journal reporter once posed an amusing question by asking, “What’s going on here? Has the state spawned a new criminal class, composed of the very people charged with nurturing the minds of our youth?” While he was not being entirely serious, he was probing the reasons behind this unique Rhode Island phenomenon. In essence, there is no one cause, but rather several factors.

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234 School Committee of the City of Pawtucket v. Pawtucket Teachers’ Alliance, Local No. 930, 510 A.2d 943, 943 (1986).
235 “Why Rhode Island seems to have so many teachers’ strikes?,” p. A-01.
237 Ibid.
have made Rhode Island the leader among the states in teachers’ strikes including, the structure of the state’s school districts, the wording of the Michaelson Act, a deadlocked legislature, and “statewide politics with a small-town flavor.”

The manner in which Rhode Island school districts receive funding emerges as the first structural problem. In New England, school committees depend solely on the mayor and city government to provide necessary funds; in contrast, in the Mid-West, school districts operate as complete and independent government bodies with an elected leadership and the ability to levy taxes. Due to this structure, it is much simpler for school districts in the Mid-West to raise the money necessary to provide teachers’ with raises. On the other hand, the New England structure pits educational issues and funding at odds with other city and local decisions. Whatever money is directed to education is taken away from other citywide improvements and programs, which often leads school districts to get less funding than they require and makes it difficult to increase teachers’ salaries. In 2003, Rhode Island ranked forty-seventh in the nation for the amount of funding given to education by the state government. Massachusetts ranked seventeenth and Connecticut ranked twenty-second. The same year, Rhode Island ranked thirty-eighth in money received from local governments. In comparison, Massachusetts ranked ninth and Connecticut ranked sixteenth. According to AFT spokesman, Jim Horwitz, New England school districts are “just an awkward structure. There's a whole extra step there where things can break down, and get politicized. Result? More strikes.”

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238 Ibid.
The small structure of Rhode Island school districts creates another reason for dispute. As the nation’s smallest state, Rhode Island boasts only 36 school districts, 158,592 students, and 12,039 teachers. By comparison, the neighboring state of Massachusetts boasts 372 districts, 983,313 students, and 73,404 teachers. The high frequency of strikes, in combination with the low number of school districts in Rhode Island, indicates that the individual Rhode Island teacher engages in strikes more frequently and has an impact on more students than in any other state.

This problem has not gone unnoticed, but rather several proposals to unite the Rhode Island school districts into larger more cohesive units have appeared throughout the last decade. A prominent advocate of this type of measure is Julie Steiny, a former member of the Providence School Committee, current author of the reoccurring Ed Watch, Issues, & Ideas column in The Providence Journal, and critic of Rhode Island teachers’ unions. She sees school district organization as the root of teachers’ strikes and proposed a three part plan to prevent future strikes and remove the “contractual monkeys” from Rhode Island’s educational system. Her plan calls for negotiation of a statewide benefits plan, creation a standardized salary scale for the state, and moving the expiration of teachers’ contracts from August 31 to June 30. The first two prongs of Steiny’s plan are based on the assumption that “every time insurers dream up a new perk, unions put it on the table and boom, they’re off and running. If one district has the perk, a lower co-pay or spouse coverage for life, we enter the Rhode Island sibling world of ‘you love her more than you love me.’ And the squabble begins.” By making a unified state contract, there would be no more envy between the school districts. The third prong makes logical sense.

244 “Statistics,” Massachusetts Department of Education; available from www.doe.ma.edu; Internet; accessed 5 April 2005.
245 Julie Steiny, “Preventing teachers strikes,” The Providence Journal, 19 September 1999, p. 1H.
246 Ibid.
By moving up the contract expiration date, school committees and teachers would have more time to work out their differences and not be forced to cram negotiation sessions into the last week of the summer vacation. Some communities have taken similar actions to that which the Steiny proposed. For example, the city of Woonsocket would change the expiration date of teachers’ contracts from August 30th to June 30th in the 1990s. The whole of Steiny’s plan received little attention from anyone in power; however, it did not stop her attacks on the teachers of Rhode Island. In 2001, her column highlighted the fact that “if Rhode Island is ever to do away with the annual teachers strikes, we will have to dismantle the mechanical, legalistic systems that prevent communities from cultivating their own schools.”

In June 2003, Representative Nicholas Gorham, a Republican from the town of Coventry, offered a plan for a statewide teachers’ contract. He proposed a commission to study both the positive and negative aspects of this drastic change to Rhode Island’s education system. However, there are some thorny issues to this proposal. For example, if a contract could not be reached, as is often the case in Rhode Island, the entire state’s teaching force could go out on strike. Additionally, Rhode Island teachers’ unions are affiliated with both the American Federation of Teachers and the National Education Association. Deciding which union would negotiate a statewide contract would be extremely problematic. Both unions remain skeptical about this plan.

Representative Paul Crowley, a Democrat from Newport, has devoted his political career to educational reform and, as a result, much of the proposed legislation to revamp Rhode Island law has been initiated by this local politician. In 2003, Crowley put forth a plan for two statewide teachers’ contracts, one for the NEA locals and one for the AFT locals. This bill asked for

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the 2004 state budget to include a provision to perform a cost-benefit analysis of this proposal. Public hearings would be slated to occur throughout the state during the 2005-2006 school year. Then in the 2006 general elections, residents of all communities would be ask to vote for either the statewide contract or maintaining the local contracts. If approved, the new version of teachers’ contracts would go into effect in 2007. Two years later, the possibility of a statewide contract still remains in the preliminary discussion phase.

Not all blame for the vast number of teachers’ strikes can fall on the organization and structure of Rhode Island’s school districts. Public sector employees, since the start of their struggle for rights, have faced opposition by the law. The current labor situation in Rhode Island has led many scholars, press, politicians, and education professionals to fault Rhode Island law as the root of a majority of the strikes in the state.

There are essentially three basic types of laws nationwide governing teacher contract impasses. Some states mandate binding arbitration, others grant teachers the right to strike, but many are “like Rhode Island - neither fish nor fowl…There’s no right to strike, but there’s not another mechanism to resolve the dispute, either.” In Rhode Island, teachers’ strikes are illegal according to the 1973 Westerly case, but not criminal. There is no penalty for many Rhode Island teachers who initiate and participate in a strike. The state law mandates that schools operate for 180 days. Any time lost to a strike is simply made up at the end of the year which means teachers do not lose any money by engaging in a strike. With nothing to lose and everything to gain, it is no wonder Rhode Island teachers are so willing to strike.

The Michaelson Act, the backbone of Rhode Island collective bargaining law, was a huge improvement for public school teachers when developed in 1966. However, problems began to

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emerge as the law was put into practice. Unlike the collective bargaining laws regulating Rhode Island police and firefighters, the Michaelson Act does not provide binding arbitration in economic issues. Binding arbitration is only valid on work issues such as classroom size. As a result, there is no incentive for teachers’ unions to submit to this process. Additionally, the vague wording of the act which stated, “nothing contained in this chapter shall be construed to accord to certified public school teachers the right to strike”\textsuperscript{251} allowed teachers’ organizations to claim while the act does not condone strikes, it does not expressly prohibit strikes either. The act’s author, former Senator Julius Michaelson, once reflected, “The idea was that if the law required school committees and teachers to sit down together and negotiate and try to resolve their differences, you wouldn’t have strikes. The hope was that these talks would sort of lead to a kind of a partnership in education, where both sides have the same goals and in a reasonable way could work things out. And in the early years, it worked very well.”\textsuperscript{252}

Rhode Island law is seen as the source of problems because other nearby states have adopted much more stringent laws governing a teacher’s ability to use their most powerful weapon. As a result of harsh laws, states such as Massachusetts, New York, and Connecticut have witnessed a drastic reduction in the number of strikes which delay the opening of school each year.

Massachusetts law expressly states, “No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.”\textsuperscript{253} This unequivocal language prevents unions from employing it in their defense as Rhode Island teachers have done with the Michaelson Act’s vague wording. Additionally,


\textsuperscript{253} Labor Relations: Public Employees, Annotated Laws of Massachusetts, Chapter 150E, sec. 9A (1973).
Massachusetts law has a punitive power by stating that when, “an employee organization willfully disobeys a lawful order of enforcement pursuant to this section, or willfully encourages or offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt continues may be a fine for each day to be determined at the discretion of said court.”\textsuperscript{254}

While Massachusetts law allows a union to be financially penalized, the New York legislature passed an even harsher law known as the Taylor Law or, officially, as the Public Employee’ Fair Employment Act of 1967. This act punishes the individual teacher: “No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall cause, instigate, encourage, or condone a strike…The chief fiscal officer of the government involved shall deduct from the compensation of each such public employee an amount equal to twice his daily rate of pay for each day or part thereof that it was determined that he had violated”\textsuperscript{255} the law.

The Connecticut legislature established the Teacher Negotiation Act in 1969. In a fashion similar to Massachusetts and New York, the Teacher Negotiation Act states, “No certified professional employee shall, in an effort to effect a settlement of any disagreement with the employing board of education, engage in any strike or concerted refusal to render services.”\textsuperscript{256} This state took its act even further to not only ban strikes, but also mandated binding arbitration for contract impasses. This clause asks each side to prepare a final contract offer which is presented to a three person arbitration panel composed of one union chosen arbitrator, one city chosen arbitrator, and one neutral party. The panel then examines the

\textsuperscript{254} Ibid., sec. 9.  
\textsuperscript{255} \textit{Public Employees’ Fair Employment Act, New York Civil Service Law}, Article 14, sec. 210 (1967).  
proposals and on every contentious issue chooses one party’s proposal. In the end, a contract emerges which is combination of both final proposals.

While other states have taken a firm and clear stance regarding a teachers’ right to strike, one must wonder why Rhode Island has maintained its ambiguous Michaelson Act for the last forty years. This legal stagnation has not occurred due to a lack of effort. Legal reform in Rhode Island is popular among state politicians and “as regular as poppies in the late spring”\textsuperscript{257} the General Assembly annually hears proposals to overhaul or replace the Michaelson Act.

Representative Crowley proposed a reinterpretation of Rhode Island case law in the 1990s. While the Michaelson Act makes no mention of “irreparable harm” to students, the Rhode Island Judiciary, over the years, has made it necessary for school districts to prove that the teachers’ strike actually harms the students before an injunction can be issued. Crowley in 1995, 1996, and 1997 proposed a bill which would remove the “irreparable harm” clause and make it easier and faster for courts to issue injunctions in teachers’ strikes. Representative Crowley believes the Michaelson Act already “assumes a strike is a very bad thing for education and is not in the public’s interest, and judges shouldn’t be holding hearings to determine harm.”\textsuperscript{258} Unfortunately for Crowley, both the Rhode Island Federation of Teachers, AFL-CIO and the National Education Association/Rhode Island came out in opposition to his bill. RIFT President Marcia Reback stated, it’s “an interesting piece of legislation, actually, in terms of the practical effect on bargaining, and the use of the courts as a weapon against teachers…I think it does nothing to further getting a settlement but simply tilts all the pressure against teachers.”\textsuperscript{259}

NEA/RI President Harvey Press told \textit{The Providence Journal} that “The issue is there's a strike, whether one day or six days, before the court can issue an injunction. If you force teachers back

\textsuperscript{258} Ibid.
\textsuperscript{259} Ibid.
without a contract, we’ve found that’s even more detrimental than a five-day strike.”

In 1996, Crowley’s bill was actually approved by the House Judiciary Committee, but it did not get a vote on the floor.

The Rhode Island Legislature frequently calls for or is presented with legislation proposing binding arbitration for educational contract disputes. This type of legislation first appeared in the months following the Woonsocket teachers’ strike of 1975. In 1976, the Manning Commission, a group headed by a local state representative, proposed a new manner in which to end strikes, last-best offer arbitration. Under the House’s proposal, an arbitrator would be appointed early in the strike and would have to choose between the final demand of the union, the final offer of the School Committee, or the recommendation of an independent fact finder. The House’s proposal would also officially outlaw teachers’ strikes and allow the enforcement of an arbitrator’s decision. At the same time, the Rhode Island Senate proposed and passed its own conflicting legislation. The Senate bill allowed teachers to strike and called only for regular binding arbitration.

Little came from these legislative debates as neither proposal gained support in both branches of the legislature. Ironically, the same proposals made in 1975 still appear before the General Assembly allowing politicians to believe that eventually a proposal will be approved.

In recent years, the National Education Association has become the foremost proponent of this type of legislation. Since its founding, the NEA has been an advocate for peaceful resolution of teacher disputes and, therefore, binding arbitration appears to be a reasonable solution to contract disputes. In 1997, the NEA/RI and Representative Gordon D. Fox, a Democrat from Providence, emerged as two different sponsors of binding arbitration laws,

260 Ibid.
similar to Connecticut. Also known as the last-best offer legislation, the NEA bill would require both sides to submit their final proposal ten days before the end of the current contract to an outside arbitrator. Fox’s bill would require the same steps to be taken before the end of the last school year governed under the contract. The additional time would prevent fall school disruptions. The NEA, with the assistance of a Washington, DC research agency, conducted a survey of Rhode Island residents which indicated that 73 percent favored the last-best offer legislation, 19 percent opposed, and 9 percent were undecided.\(^{262}\) The Rhode Island Federation of Teachers, the Rhode Island League of Cities and Towns, and the Rhode Island Association of School Committees steadfastly oppose binding arbitration. According to RIFT President Reback, “It’s a bill which places all of the responsibility for coming to an agreement on the teachers. It places no responsibility on a school committee to come to a fair contract. It’s punitive.”\(^{263}\) The other two organizations oppose the bill due to the dramatic increase in cost which binding arbitration causes in education. This trend has become clear in Connecticut for “while there may be greater harmony with unions, there’s an increasing backlash in communities. We see taxpayers voting down the local budgets, saying teacher salaries are too high. But the contract is in place. There may be fewer teachers as a result, and larger class sizes. But the salaries won’t be cut.”\(^{264}\) The binding arbitration law was put forth again in 2001 by Representative Robert D. Sullivan, but was defeated.

A multitude of other bills have appeared before the Rhode Island General Assembly in the last twenty years. A bill, similar to the law in New York, has appeared twice in 1993 and 1997. In 1993, Representative Donald Large, a Democrat from Cumberland, proposed a fine equal to two days pay for every day teachers were on strike. Four years later, Senator Roger R.

\(^{263}\) McVicar, “Assembly bills target teachers’ strikes,” p. 1B.
\(^{264}\) McVicar, “NEA uses poll to press for bill,” p. 1B.
Badeau of Woonsocket put forth a virtually identical bill upon the urging of the state’s School Committee Association. While Badeau sponsored the bill, he also saw the futility of proposing this legislation and comically remarked, “You couldn't pass that if you were President Lincoln.”

Representative Marc C. Lauzon of Woonsocket proposed not only a monetary fine, but also a change in the Michaelson law to make strikes explicitly illegal. Monetary fines again appeared in the proposal of Senator Edward Lawrence of Warwick. However, Lawrence desired to make teachers’ strikes legal. He then called for the Superior Court to assess which party was responsible for the strike. If the union was responsible a two day pay fine would be imposed on all members, but if the school committee was found at fault each member would be charged $200.

In the mid-1990s, Rhode Island legislators would branch out and propose strike laws unlike those in any other state in the country. In 1993, an extremely unusual bill known as “back to the future” legislation was put forth by Democratic Senator Joseph McGair of Warwick. This bill, S797, stated that if by April 1st of the last year of a teachers’ contract a new resolution had not yet been devised the contract disputes would be turned over to and decided by a twelve member Superior Court jury. This bill never made it out of the legislature.

Former Governor Bruce Sundlun also involved himself in this debate as his office put forth the “Quinlan Bill.” Robert H. Quinlan was the chairman of the Warwick School Committee in the early 1990s with whom Governor Sundlun had gotten into a disagreement. This bill incorporated several novel and unprecedented clauses. For example, Sundlun’s bill

266 Ibid.
called for the establishment of a fact finding committee, allowed a mediator to establish a one to three month cooling off period, and required the old contract to remain in place throughout the dispute. The bill also allowed the state to shutdown any union which caused a strike for a maximum of three years. Finally, Sundlun’s bill gave the governor the power to remove a member of a school committee from his seat if he was not fulfilling his obligations to the community. Quinlan saw this bill as nothing more than a personal attack and responded that “giving Sundlun the power to remove elected local officials would be like declaring him Crown Emperor of Rhode Island.”

With multitudes of unsuccessful proposals appearing before the General Assembly in the last few years, many in the press and politics attribute these legal failures to the power of the teachers’ unions. As one reporter colorfully illustrated, “like seeing the ribs on a skinny kid, Rhode Island’s size allows us to see the blocs of votes, organized and to some degree controlled by local union leadership, that join together to create almost an unstoppable political machine.” Teachers’ unions are a pillar of the Democratic Party and in a state controlled by Democrats, teachers possess enormous power. This powerful and united political bloc has proved extremely beneficial for the teachers of Rhode Island. According to statistics collected by the National Education Association, for 2003-2004, Rhode Island teachers were the ninth highest paid educators in the country with a median salary of $52,261. Apparently Rhode Island’s “rite of September,” strong unions, and the willingness to challenge the law has allowed Rhode Island teachers to secure these advantageous working conditions.

III. The Bigger Picture: The Future of Public Sector Labor Unions in Rhode Island

Rhode Island law for many years has struggled to achieve a balance between worker and employer rights. However, in the last decade the Rhode Island Supreme Court, under the leadership of Chief Justice Frank Williams, has emerged with multiple rulings wearing away the power of the state’s public sector labor unions. According to long-time Rhode Island union lawyer Richard Skolnik,

“Most recently and I would say for that 15 years, the decisions of the Supreme Court for setting forth the rules for arbitration, collective bargaining, and things of that nature–have not been, in my judgment, been fair and really don’t help the situation…if something isn’t balanced and favors one side, it impedes the process. Now for instance, our Supreme Court has gotten involved in arbitration decisions, to the extent that I don’t think another court in the country has gotten involved…I am talking about reversing decisions…Let an arbitrator make an award and unless the offer is off the wall he has done his job, leave him be. Those recent decisions I believe favor management and therefore, are not conducive to a resolution of a balanced process.”

Certain cases can be identified as particularly egregious to the rights of public sector labor in Rhode Island. In 1991, the Supreme Court ruled that members of the Rhode Island Brotherhood of Correctional Officers could be forced to work involuntary overtime. The union argued that this policy violated their collective bargaining agreement, but to no avail. Actions such as this, prompted the Brotherhood of Correctional Officers to conduct a study in 2002 of recent court arbitration decisions. The union found that in twenty of twenty-three arbitration cases reviewed by the Supreme Court, rulings had been issued in favor of management. In 1994, the Superior Court vacated an arbitration award favoring Rhode Island Council 94 of the American Federation of State, County, and Municipal Employees and ruled that the state could

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replace union workers in any state agency with convicted criminals on work release.\textsuperscript{274} Two years later, the Rhode Island Supreme Court upheld this ruling.\textsuperscript{275} In 1997, this same union again suffered a setback when the Supreme Court upheld an appeal overturning another arbitration award. In this case Rhode Island Council 94, AFSCME, AFL-CIO v. Woonsocket School Committee, the union local had a collective bargaining agreement which stated, “The School Department agrees that it will not subcontract work which can be satisfactorily and more economically performed by bargaining unit employees, provided it has the facilities for doing the work, and the available personnel.”\textsuperscript{276} However, when Woonsocket schools privatized their lunch program, union workers were replaced by private employees. Both the Superior and Supreme Courts supported this action.

While for many years, Rhode Island public sector labor unions have faced setbacks in the court, animosity from the press, and hostility from their communities nothing has deterred the state’s workers from becoming active union members. This can be clearly illustrated with a few statistics. In 1964, only 26 percent of private and public sector workers were unionized in Rhode Island, as compared to the national average of 29 percent. This placed the state twenty-second in the national ranking of unionism.\textsuperscript{277}

Rhode Island’s reputation as being a leader in the labor movement would soon return for between 1983 and 2003 the state’s percentage of unionized employees, both private and public sectors, soared far above the national average. In 1983, only 18.8 percent of all workers in the United States were unionized which represented 15.3 percent of private sector employees and 35.7 percent of public sector employees. In Rhode Island, 22 percent of all labor was unionized

\textsuperscript{277} “Public Sector Unions and State Spending;” available from www.ripolicyanalysis.org/PubSectorUnions.html; Internet; accessed 19 April 2004.
including 13.9 percent of private and 77 percent of public workers. In 1993, only 17.7 percent of all laborers in the United States were affiliated with a union which represented 12.1 percent of private sector workforce and 43.8 percent of public sector workforce. In Rhode Island, 18.8 percent of all labor was unionized including 11.8 percent of private and 63.8 percent of public. Ten years later, in 2003, America’s total union membership had dropped to 14.3 percent including just 9.0 percent of private sector labor and 41.5 percent of public sector. In Rhode Island, 17.0 percent of all labor was unionized including 9.0 percent of private and 65.1 percent of public. The state’s unionized workforce has continually remained high above the national average even though there has been a nationwide decline in union membership. In the last ten years, Rhode Island has managed to buck the national trend and actually seen an increase in the number of unionized public employees in the state. This remarkable effort allowed the nation’s smallest state to have the second highest percentage of unionized public sector workers in the nation. Only New York placed higher.278 These statistics prove that Rhode Island has remained a hospitable environment for labor despite the change in the court sentiment.

Understanding why unionization, especially in the public sector, has remained a prominent factor in Rhode Island life, economics, and politics can be linked directly to the state’s long labor tradition. In this small state there always was a “large contingent of organized workers in the construction, manufacturing, and building trades. The climate here was always an organized state so when it came to the public employees turn, that the notion of unionization was not an anomaly.”279 If this trend should continue, unionization will never be an anomaly in Rhode Island. Instead, the future for public sector workers in Rhode Island is very bright despite

278 Union Membership and Coverage Database; available from www.unionstats.com; Internet; accessed 29 April 2004.
279 Casey, interview by author, 11 August 2004.
the best efforts of the Rhode Island Supreme Court and the legislators to limit the rights and power of public sector unions.
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