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Job Security For Public Employees

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JOB SECURITY FOR PUBLIC EMPLOYEES

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What protections do public employees in the United States have against arbitrary, summary discharge? It is, of course, clear that no public employee may be discharged for inherently suspect reasons such as motivations based on race. Further, constitutional protections are provided by way of procedural due process for those who have attained certain liberty and property rights in their jobs. Finally, public employees are protected contractually to the extent provided explicitly by collective bargaining agreements or by federal, state, and municipal civil service laws.

Despite the apparent job security afforded by the preceding safeguards which in some cases overlap, it will be seen that job security for public employees as a whole is often illusory because either they may not work for a governmental unit which provides or allows these safeguards or the safeguards themselves may have been minimized by interpretation and usage. Indeed, as late as 1950 the United States Court of Appeals for the District of Columbia Circuit could still say, "The First Amendment guarantees free speech and assembly, but it does not guarantee Government employ,"[1] echoing the words of Justice Holmes that "[t]he petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman."[2] Nevertheless, it is herein submitted that while one may not have a right to employment by the government, once having been employed and having proven his ability to perform his job, he should in most cases have the right to retain his job free from the fear of arbitrary or summary removal. Such minimal security would seem to be imperative as public employment continues to usurp a greater and greater percentage of the total job market.[3]

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[1]Bailey v. Richardson, 182 F.2d 46, 59 (D.C. Cir. 1950), *aff'd by an equally divided Court*, 341 U.S. 118 (1951).

[2]McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220 (1892).

[3]During the past 30 years the ranks of government employees have more than tripled, while the nation's total labor force has not increased by as much as 50%:

Collective Bargaining Agreements

Members of public employees' unions which are parties to collective bargaining agreements are protected against arbitrary and summary discharge by the contractual arbitration procedure and grounds for dismissal. The typical labor contract permits discharge only on the basis of an enumerated act of misconduct and authorizes discharge only after the several steps of the grievance procedure have been exhausted.[4] These basic job protections, incidentally, would seem to comport with procedural due process requirements in the context of employment termination.[5] The number of public employees who are members of labor unions has increased dramatically in

Number Government Employees

Year	Federal	State	Local	Total Labor Force
1940	1,128,000	3,346,000		56,180,000
1950	2,117,000	1,057,000	3,228,000	63,858,000
1960	2,421,000	1,527,000	4,860,000	72,142,000
1970	2,881,000	2,755,000	7,392,000	85,903,000

U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 109, 345 (1973).

[4]*E.g.*, Lipp v. Board of Educ., 470 F.2d 802 (7th Cir. 1972). For the purpose of this discussion it is assumed that all labor contracts with government employees contain these provisions (*see generally* PUBLIC WORKERS AND PUBLIC UNIONS [Zagoria ed. 1972]); it is recognized that there may be exceptional agreements which do not.

[5]Board of Regents v. Roth, 408 U.S. 564 (1972), the latest authority on procedural due process rights of government employees, makes it clear that no rigid delineation of due process requirements can be made for these cases in general: "[A] weighing process has long been a part of any determination of the form of hearing required in particular situations by procedural due process." *Id.* at 570. The Court went on to quote Boddie v. Connecticut, 401 U.S. 371, 378 (1970): " 'The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.' " The full range of procedural due process rights in an administrative hearing, as outlined in Goldberg v. Kelly, 397 U.S. 254 (1970), include notice of the reasons supporting the proposed action, an opportunity to be heard, the right to cross examine, the right to present evidence, and the right to be represented by counsel. There is one case in which a public employee challenged the constitutional adequacy of a greivance proceeding under a collective bargaining contract, Lipp v. Board of Educ., 470 F.2d 802 (7th Cir. 1972), but the court in that case did not reach this issue. Viewing the flexible approach toward due process requirements taken by Board of Regents v. Roth together with the courts' usual reluctance to interfere with grievance arbitration under labor contracts, *e.g.*, United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960), it is reasonable to expect that, absent gross irregularities, a public employee's discharge after losing a grievance proceeding would be upheld by the courts.

recent years.[6] Thus, by 1970, 18% of all federal, state, and local employees were union members. While it is conceded that some of these employees are not covered by collective bargaining contracts, it is reasonable to suppose that most of them are and that these contracts provide at least some measure of job security.

Civil Service Laws

Since the early 1960's most of the states have enacted civil service laws or merit system laws which provide job protection to state employees, and in a number of states there are civil service systems that protect local government employees as well.[7] The initial impetus for many of these laws seemed to come from the federal statutory requirements that state employees in federal grant-in-aid programs be covered by merit system rules.[8] Of course, the great majority of employees of the United States Government have been subject to civil service protection since 1912.[9]

More specifically, the public servants of thirty-nine states generally are covered by civil service laws that enumerate the causes for discharge and require notice and an administrative hearing preceding discharge. In five other states these protections are accorded only to limited segments of the public work force.[10] By contrast, the extent to which employees of local government bodies are covered by civil service laws is a difficult matter to ascertain from a review of the state statutes. One source states that all cities in the United States with a population over 250,000 have civil service systems.[11] In three states

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Year	*Unionized Government Employees*
1956	1,035,000
1960	1,070,000
1964	1,453,000
1970	2,318,000

U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 339-42 (1973).

[7]Aronson, *Personnel Administration, The State and Local Picture*, 13 CIVIL SERVICE L.J. 37 (1972).

[8]*E.g.*, 42 U.S.C. § 1382(a)(5) (1970).

[9]5 U.S.C. § 7501 (1970). *See also* 5 C.F.R. §§ 752.101-.226 (1971).

[10]See the table set out in the Appendix to this article. Those states which have comprehensive coverage of public employees generally exclude only such persons as elected officers, judges, officers required by the constitution to be appointed by the governor, members of boards and commissions, state militia, students, inmates of state institutions, laborers, and hourly employees. *See, e.g.*, VA. CODE ANN. §§ 2.1-110 *et seq.* (1950). Why laborers and hourly employees should not be deserving of job security is not apparent, but these are common exclusions.

[11]Aronson, *supra* note 7. From another source it is learned that 83 out of 201 counties responding to a nationwide study have civil service programs. MUNICIPAL YEAR BOOK 180-86 (1970).

(New York, Alaska, and Louisiana) local civil service systems are required in all cities; in sixteen states local civil service systems are required in cities of certain sizes or with certain groups of local government employees; in twenty-two states a prescribed form of civil service system is available to local governmental units for their adoption by referendum or ordinance;[12] and a number of other states grant their municipalities general powers to adopt merit systems without specification of the details.[13]

It is reasonable to estimate that 75% of all state employees in the United States are protected by civil service laws from arbitrary or summary discharge.[14] An accurate estimate of the number of local government employees thus protected cannot be made. It must be recognized that many public employees are both members of unions and subject to civil service or merit systems, so that the numerical range of protection afforded by these sources of employee rights is diminished by the overlap.

Under almost all civil service laws, an employee acquires the right not to be discharged, except upon specified grounds and after notice and hearing, once he has become a permanent employee. The procedural protection given by these laws ordinarily should be found by the courts to be consistent with due process.[15] The period of probationary

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[12]See the table set out in the Appendix to this article.

[13]*E.g.*, GA. CODE ANN. tit. 69, § 310 (1957).

[14]This percentage is derived from the table in the Appendix together with the figures in U.S. DEP'T OF LABOR, HANDBOOK OF LABOR STATISTICS 114-15 (1973).

[15]See the discussion in note 5 *supra*. There is, however, a division in the lower courts regarding the constitutionality of discharge procedures under the federal civil service act and regulations. Kennedy v. Sanchez, 349 F. Supp. 863 (N.D. Ill. 1972) (unconstitutional); Henley v. Schultz, 13 CIVIL SERV. L.J. 10 (N.D. Pa. 1972) (constitutional). The United States Supreme Court recently dealt with this issue in Arnett v. Kennedy, ___ U.S. ___, 94 S. Ct. 1633 (1974). Five separate opinions were filed, so it cannot be said that the Court has reached a meaningful consensus. Mr. Justice Rehnquist, delivering the judgment of the Court, said that the procedures established by and under the Lloyd-La Follette Act, 5 U.S.C. § 7501, for the removal of nonprobationary employees from the competitive civil service, are constitutional. He reasoned that the property interests protected by the due process clause are created and defined by sources such as statutes which are independent of the Constitution. In the Lloyd-La Follette Act, Congress created the property interest in continued employment and established the procedure by which individuals could be deprived of this interest. The statute cannot be bifurcated at will: "A litigant in the position of appellee must take the bitter with the sweet." ___ U.S. at ___, 94 S. Ct. at 1644. As is pointed out by the dissenting justices and by the concurring opinion of Mr. Justice White, this sort of reasoning too severely limits the protection of the due process clause. It would appear from the plurality opinion that if the statute granting the interest contains any provision for a procedure to be followed in the discharge of an employee, however sketchy or inadequate, the employee if he is to assert his property interest must content

or temporary employment before job security is acquired varies from six months to as long as six years, but the typical transitional point is at six months.[16]

Discharges for Unconstitutional Reasons

When the distinction in constitutional law between rights and privileges fell into disfavor,[17] the broad holding of *Bailey v. Richardson*[18] was doomed. In *Graham v. Richardson*,[19] Justice Blackmun wrote for the Court, "[T]his court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.'" Thus, although a person still may have no right to be hired by the government and may be dismissed from government employment for any number of reasons, there are some reasons upon which the government is powerless to act.[20] For example, it has been repeatedly held that a public employee may not be fired on account of race,[21] for exercising his right of free speech,[22] for exercising his right to religious freedom,[23] for engaging in his right of association,[24] for claiming his privilege against self incrimination,[25] or in violation of his right of personal privacy.[26]

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himself with the inadequate statutory procedure. This approach seriously erodes the Court's decision in Goldberg v. Kelly, 397 U.S. 254 (1970), which allowed welfare recipients to assert their property interest in the receipt of their benefits and at the same time challenge the constitutionality of the procedures through which the benefits could be terminated.

[16]*E.g.*, KY. REV. STAT. ANN. § 90.110(2) (1969); MO. ANN. STAT. § 36.250 (1969).

[17]Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 HARV. L. REV. 1439 (1968).

[18]*See* quotation in text accompanying note 1 *supra*.

[19]403 U.S. 365, 374 (1971).

[20]Perry v. Sindermann, 408 U.S. 593, 597 (1972).

[21]Johnson v. Branch, 364 F.2d 177 (4th Cir. 1966).

[22]Pickering v. Board of Educ., 391 U.S. 563 (1968). The Supreme Court has recently determined that a public employee can be dismissed for publicly criticizing his agency, Arnett v. Kennedy, ___ U.S. ___, 94 S. Ct. 1633 (1974), on the theory that such utterances tend to impair his own effectiveness as an employee and that of his agency. This decision is most difficult to square with *Pickering*, where the employee was protected after making comments critical of his superiors.

[23]Hollon v. Pierce, 257 Cal. App. 2d 468, 64 Cal. Rptr. 808 (1967).

[24]Keyishian v. Board of Regents, 385 U.S. 589 (1967); Wieman v. Updegraff, 344 U.S. 183 (1952). These authorities provide an additional source of job security for the public employee who is a union member. Discharge may not lawfully be predicated upon his union membership or activity protected by the right of association. Contine v. Van Cleve, 483 F.2d 966 (10th Cir. 1973).

[25]Gardner v. Broderick, 392 U.S. 274 (1968); Slochower v. Board of Higher Educ., 350 U.S. 551 (1956).

[26]Lindquist v. City of Coral Gables, 323 F. Supp. 1161 (S.D. Fla. 1971).

Of course, these constitutional prohibitions may not protect the job of a high ranking appointee in a policy-making position. Such individuals may properly be dismissed on account of their activities which ordinarily would be protected speech and association; and this exception appears necessary to insure teamwork at the apex of the administration.[27]

What of the case where both a constitutionally protected ground and an unprotected ground motivate a public employer to dismiss an employee? The circuit courts of appeal are divided on the appropriate solution. The Fifth Circuit held that the dismissal is valid if the unconstitutional ground played a minor role; and even if it played a significant role, the balance of interests weighs in favor of the employer.[28] The Seventh Circuit held the dismissal is valid as long as an unprotected ground exists.[29] The Eighth Circuit held that if any protected ground exists, the dismissal is invalid.[30]

With respect to the public employee's remedy for discharge for unconstitutional reasons, the Supreme Court recently made it clear that such a claim does not necessitate a pre-discharge administrative hearing.[31] The employee's remedy is to bring a civil action against the employer under the Civil Rights Act of 1875[32] or the Civil Rights Act of 1964.[33]

The Spoils System Problem

Once it is established that the First Amendment freedom of association protects a public employee from discharge on account of his associational activity,[34] it would seem that discharges of employees under a patronage system solely because they were members of the

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[27]Gold v. Walker, 356 F. Supp. 421 (N.D. Ill. 1973). See the further discussion of this issue in text at note 43 *infra*.

[28]Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970).

[29]McLaughlin v. Tilendis, 398 F.2d 287 (7th Cir. 1968).

[30]Smith v. Board of Educ. 365 F.2d 770 (8th Cir. 1966).

[31]Board of Regents v. Roth, 408 U.S. 564, 575 n.14 (1972). The Court distingushed cases requiring prior adversary hearings where First Amendment rights were at issue, such as Carroll v. Princess Anne, 393 U.S. 175 (1968), by saying that they involved conduct which directly infringed upon First Amendment rights; and as to the case before it the Court said, "Whatever may be a teacher's rights of free speech, the interest in holding a teaching job at a state university, *simpliciter*, is not itself a free speech interest." *Id.*

[32]42 U.S.C. § 1983.

[33]42 U.S.C. § 2000e-2, applicable only to discharges based on race, religion, color, sex, and national origin.

[34]Keyishian v. Board of Regents, 385 U.S. 589 (1967); Wieman v. Updegraff, 344 U.S. 183 (1952).

wrong political party could not be sustained. Yet the spoils system continues to flourish in most of those jurisdictions where civil service laws have not been enacted.[35] Is its continued operation consistent with the Constitution?

In *United States v. Robel*,[36] the Supreme Court relying on the ground of freedom of association protected a Communist's right to maintain his employment. It certainly seems that Democrats and Republicans should be entitled to the same protection. On at least two occasions the Court has said by way of dicta that public employees cannot lawfully be discharged for membership in one of the principal political parties. In *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, the Court remarked that "she could not have been left out of a government job because she was a Democrat or a Methodist."[37]

The Court in *United Public Workers v. Mitchell* stated:

> Appellants urge that federal employees are protected by the Bill of Rights and that Congress may not "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." None would deny such limitations on Congressional power. . . .[38]

However, notwithstanding the clear application of the First Amendment right of association, the cases are sharply divided as to whether discharges to make room for patronage appointees are constitutionally permissible. The Supreme Court of Pennsylvania and the United States Court of Appeals for the Second Circuit upheld the spoils system;[39] the United States Court of Appeals for the Seventh Circuit struck it down;[40] and the Supreme Court declined opportunities to review these cases.[41]

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[35]*See generally* M. TOLCHIN & S. TOLCHIN, TO THE VICTOR (1971); BUSINESS WEEK, May 22, 1971, at 22 (4000 employees fired in Illinois, 3500 employees fired in Pennsylvania, in recent changes of administration).

[36]389 U.S. 258 (1967).

[37]Cafeteria Workers, Local 473 v. McElroy, 367 U.S. 886, 898 (1961).

[38]United Public Workers v. Mitchell, 330 U.S. 75, 100 (1949).

[39]American Federation of State Employees v. Shapp, 443 Pa. 529, 280 A.2d 375 (1971); Alomar v. Dwyer, 447 F.2d 482 (2d Cir. 1971). To the same effect is Indiana State Employees Ass'n v. Negley, 357 F. Supp. 38 (S.D. Ind. 1973), but this case is not useful as a precedent because it is in clear conflict with Illinois State Employees Council 34 v. Lewis, 473 F.2d 561 (7th Cir. 1972), hereinafter mentioned.

[40]Illinois State Employees Council 34 v. Lewis, 473 F.2d 561 (7th Cir. 1972).

[41]Alomar v. Dwyer, 447 F.2d 482 (2d Cir. 1971), *cert. denied*, 404 U.S. 1020 (1972); Illinois State Employees Council 34 v. Lewis, 473 F.2d 561 (7th Cir. 1972), *cert. denied*, 410 U.S. 493 (1973).

The cases upholding the spoils system have found interests of the government and the public which transcend the interests of the employee in exercising his freedom of association, voting in the party primary of his choice, and earning a livelihood without sacrificing these rights. First, the governmental interest of obtaining loyal and obedient public service is claimed:

> [G]ood administration requires that the personnel in charge of implementing the policies of an agency be responsible to and responsive to those charged with the policy-making function, who in turn are responsible to a higher governmental authority, or to the public itself, whichever selected them. This chain of responsibility is the basic check on government by the public at large. The power to dismiss summarily is the assurance of such responsibility.[42]

This argument is valid when applied to high level appointees who have policy-making responsibilities. Undoubtedly this is the consideration that prompted the exemption of such persons from most civil service laws[43] and even from federal legislation forbidding race, sex, and religious discrimination in public employment.[44] It is generally accepted that politically elected officers should have unfettered choice in filling policy-making positions. But this argument does not fit the rank and file worker whose task it is to carry out the policies formulated by those at the highest echelons. If the ordinary government employee defies the orders of his superiors in deference to his own political philosophy, he is clearly guilty of misconduct which can be remedied by discharge.[45] Common sense tells us that the non-policy making employee will not be inclined toward disloyalty and disobedience for political reasons, but will continue to perform his job in the same manner as he did before the change of administrations. Extensive experience under the civil service laws, as well as informed opinion,[46] are supportive of this common sense view. It was in part because the spoils system was so inefficient that civil service laws

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[42]American Federation of State Employees v. Shapp, 280 A.2d at 378. *See generally* Note, *A Constitutional Analysis of the Spoils System—The Judiciary Visits Patronage Place*, 57 IOWA L. REV. 1320 (1972) [hereinafter cited as *Constitutional Analysis*].

[43]Note 10 *supra*.

[44]42 U.S.C. § 2000e(f).

[45]*E.g.*, Studemeyer v. Macy, 321 F.2d 386 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 934 (1963).

[46]*Constitutional Analysis*, *supra* note 42, at 1326 n.31, 1345 nn.122-23; Richardson, *Problems of the Removal of Federal Servants*, 54 MICH. L. REV. 219 (1955).

were enacted.[47] Moreover, it should be remembered that the dismissed employee is trained and experienced, while the new spoils system employee is untrained and inexperienced since, by definition, patronage is the provision of employment in reward for party loyalty, not proven or even predicted competence. Thus, the effect of a patronage turnover in employment is to disrupt and degrade, rather than improve, public administration.

The second justification offered for the spoils system of public employment is that it has traditionally served a quasi-welfare function by providing a supplementary means of enabling poor families to subsist.[48] This argument overlooks the fact that for every poor person placed on the public employment rolls after the elections, another must be discharged and cut off from his means of support. In any case, whatever validity this purpose may have had in bygone days has been rendered insignificant by modern welfare legislation.[49]

Third, it is argued that the spoils system is essential to the two party system, and that if it is undermined the two-party system will decline and ultimately democracy will fall.[50] Many municipalities have long operated under non-partisan forms of government.[51] The great majority of federal government employees have been protected by civil service laws since 1912.[52] Neither of these developments has visibly weakened the national and state two party systems or perceptibly injured our democratic form of government. Thus, this third argument has not been borne out by history.

Finally, it is argued that persons who are themselves beneficiaries of the patronage system should not be heard to complain of its foreseeable consequences. Those who "live by the political sword should be prepared to die by the political sword."[53] Unlike the other arguments, this presents a legal question and not an issue of public policy.

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[47]*Constitutional Analysis, supra* note 42, at 1345 n.124.

[48]*F. Greenstein,* THE AMERICAN PARTY SYSTEM AND THE AMERICAN PEOPLE, 46-50, 54 (1970).

[49]*Constitutional Analysis, supra* note 42, at 1326.

[50]Schoen, *Politics, Patronage and the Constitution,* 3 IND. LEGAL F. 35, 83-97 (1969).

[51]Fewer than one third of the cities responding to a survey report that the ballot used in city council general elections indicates a political party. Pressure for non-partisan municipal elections and government began early in the twentieth century, based on the belief that national politics and political parties have little relevance to municipal problems and local issues. Klevit, *City Councils and Their Function in Local Government,* THE MUNICIPAL YEAR BOOK 15 (1972).

[52]5 U.S.C. § 7501 (1970). *See also* 5 C.F.R. §§ 752.101-.226 (1971).

[53]American Federation of State Employees v. Shapp, 443 Pa. 527, 280 A.2d 375, 378 (1971).

The question must be resolved against the spoils system, because a waiver of such a fundamental freedom as that of association cannot be so lightly presumed.[54]

It is now well established that whenever a fundamental freedom is to be in some way curtailed or whenever a constitutionally suspect classification is involved, the burden is upon the government to demonstrate a compelling state interest served by the action.[55] The equally well established corollary principle is that the limitation upon individual rights will not be sustained if some less restrictive measure could adequately serve the state interest in question.[56] The freedom of association is recognized to be a fundamental freedom.[57] And, at least according to Justice Harlan, the criterion of political allegiance appears to have been added to the list of constitutionally suspect classifications.[58] Accordingly, a compelling state interest must be identified if the spoils system is to be lawfully maintained. The arguments in favor of patronage—obtaining loyal and obedient employees, serving a quasi-welfare function, and upholding the two party system[59]—are not supported by either experience or common sense. It is submitted that there is not even a rational basis[60] for the spoils system, much less a compelling governmental interest in maintaining it.[61] Moreover, each of the interests sought to be advanced by the spoils system can be adequately protected by means which are less restrictive of the freedoms at stake, *viz.*, by discharging disobe-

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[54]Illinois State Employees Council 34 v. Lewis, 473 F.2d 561, 573-74 (7th Cir. 1972). *See also* Johnson v. Zerbst, 304 U.S. 458 (1938).

[55]Schilb v. Kuebel, 404 U.S. 357 (1971).

[56]United States v. Robel, 389 U.S. 258 (1967) (applying the doctrine in an employment case where the restriction of free association was at issue); Shelton v. Tucker, 364 U.S. 479 (1960).

[57]Wieman v. Updegraff, 344 U.S. 183 (1952).

[58]Shapiro v. Thompson, 394 U.S. 618, 659 (1969) (dissenting opinion).

[59]In and of itself, the maintenance of a two party system is not a compelling governmental interest which would overcome the rights to associate and vote. Williams v. Rhodes, 393 U.S. 23 (1968).

[60]The rational basis test applies if constitutional rights are at stake but the action in question does not require a compelling governmental interest; to be valid the state action must have a rational basis, or must not be arbitrary and capricious. Schilb v. Kuebel, 404 U.S. 357 (1971).

[61]The least flimsy of the arguments supporting the spoils system, that it removes disloyal employees, appears to have been foreclosed by the decision of Wieman v. Updegraff, 344 U.S. 183 (1952). There it was held that mere affiliation with a subversive organization was an insufficient basis for discharging public employees. So it would seem to be unconstitutional to discharge an employee solely because he is a member of the opposing major political party without proving acts of misconduct on his part. *See Constitutional Analysis, supra* note 42, at 1343.

dient and incompetent employees, by continuing the system of public welfare, and by maintaining the two party system through means less susceptible of corruption and harm, *e.g.*, by a campaign fund income tax check-off.[62]

Upon consideration of the holdings in the freedom of association cases, the dicta about political rights of employees in these cases, and the arguments favoring the spoils system, it is believed that when a patronage discharge case eventually is reviewed by the Supreme Court, the employee is likely to prevail.

Judicial Review of Administrative Action

The Administrative Procecedure Act[63] and similar state legislation[64] make most governmental agency action subject to judicial review. In fact there is a presumption in favor of judicial reviewability;[65] and any reviewable action, upon complaint by a party aggrieved, will be set aside if found by the court to be arbitrary or capricious.[66]

Such a remedy would seem made to order for the government worker dismissed without cause. There are, however, certain types of administrative actions which by law are committed to agency discretion and are not subject to judicial review.[67] For example, before the enactment of the Administrative Procedure Act, the Supreme Court,

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[62]*See* Note, *Unconstitutional Conditions Upon Public Employment*, 21 HASTINGS L.J. 129, 162 (1970); *Constitutional Analysis, supra* note 42, at 1342-50.

[63]5 U.S.C. §§ 701-06 (1966).

[64]*E.g.*, ARK. STAT. ANN. § 5-713 (1967). A Revised Model State Administrative Procedure Act was promulgated in 1961 by the Commissioners on Uniform State Laws, and an impressive number of state legislatures have adopted it in major part. GA. CODE ANN. § 3A-101; *Hawaii Sess. Laws* 1961, act 103, § 14; IND. ANN. STAT. § 63-3014; MAINE REV. STAT. ANN. ch. 20-A, § 13I; MASS. GEN. LAWS ANN. ch. 30-A, § 14; MICH. STAT. ANN. § 3.560 (21.8); MINN. STAT. § 15.0424; MO. REV. STAT. § 536.100; N.M. STAT. ANN. § 67-26-17; N.C. GEN. STAT. § 143-307; PA. STAT. ANN. tit. 71, § 1710.14; R.I. GEN. LAWS ANN. § 42-35-15; TENN. CODE ANN. § 27-901; VA. CODE ANN. § 9-6-13; WASH. REV. CODE § 34.04.130; WIS. STAT. § 227.15. A major difference exists between the federal Administrative Procedure Act and the Model Act and state legislation following it. The federal Administrative Procedure Act states that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof." 5 U.S.C. § 702 (1966). Section 15 of the Model Act contains the more liberal standing requirement that any person "who is aggrieved by a final decision in a contested case is entitled to judicial review."

[65]First applied in American School of Magnetic Healing v. McAnnulty, 187 U.S. 94 (1902); L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATION ACTION 339 (1965).

[66]5 U.S C. § 706 (1966).

[67]5 U.S.C. § 701(a)(2) (1966).

invoking judge-made law, had repeatedly held that the firing of a public employee was a matter solely within the discretion of the public employer.[68] However, the Supreme Court has yet to make an authoritative determination as to whether the modern doctrine of judicial review and the express provisions of the Administrative Procedure Act provide a remedy for a federal employee fired from his job. The question was answered negatively by the District of Columbia Circuit in *Bailey v. Richardson*,[69] but this case was affirmed by an equally divided Supreme Court and therefore is not a precedent. *Cafeteria & Restaurant Workers, Local 473 v. McElroy*[70] is also sometimes cited for the proposition that a dismissed employee is without rights;[71] however, the narrow question before the Court in that case was only whether a *private* employee could be denied access to a military installation where she worked because her security clearance had been withheld.

In recent years judicial review of administrative action has been engaged in very expansively by the Supreme Court.[72] The exceptions to reviewability are generally limited to those situations for which legislative intent to the contrary can be found, or in which the nature of the action provides special reasons for non-reviewability as for example, in the case of military operations and foreign affairs.[73] However, there are no statutes providing that federal employment discharges are committed to agency discretion; and no special reasons for nonreviewability appear. Moreover, the practicality and reasonableness of hearings to review public employment termination have been demonstrated by the procedures followed in most civil service systems.

The foregoing considerations lead to the conclusion that the Supreme Court should hold federal employment discharges to be remediable under the Administrative Procedure Act instead of continuing to rely on the old judge-made rule that government employment is terminable at will.[74] In states with administrative review laws similar

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[68]Taylor v. Beckham, 178 U.S. 548 (1900); Keim v. United States, 177 U.S. 290 (1900); Matter of Hennen, 38 U.S. (13 Pet.) 230 (1839).

[69]182 F.2d 46, 59 (D.C. Cir. 1950), *aff'd by an equally divided Court*, 341 U.S. 118 (1951).

[70]367 U.S. 886 (1961).

[71]Comment, *Due Process and Public Employment in Perspective*, 19 U.C.L.A. L. Rev. 1052, 1068-69 (1972).

[72]*E.g.*, Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).

[73]K. DAVIS, ADMINISTRATIVE LAW TEXT § 28.02, at 510 (3d ed. 1972).

[74]*But see* the recent case of Sampson v. Murray, ___ U.S. ___, 94 S. Ct. 931 (1974), in which Mr. Justice Rehnquist speaking for the Court seemed to reaffirm the old judge-made rule of *Bailey* and *McAuliffe*. *Cf.* text accompanying notes 1-2 *supra*.

to those of the federal government, there should also be a movement toward protection of public employees from arbitrary discharges.[75] The potential for judicial review of discharges of state public employees is very substantial. All non-civil service positions might be covered.[76] Finally, while state administrative procedure laws ordinarily do not extend to actions of municipal and county agencies, some states invoke a judge-made doctrine of judicial review to set aside arbitrary decisions of governmental subdivisions;[77] this doctrine possibly could be made available to review discharges of employees of local governmental units.

Procedural Due Process

In those instances in which a public employee has an express contract of employment, the employing agency cannot lawfully discharge him unless as a result of misconduct or for some other sufficient reason the employee is in breach of the contract. In this respect the rights of public and private employees are the same; they are grounded on the law of contract.[78]

Because express contracts of employment are not common among government workers, attention must shift to relationships in the na-

[75]It is generally agreed that courts have the power to review administrative acts to determine whether they are arbitrary, unreasonable, capricious, or an abuse of discretion. Foley Bros., Inc. v. Marshall, 266 Minn. 259, 123 N.W.2d 387 (1963). Although the state courts have not developed precise definitions for these terms, it is often stated that courts may not substitute their discretion for that of the agency, and that a mere difference of opinion as to what would constitute suitable action cannot be said to be arbitrary and capricious. State *ex rel* Boroo v. Town Board of Barnes, 10 Wis.2d 153, 102 N.W.2d 238 (1960); Culinary Institute of America, Inc. v. Board of Zoning Appeals, 143 Conn. 257, 121 A.2d 637 (1956); McKnight v. Board of Public Educ., 365 Pa. 422, 76 A.2d 207 (1950). It has been argued that this approach is too limited and that the test incorporated in § 15(g)(6) of the Revised Model State Act, "clearly unwarranted exercise of discretion," should be adopted. This would allow for review in those cases where the courts have indicated disapproval of an agency's exercise of discretion but have ruled that no clear abuse existed. COOPER, STATE ADMINISTRATIVE LAW 771-72 (1965).

[76]A civil service employee probably would have no remedy under this approach, because the civil service procedure may be deemed the exclusive remedy intended by the legislature. See text at note 66 *supra*. Even if he did, the remedy would be inferior to that provided under civil service laws which allow pre-discharge hearings on their merits, whereas judicial review would be only a limited post-discharge inquiry to determine whether there was any basis in fact for the conclusion supporting the discharge. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).

[77]*E.g.*, Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952) (abuse of discretion). *See* 43 C.J.S. *Injunctions* §§ 110-11 (1968).

[78]*Cf.* Pierce v. Tennessee Coal, Iron & R.R., 173 U.S. 1 (1898); Sax v. Detroit, G.H.&M. Ry., 125 Mich. 252, 84 N.W. 314 (1900).

ture of implied contract. Traditionally, public employment has been regarded by the courts as employment terminable at will, with or without cause.[79] However, in recent years the protections of procedural due process have been expanded by the courts to cover a variety of interests, including the continuation of welfare benefits,[80] tenancy in a public housing project,[81] and enrollment as a student in a state university.[82] A number of commentators have advocated that the continuation of public employment be regarded as one of those interests that could not be interfered with except by observing the requirements of procedural due process.[83]

In 1972 the Supreme Court in *Board of Regents v. Roth*[84] and *Perry v. Sindermann*[85] analyzed the rights of public employees in the context of the liberty and property language of the Fourteenth Amendment. The Court concluded there is no general right to continued public employment and that procedural due process requirements apply only to certain instances of discharge. But the Court did find a *property* interest in continued public employment, requiring notice and hearing before dismissal, in each of the following circumstances:

> (a) where an office is held under tenure provisions;
> (b) during the term of an existing employment contract;
> (c) where there is a clearly implied promise of continued employment;
> (d) where the right to employment is grounded in statute;
> (e) where the employment practices in question have evolved into a "common law" of continued employment;
> (f) in any other situation in which the employee has an objective expectation of continued employment (more than an abstract need, desire or unilateral expectation of continued employment).[86]

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[79]*See* text accompanying notes 1-2 *supra*.

[80]Goldberg v. Kelly, 397 U.S. 254 (1970).

[81]Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir. 1970), *cert. denied*, 400 U.S. 853 (1970).

[82]Dixon v. Alabama, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).

[83]Frakt, *Non-Tenure Teachers and the Constitution*, 18 KAN. L. REV. 27 (1969); Pettigrew, *Constitutional Tenure: Toward a Regulation of Academic Freedom*, 22 CASE W. RES. L. REV. 475 (1971); Note, *Dismissal of Federal Employees—The Emerging Judicial Role*, 66 COLUM. L. REV. 719 (1966); Comment, *Due Process and Public Employment in Perspective*, 19 U.C.L.A. L. REV. 1052 (1972).

[84]408 U.S. 564 (1972).

[85]408 U.S. 593 (1972).

[86]Board of Regents v. Roth, 408 U.S. 564, 576-78 n.16; Perry v. Sindermann, 408 U.S. 593, 601-02.

It should be noted that there are possibly other categories of employees with a property interest; the Court nowhere said its list was exhaustive.

The Court stated that these "property" interests are not created by the Constitution, but are defined by "rules or understandings that stem from an independent source *such as* state law."[87] The Court thus seemed to leave federal and state courts free to fashion "constitutional common law" rules to fit public employees into the various categories entitled to protection. However, the Chief Justice in his concurring opinion made it clear that he believes state law, not federal "constitutional common law," should govern the public employee's job security, and advised that federal courts should abstain for state judicial determinations of the employee's entitlement to due process whenever the question arises.[88] And the majority opinion came close to adopting this view in a footnote: "If it is the law of Texas that a teacher in the respondent's position has no contractual or other claim to job tenure, the respondent's claim would be defeated."[89] This inclination to defer to state law portends an unfortunate retreat from the Supreme Court's traditional willingness to develop judge-made rules to implement constitutional rights.[90] The result may be a substantial limitation on the potential impact of these two important decisions on the rights of public employees.

The enumeration of property interests in the *Roth* and *Sindermann* cases has the effect of extending an overlay of federal procedural due process protection to all public employees covered by civil service laws,[91] other job security laws,[92] collective bargaining agreements,[93] and express contracts of employment, as well as to any class of workers with implied rights or objective expectations of continued employment. Apparently foreseeing this broad application of its decision, the Court wrote that a "weighing process" would be used to determine the "form of hearing required."[94] By these words, the Court seemed to suggest that forms of procedures available under

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[87]Board of Regents v. Roth, 408 U.S. 564, 577 (emphasis added).

[88]Perry v. Sindermann, 408 U.S. 593, 603-04.

[89]*Id.* at 602 n.7.

[90]Wisconsin v. Constantineau, 400 U.S. 433, 437-38 (1971); Note, Board of Regents v. Roth, 5 CONN. L. REV. 685, 699-701 (1973).

[91]Snead v. Department of Social Serv., 355 F. Supp. 764 (S.D.N.Y. 1973); Norlander v. Schleck, 345 F. Supp. 595 (D. Minn. 1972).

[92]Fitzgerald v. Hampton, 467 F.2d 755 (D.C. Cir. 1972) (veterans' preference statute).

[93]See Lipp v. Board of Educ., 470 F.2d 802 (9th Cir. 1972).

[94]Board of Regents v. Roth, 408 U.S. 564, 570.

such widely variant dismissal determinations as the management-labor grievance process and the civil service board hearing will be respected, as long as gross procedural abuses do not occur.[95]

In addition to property interests found under certain circumstances, the Supreme Court at the same time decided that there is a *liberty* interest in continued public employment, requiring notice and hearng before dismissal, where the employer makes a charge against the employee "that might seriously damage his standing and associations in the community."[96]

Applying its tests for liberty and property interests to the facts of the cases at hand, the Court ruled that neither plaintiff had established a "liberty" right to procedural due process; that both plaintiffs' claims of retaliatory dismissal for exercising free speech were appropriate for consideration in actions under 42 U.S.C. § 1983;[97] that Roth was not entitled to notice and hearing because, as a first year college teacher whose contract had not been renewed, he had acquired no "property" right; and that Sindermann would be entitled to notice and hearing on remand if he could show he had implied tenure or a reasonable expectancy of continued employment as a consequence of teaching for ten years in the state college system under certain rules and understandings.[98]

The holdings of *Board of Regents v. Roth* and *Perry v. Sindermann* do not apply solely to school and college teachers, although most of the enormous amount of public employment discharge litigation in recent years has involved members of the teaching profession.[99] Teachers do not have any greater constitutional rights than other public employees.[100] The Supreme Court in both cases used the terms "public employee" and "public employment" often enough[101] to make it understood that the principles enunciated in these cases were relevant to all government employee dismissal cases, not just those of educators.

Servants of the government are given important job protection

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[95]See the discussions at notes 5 and 15 *supra*.

[96]Board of Regents v. Roth, 408 U.S. 564, 573.

[97]*See* the discussion in text accompanying notes 27 and 43 *supra*.

[98]Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972).

[99]*E.g.*, Orr v. Trinter, 444 F.2d 128 (6th Cir. 1971); Drown v. Portsmouth School Dist., 435 F.2d 1182 (1st Cir. 1971); Ferguson v. Thomas, 430 F.2d 852 (5th Cir. 1970); Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969); Freeman v. Gould Special School Dist., 405 F.2d 1153 (8th Cir. 1969).

[100]Barenblatt v. United States, 360 U.S. 109 (1959).

[101]Board of Regents v. Roth, 408 U.S. 564, 569 n.6; Perry v. Sindermann, 408 U.S. 593, 597.

rights by the *Roth* and *Sindermann* cases. Yet it may properly be asked how those in the public employment sector may be legitimately singled out for preferential treatment. This question should not be seen as one concerning preferential treatment of the employee but rather as relating to the problem of curbing the governmental employer's arbitrariness. If the government is an employer, it is bound by the constitutional limitations upon government; it is regulated as a government, not as an employer. As stated by Justice Douglas regarding the government's analogous status as landlord:

> It is not dispositive to maintain that a private landlord might terminate a lease at his pleasure. For this is the government we are dealing with, and the actions of the government are circumscribed by the Bill of Rights and the Fourteenth Amendment. "The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process."[102]

The Court's decisions in *Roth* and *Sindermann* have also been misinterpreted as signaling the emergence of due process protection for private employees.[103] The proposition is preposterous, because there is no state action when a private employee is fired, so that 42 U.S.C. § 1983 and the Fourteenth Amendment are not applicable.[104]

The employment rights of public school and college teachers ordinarily are geared to tenure statutes or regulations. Such enactments generally provide for a period of about three to four years service before the employee becomes tenured and thereby entitled to notice and hearing with a decision on sufficient grounds before discharge. The enactments usually further provide that even a non-tenured employee cannot be dismissed during the annual contract period without notice, hearing, and grounds.[105] As it might be expected,

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[102]Concurring opinion in Thorpe v. Housing Authority, 386 U.S. 670, 678 (1968). "[T]he state and federal governments, even in the exercise of their internal operations, do not constitutionally have the complete freedom of action enjoyed by a private employer." Cafeteria Workers, Local 473 v. McElroy, 367 U.S. 886, 897-98 (1961). *See also* Vinson v. Greenburgh Housing Authority, 29 App. Div. 2d 338, 288 N.Y.S.2d 159 (1968), *aff'd*, 27 N.Y.2d 675, 262 N.E.2d 211, 314 N.Y.S.2d 1 (1970); Van Alstyne, *Constitutional Rights of Public Employees: A Comment on the Inappropriate Use of an Old Analogy*, 16 U.C.L.A.L. REV. 751 (1969); Comment, *Due Process and Public Employment in Perspective*, 19 U.C.L.A.L. REV. 1052, 1074 (1972).

[103]Note, *Implied Contract Rights to Job Security*, 26 STAN. L. REV. 335 (1974).

[104]Hines v. Cenla Community Action Comm., 474 F.2d 1052 (5th Cir. 1973).

[105]*E.g.*, VA. CODE ANN. §§ 22-217.4 *et seq.* (1968); Annots., 127 A.L.R. 1298 (1940), 113 A.L.R. 1495 (1938), 110 A.L.R. 791 (1937).

educators are a highly mobile work force and traditionally have been employed on annual nine or ten month contracts, with each year being viewed as a separate job. By comparison, other governmental employees enter into an employment relationship for a continuous, indefinite term. Once they complete an initial probationary or training period, as a practical matter, they are viewed as permanent employees.[106] It is upon successful completion of the probationary or training period that for Fourteenth Amendment purposes this latter class of public employees should be regarded as having attained an objective expectancy of continued employment, or having become the beneficiaries of an implied contract of continued employment.[107] Unfortunately, the lower courts when called upon to enforce the holdings of *Sindermann* and *Roth* have not given the public employees the protection which they are due. A workmen's compensation referee with more than fifteen years service,[108] a teacher employed eight years,[109] and a teacher employed for twenty-two consecutive years,[110] were all held to be without procedural due process rights. Indeed, it is a relief to find a Fourth Circuit decision rendered on due process grounds favorably to a teacher of twenty-nine years service who was dismissed![111] Under the typical civil service law an employee is on probationary status and without job protection for a period of six months.[112] It would be a reasonable and easily administered standard to hold that employees without statutory job protection similarly should make the transition from temporary to secured employment at the termination of a probationary or training period of six months or so, after which they should be entitled to procedural due process in advance of discharge.

For the statistics on job turnover rates, it can be estimated that 7.6% of the work force leave their jobs each month, including separations, quits, and layoffs. New jobs, including accessions and rehires are obtained by 6.4% of the labor force.[113] It is obvious, therefore, that the great bulk of the work force retains the same employment. All of

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[106]Of course, during the probationary period, the employee may be lawfully dismissed without a hearing and regardless of grounds (so long as the dismissal is not in retaliation for the exercise of a constitutional right). Jenkins v. U.S. Post Office, 475 F.2d 1256 (9th Cir. 1973); Harnett v. Ulett, 466 F.2d 113 (8th Cir. 1972).

[107]*See* text at note 85 *supra*.

[108]Diles v. Woolsy, 468 F.2d 615 (8th Cir. 1972).

[109]Patrone v. Board of Educ., 472 F.2d 159 (6th Cir. 1972).

[110]Skidmore v. Shamrock Independent School Dist., 464 F.2d 605 (5th Cir. 1972).

[111]Johnson v. Fraley, 470 F.2d 179 (4th Cir. 1972). Virginia's new teacher tenure law required a three year probationary period after 1968.

[112]*E.g.*, KY. REV. STAT. ANN. § 90.110(2) (1969); MO. ANN. STAT. § 36.250 (1969).

[113]U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1972).

those in this majority who are public employees should soon attain the point at which they have earned the right to be protected from discharge by procedural due process.

Summary and Empirical Analysis

We have seen how, through a series of legislative, judicial, and socio-economic changes in a period of less than twenty years, the American public employee who formerly had "no right to be a policeman"[114] now may enjoy a combination of job security protections that cumulatively are very extensive. The numerical effect of these protections is suggested by the table in the footnote below.[115] However, more

[114]McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517 (1892).

[115]It must be kept in mind that these following coverages often are duplicative. The most obvious example of duplication is the protection against discharge for unconstitutional reasons, which affects all public employees:

	Government Employees		Federal		State		Local	
	Number	Per Cent	Number	Per Cent	Number	Per Cent	Number	Per Cent
Total*	13,028,000	100	2,881,000	100	2,755,000	100	7,392,000	100
Collective Bargaining Contracts**	2,318,000	18	1,370,000	48			948,000	9
Civil Service Laws***	7,623,050	59	2,600,000	90	2,066,250	75	2,956,800	40
Discharge for Unconstitutional Reasons	13,028,000	100	2,881,000	100	2,755,000	100	7,392,000	100
Judicial Review (Too uncertain to estimate)								
Express Contracts (Negligible)								
Procedural Due Process****	6,514,000	50	1,440,500	50	1,377,500	50	3,696,000	50

*Text at note 3 *supra*.

**Text at note 6 *supra*. It must be realized that not all union members are beneficiaries of collective bargaining agreements, so these statistics are somewhat overstated.

***Text at note 14 *supra*, for state figures. The local figures are very loosely estimated on the basis of the statement at note 11 *supra*.

****Text at note 99 *supra*.

important than the compilation of numerical advances is the question of whether for the employer, the employee, and the public, these developments have had a net beneficial or a net adverse effect.

The evidence shows that discharge from employment affects an employee's self-esteem,[116] since work plays a crucial role in the individual's psychological identity and sense of order.[117] There are also indications that job satisfaction has a positive correlation with length of employment.[118] Therefore, the removal of threats to job security should enhance job satisfaction. Job satisfaction, in turn, correlates positively with low absenteeism, an accepted indicium of worker productivity and efficiency.[119] Thus, the available evidence points to the conclusion that protection against arbitrary discharge is of significant benefit to both the worker and the employer.

Furthermore, on a more legal and less psychological plane, it may be argued that a decision to discharge reached by due process is more likely to be a good decision than one reached arbitrarily. While there may be no empirical evidence to support this argument, it probably derives some validity from a fundamental assumption of our legal system upon which it seems to be based, *i.e.*, that a rational decision is better than an irrational one.

Finally, it is submitted that due process protections against arbitrary and summary discharge of public employees would tend to improve the moral tone of society in general. Nowhere, it would seem, is confidence in governmental processes more crucial than among government employees. The attitudes which these employees hold toward their employers are reflective of the fundamental fairness of the systems under which they work and which govern the lives of all citizens. Disrespect, dissatisfacton, and anxiety on the part of public employees with respect to their employers would tend to be transmitted to other citizens, resulting in a corresponding decrease in the prestige and esteem of government in general. On the other hand, a secure, satisfied public employee would tend to present an image of the well-being and probity of government, an image likely to be accepted by other citizens.

It has been seen that many of today's workers have come to expect

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[116]M. AIKEN, L. FERMAN AND H. SHEPPARD, ECONOMIC FAILURE, ALIENATION AND EXTREMISM 2 (1968).

[117]REPORT OF SPECIAL TASK FORCE TO SECRETARY OF HEW, WORK IN AMERICA 4-6 (1972).

[118]J. TIFFEN AND E. MCCORMICK, INDUSTRIAL PSYCHOLOGY 366-67 (5th ed. 1965).

[119]*Id.* n.106.

job security.[120] Moreover, it has been shown that the often competing interests of both public employer and public employee may be mutually advanced by a requirement of due process in effecting discharges; and that such a requirement also gains support from the premise of rational decision-making within our legal system and from a probable effect of bolstering societal morale. Thus, there appears to be no reason why the expectation of job security should not be realized by all public employees, especially since the public at large also stands to gain.

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[120]E. GONZBERG AND I. BERG, DEMOCRATIC VALUES AND THE RIGHTS OF MANAGEMENT 170 (1963).

APPENDIX

Table Showing Coverage of State Civil Service System Laws Affecting Employees of States and Their Subdivisions

State	State Employees		Local Government Unit Employees	
	General Coverage	Coverage of Limited Classes Only	Required in Units of Certain Size or Type	Form Available for Local Adoption
Alabama				
Alaska	ALASKA STAT. § 39.25.170 (1962)		ALASKA STAT. § 29.23.550 (1962) (all local employees covered)	
Arizona	ARIZ. REV. STAT. ANN. §§ 41-781 to -785 (Supp. 1973)		ARIZ. REV. STAT. ANN. §§ 38-1001 to -1007, §§ 15-231 to -261 (Supp. 1973)	
Arkansas			ARK. STAT. ANN. §§ 19-1601.1 to -1618 (1947)	ARK. STAT. ANN. §§ 19-1301 to -1347 (1947)
California	CAL. GOV'T CODE §§ 18526-18529, 19570-19588 (West 1963)			CAL. GOV'T CODE §§ 45001-45008, 31100-31108 (West 1968)
Colorado	COLO. REV. STAT. ANN. §§ 26-5-1 to -32 (Supp. 1971)			COLO. REV. STAT. ANN. § 89-6-46 (Supp. 1971) (firemen only)
Connecticut	CONN. GEN. STAT. ANN. tit. 5, §§ 193-268 (1969)			CONN. GEN. STAT. ANN. tit. 7, §§ 407-424 (1969)

Delaware		DEL. CODE ANN. tit. 14, §§ 1401-1414 (Supp. 1970)		
Florida	FLA. STAT. ANN. §§ 110.011-.11 (1973)			FLA. STAT. ANN. §§ 174.01-.26 (1966) (police & firemen only)
Georgia	GA. CODE ANN. tit. 40, §§ 2201-2242 (1957)		GA. CODE ANN. tit. 40, §§ 2201-2242 (1957)	
Hawaii	HAWAII REV. STAT. §§ 76-1 to -56 (1968)		HAWAII REV. STAT. §§ 76-1 to -56 (1968)	
Idaho	IDAHO CODE §§ 67-5301 to -5338 (1973)			IDAHO CODE §§ 50-1601 to -1610 (1973)
Illinois	ILL. ANN. STAT. ch. 127, §§ 63b101-63b119 (1967)			ILL. ANN. STAT. ch. 24, §§ 10-1-1 to -45 (1967)
Indiana		IND. STAT. ANN. §§ 60-1301 to -1364 (1961)	IND. STAT. ANN. §§ 60--1301 to -1364 (1961)	
Iowa	IOWA CODE ANN. §§ 19A.1-.23 (Supp. 1973)		IOWA CODE ANN. §§ 365.1-.30 (1949)	
Kansas	KAN. STAT. ANN. §§ 75-2925 to -2969 (1969)			KAN. STAT. ANN. §§ 13-2201 to -22,104 (1964)
Kentucky	KY. REV. STAT. ANN. §§ 18.110 -.340 (1969)		KY. REV. STAT. ANN. §§ 90.110-.990 (1969)	KY. REV. STAT. ANN. §§ 90.110-.990, 78.400-.460 (1969)
Louisiana	LA. CONST. art. 14, §§ 15 and 15.1 (1955)		LA. CONST. art. 14, §§ 15 and 15.1 (1955) (all cities)	LA. REV. STAT. §§ 33: 2391-:2568 (1966) (parish police and firemen)

Maine	ME. REV. STAT. ANN. tit. 5, §§ 551-741 (1964)		
Maryland	MD. ANN. CODE art. 64A (1957)	MD. ANN. CODE art. 64A (1957)	
Massachusetts	MASS. ANN. LAWS ch. 31 (1973)	MASS. ANN. LAWS ch. 31 (1973)	MASS. ANN. LAWS ch. 31 (1973)
Michigan	MICH. CONST. art. 11, § 5 (1963)		MICH. COMP. LAWS ANN. §§ 38.401-.428, 38.451-.470, 38.501-.518 (1967)
Minnesota	MINN. STAT. ANN. §§ 43.01-.35 (1962)		MINN. STAT. ANN. §§ 44.01-.16 (1962)
Mississippi		MISS. CODE ANN. §§ 21--31-1 to -75 (1972)	
Missouri	MO. ANN. STAT. §§ 36.010-.460 (1969)	MO. ANN. STAT. §§ 74.215-.225, 85.360-.530 (1969)	
Montana	MONT. REV. CODE ANN. §§ 59-903 to -914 (1973)		
Nebraska	NEB. REV. STAT. §§ 81-1301 *et seq.* (1971)		NEB. REV. STAT. §§ 19-649 *et seq.* (1971)
Nevada	NEV. REV. STAT. §§ 284.010-.430 (1967)		
New Hampshire	N.H. REV. STAT. ANN. § 98.2 (1964)		
New Jersey	N.J. STAT. ANN. §§ 11-1-1 to -28-3 (1960)		N.J. STAT. ANN. § 11-19-2 (1960)

New Mexico	N.M. STAT. ANN. §§ 5-4-28 *et seq.* (1953)			
New York	N.Y. CIVIL SERVICE LAW (McKinney 1973)		N.Y. CIVIL SERVICE LAW (McKinney 1973) (all subdivisions covered)	
North Carolina	N.C. GEN. STAT. §§ 126-1 to -16 (1965)			N.C. GEN. STAT. §§ 126-9 to -11 (1965)
North Dakota		N.D. CENT. CODE ANN. §§ 54-42-01 *et seq.* (1960)		N.D. CENT. CODE ANN. §§ 40-44-01 *et seq.* (1960)
Ohio	OHIO REV. CODE ANN. §§ 143.01 *et seq.* (1971)		OHIO REV. CODE ANN. §§ 143.01 *et seq.* (1971)	
Oklahoma		OKLA. STAT. ANN. tit. 74, §§ 801-839 (1965) (sole discretion of governor)		
Oregon	ORE. REV. STAT. §§ 240.005-.990 (1953)			ORE. REV. STAT. §§ 241.002-.990, 242.050-.990 (1953)
Pennsylvania	PA. STAT. ANN. §§ 741.1-.1002 (1957)		PA. STAT. ANN. §§ 12622 *et seq.* (1957)	
Rhode Island	R.I. GEN. LAWS §§ 36-4-1 to -60 (1956)			
South Carolina				S.C. CODE §§ 47-701 to -800.10 (1962)
South Dakota		S.D. CODE §§ 3-7-1 *et seq.* (1967)		S.D. CODE §§ 9-14-14, 9-39-21, 11-6-7 (1967)
Tennessee	TENN. CODE ANN. §§ 8-3001 *et seq.* (1973)			

Texas			TEX. CIV. STAT. ANN. §§ 1269m *et seq.* (1955)
Utah	UTAH CODE ANN. §§ 67-13-2 *et seq.* (1953)	UTAH CODE ANN. §§ 17-3301 *et seq.*, 10-6-100 *et seq.*, 10-10-9 *et seq.*, 17-30-1 *et seq.* (1953)	UTAH CODE ANN. §§ 17-33-1 *et seq.* (1953)
Vermont	VT. STAT. ANN. tit. 3, §§ 250 *et seq.* (1959)		
Virginia	VA. CODE ANN. §§ 2.1-110 *et seq.* (1950)		
Washington	WASH. REV. CODE ANN.§§ 41.06.010 *et seq.* (1972)		
West Virginia	W. VA. CODE §§ 29-6-1 *et seq.* (1971)		
Wisconsin	WIS. STAT. ANN. §§ 16.01 *et seq.* (1972)		WIS. STAT. ANN. §§ 59.07(20), 66.19 (1972)
Wyoming		WYO. STAT. §§ 15.1-281 *et seq.* (1957)	

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