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Striker Participation in Public Assistance: An Anomaly

A contingent weakness of the law, which still persists, is that in the event of litigation it remains possible that both or neither of the parents will be granted the exemption. The statutory presumptions provide no relief since, for trial purposes, these provisions merely govern the level of proof required of the petitioner, and the burden of producing evidence. Perhaps the most reasonable solution to the problem lies in making both parents parties in the same action whenever possible through consolidation and impleader provisions. The effect of this procedure would be to provide dual benefits of fairness to the parties and an end to multiple litigation.

MORRIS E. FLATER

STRIKER PARTICIPATION IN PUBLIC ASSISTANCE: AN ANOMALY

One social phenomenon of the twentieth century has been the increasing influence of government largess on almost every phase of human conduct.[1] This pervasiveness often results in conflict; the attempt to realize one political goal inadvertently frustrates the realization of another. The Food Stamp Act of 1964,[2] for example, was recently amended to authorize striker participation in the federally funded assistance program for low income households.[3] Those who passed the amendment felt that the legitimate interest of government in providing for needy persons was enhanced by the legislation.[4] By permitting striker participation, however, Congress

[1]Reich, *The New Property*, 73 YALE L.J. 733 (1964). The article describes the extensiveness of government involvement in every aspect of political existence, arguing that conventional property rights are often meaningless because of government largess. The author does not condemn this, but proposes that new property rights be statutorily created to protect the individual from the state.

[2]The Food Stamp Act of 1964, 7 U.S.C. §§ 2011-25 (1970). The program is to aid low income households in attaining more nutritional diets. It is administered pursuant to a state plan authorized by the Secretary of Agriculture; state participation is optional.

[3]The relevant portion of the 1971 Amendment to the Food Stamp Act of 1964 provides that:

> Refusal to work at a plant or site subject to a strike or a lockout for the duration of such strike or lockout shall not be deemed to be a refusal to accept employment.

7 U.S.C. § 2014(c) (1970), *amending* 7 U.S.C. § 2014 (1964).

[4]House Agricultural Committee, H.R. REP. No. 1402, 91st Cong., 2d Sess., U.S. CODE CONG. & AD. NEWS, 91st Cong., 2d Sess. 6034, 6035 (1970).

has encroached upon federal labor policy, a policy which furthers the governmental interest in a healthy economy. Labor theory relies upon need as an important element of free collective bargaining in the successful settlement of labor disputes, in that economic need motivates labor and management to compromise. The welfare policy which reduces the need of a striking employee therefore concomitantly reduces the effectiveness of collective bargaining.

Federal labor policy, enacted under the commerce clause[5] grant of power to the federal government, attempts to promote the free flow of commerce.[6] Labor disputes interfere with that flow. In the thirties, Congress, convinced that legal intervention could not satisfactorily provide a solution to the problem,[7] proposed in the Wagner Act[8] to promote collective bargaining, and thus encourage management and labor to solve their own problems.

> The Wagner Act became law on the floodtide of the belief that the conflicting interests of management and worker can be adjusted only by private negotiation, backed, if necessary, by economic weapons, without the intervention of law.[9]

The legislation reflected a recognition of the inequality between unorganized labor and management.[10] It was the purpose of the Wagner Act, and later the Labor Management Relations Act of 1947 (Taft-Hartley Act),[11] to promote a state of equality between labor and management so that industrial strife could be avoided.[12]

The Supreme Court, in interpreting federal labor policy, has recognized that collective bargaining is the means by which ordered industrial

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[5]The commerce clause provides that Congress shall have the power to regulate commerce among the States. U.S. CONST. art. 1, § 8. As acts of labor affect commerce among the states, Congress may make rules affecting labor. *See, e.g.*, NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

[6]Labor Management Relations Act, 1947, 29 U.S.C. § 141(b) (1970).

[7]Cox, *The Right to Engage in Concerted Activities*, 26 IND. L.J. 319, 323 (1951).

[8]National Labor Relations Act, § 1, ch. 372, 49 Stat. 449 (1935). The Wagner Act protects labor's right to engage in concerted activities and imposes on management the duty to bargain collectively with labor.

[9]Cox, *The Right to Engage in Concerted Activities*, 26 IND. L.J. 319, 322 (1951).

[10]National Labor Relations Act, § 1, ch. 372, 49 Stat. 449 (1935).

[11]Act of June 23, 1947, ch. 120, 61 Stat. 136. The Act re-enacted with amendments and additions what had been the Wagner Act as Title 1, and added what are now Titles II, III, and IV in an effort to make collective bargaining two-sided. The Act was further amended by the Labor Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act), Pub. L. No. 86-257, 73 Stat. 519.

[12]29 U.S.C. §§ 141, 151 (1970).

relations are to be established.[13] In providing for these relations, however, Congress "does not compel either party to agree to a proposal or require the making of a concession . . . ,"[14] and the Supreme Court has consistently prohibited intervention into the substance of collective bargaining agreements.[15] In *H.K. Porter Co. v. NLRB*,[16] for example, the Supreme Court cited approvingly the congressional rejection of such an interpretation of labor policy:

> It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory.[17]

Although the Labor Management Relations Act encourages "practices fundamental to the friendly adjustment of industrial disputes,"[18] the law appreciates that these disputes are often less than amiable.[19] The Act permits concerted activities[20] and in particular the right to strike,[21] because economic pressure on management and labor is part of the collective bargaining process. "The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the

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[13]Teamsters Local 24 v. Oliver, 358 U.S. 283, 295 (1959); NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 401-02 (1952); Consolidated Edison v. NLRB, 305 U.S. 197, 237 (1938); NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 45 (1937).

[14]29 U.S.C. § 158(d) (1970).

[15]H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970); NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477 (1960); NLRB v. American Nat'l Ins. Co. 343 U.S. 395 (1952).

[16]397 U.S. 99 (1970). In *H.K. Porter Co.* management had been found guilty of an unfair labor practice by the NLRB. In its disposition of the case the Board required management to acquiesce to the union's demand. The Supreme Court reversed the NLRB's use of its sanctioning powers to compel a result.

[17]397 U.S. at 104, *citing* S. REP. No. 573, 74th Cong., 1st Sess. 12 (1935).

[18]29 U.S.C. § 151 (1970).

[19]*See, e.g.*, Republic Steel Corp. v. NLRB, 107 F.2d 472, 479 (3d Cir. 1939). The court gives a brief description of the realities of a peaceful picket.

[20]Section 7 of the Labor Management Relations Act, 1947, provides:

> Employees shall have the right to self-organization, . . . to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . .

29 U.S.C. § 157 (1970).

[21]The Labor Management Relations Act specifically provides the right to strike.

> Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications of that right.

29 U.S.C. § 163 (1970).

system that the Wagner and Taft-Hartley Acts have recognized."[22] Thus, free collective bargaining allows both management[23] and labor[24] to induce through economic pressure what could not be procured through friendly agreement, so long as the use of economic force does not unduly impair the right of labor to engage in concerted activities.[25]

Ideally, the balance between labor and management will lead to industrial harmony;[26] the threat and occasional realization of economic sanction will temper demands because both parties realize that reasonable concessions are more profitable than prolonged disagreement. Labor policy recognizes that collective bargaining does not protect the contestants from economic adversity;[27] indeed, it "leaves the adjustment of industrial relations to the free play of economic forces but seeks to assure that the play of those forces be truly free."[28] In so doing, the free flow of commerce is promoted by economic realities, rather than inconsistent governmental intervention. To the extent that state legislation alters the balance of economic forces in the collective bargaining process it is void. As the Supreme Judicial Court of Massachusetts has said:

> The legislation under consideration . . . gives the union a potent weapon which cannot fail unilaterally to restrict the desired bilat-

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[22]NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 489 (1960).

[23]American Ship Bldg. Co. v. NLRB, 380 U.S. 300 (1965).

[24]NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477 (1960).

[25]*Compare* NLRB v. Mackay Radio & Tel. Co., 304 U.S. 333 (1938) *with* NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963). In *Mackay* the Supreme Court recognized that the right to strike does not prevent an employer from hiring employees during a strike, nor does it compel an employer to discharge those employees at the conclusion of the strike. The employer is permitted to protect his economic interest even though this may adversely affect the right to strike. 304 U.S. at 345. In *Erie Resistor*, however, the court disallowed a practice by management in which seniority was granted to striker replacements. Although the practice was not proved to be motivated by forces other than the economic necessities of retaining new employees, the court reasoned that the infringement on the right to strike outweighed the employer's legitimate economic interest.

[26]The logic of this theory is discussed in Cox, *The Duty to Bargain in Good Faith*, 71 HARV. L. REV. 1401 (1958):

> Initially it may be only fear of the economic consequences of disagreement that turns the parties to facts, reason, a sense of responsibility, a responsiveness to government and public opinion, and moral principle; but in time these forces generate their own compulsions, and negotiating a contract approaches the ideal of informed persuasion.

Id. at 1409. The Supreme Court quotes this argument in NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 489-90 (1960).

[27]American Ship Bldg. Co. v. NLRB, 380 U.S. 300 (1965); NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477 (1960).

[28]Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 183 (1941).

> eral freedom of collective bargaining, left free by Congress for the operation of economic forces. For the state to intrude into such an area designed to be kept free is as much a violation of Federal policy as it is for a state to attempt to regulate rights or duties specifically protected by the Federal acts.[29]

The mere fact that state legislation does not intend to affect federal labor policy will not excuse its intrusion into the field.[30] There are, however, no corresponding restrictions on federal welfare legislation, as evidenced by the food stamp amendment authorizing striker participation.[31]

Welfare attitudes have undergone an immense transition in the past century. At one time welfare was given as a privilege or gratuity to social outcasts.[32] Today welfare benefits approach the legal status of a right,[33] arguably because American economic, as well as social, potential is dependent on eliminating poverty.[34] Because the social and legal attitudes toward welfare have changed, the expense of providing and administering public assistance has shifted, in large part from local to federal government.[35] To the extent states wish to avail themselves of federal money, they must conform to federal requirements.[36] Thus, though welfare is still ad-

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[29]John Hancock Mut. Life Ins. Co. v. Commissioner, 349 Mass. 390, 208 N.E.2d 516, 524-25 (1965).

[30]*Cf.* Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132 (1963).

[31]See note 3 *supra.*

[32]*See* Handler & Goodstein, *The Legislative Development of Public Assistance*, 1968 WIS. L. REV. 414, 416. The authors trace the prevailing theories of categorical aid to the poor in Wisconsin, stressing that attitudes toward recipients have changed, but that the delegation of authority to local governments for distribution of benefits has remained constant.

[33]*Cf.* Goldberg v. Kelly, 397 U.S. 254 (1970) (the Supreme Court, as a matter of due process, required a hearing prior to discontinuing welfare).

[34]The Economic Opportunity Act of 1964, 42 U.S.C. § 2701 (1970).

[35]The federal government, for example, today pays approximately 100% of the Food Stamp Program, 7 U.S.C. § 2013 (1970), and 50% of the AFDC program, 42 U.S.C. § 603(a)(5) (1970). In addition, the federal government provides extensive funding for: low rent housing, 42 U.S.C. §§ 1401, 1410-11 (1970); urban renewal, 42 U.S.C. §§ 1452-53 (1970); and the education of low income groups, 20 U.S.C. § 241(a)(c) (1970). The examples are selected as being characteristic, rather than exhaustive of federal participation in public welfare. Prior to the 1930's welfare was locally financed. *See* Handler & Goodstein, *The Legislative Development of Public Assistance*, 1968 WIS. L. REV. 414.

[36]For example, Federal Old Age Assistance, AFDC, Aid to the Blind, and Aid to the Permanently and Totally Disabled all require the state agency administering the assistance program to submit a plan for the approval of the Secretary of Health, Education, and Welfare. 42 U.S.C. §§ 301, 601, 1201, 1351 (1970). All programs have certain standards which if not met will suspend federal aid. 42 U.S.C. §§ 304, 604, 1204, 1354 (1970). Thus the prescription of requirements compels the state agency to comply with federal welfare policy.

ministered by the state, a federal welfare policy, controlled by grants in aid to the states,[37] is becoming as pervasive as federal labor policy.

Prior to 1968 a striking worker had little access to any welfare benefits. Unemployment compensation was denied in all states except New York[38] and Rhode Island,[39] and even there special standards[40] were prescribed "to avoid the imputation that a strike may be financed through unemployment insurance benefits."[41] Aid to Families with Dependent Children (AFDC)[42] was available only when a child had "been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . . ."[43] Strikers did not qualify. The Food Stamp Act of 1964[44] made no provision concerning distribution to strikers, thereby leaving the issue to the discretion of the states' welfare agencies.

Recent legislation has expanded the scope of welfare programs and, in doing so, has greatly increased the availability of public assistance to strikers. A 1968 amendment[45] to the AFDC program offers an optional "Unemployed Fathers" section (AFDC-UF). This section expands the definition of dependent children to include the child of an unemployed father who has met certain special requirements.[46] Only twenty-three

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[37]The technique of using federal money with restrictions on its use, so as to assure state acquiescence to federal desire has been found constitutional. *See, e.g.*, Steward Mach. Co. v. Davis, 301 U.S. 548 (1937).

[38]N.Y. LABOR LAW § 592 (McKinney 1965).

[39]R.I. GEN. LAWS § 28-44-16 (1968).

[40]If unemployment results from a labor dispute in New York, unemployment benefits are suspended for seven weeks, N.Y. LABOR LAW § 592 (McKinney 1965); and in Rhode Island for six weeks, R.I GEN. LAWS § 28-44-16 (1968).

[41]*In re* Burger, 277 App. Div. 234, 98 N.Y.S.2d 932, 934 (1950), *aff'd mem.*, 303 N.Y. 654, 101 N.E.2d 763 (1951).

[42]The Aid to Families with Dependent Children (AFDC) program is designed to encourage

> the care of dependent children in their own homes . . . and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . .

42 U.S.C. § 601 (1970). The assistance is administered by the state, with federal financial backing contingent upon approval of the state plan by the Secretary of H.E.W. 42 U.S.C. § 602 (1970).

[43]42 U.S.C. § 606(a)(1) (1970).

[44]7 U.S.C. §§ 2011-25 (1970).

[45]42 U.S.C. § 607(a)(2) (1970).

[46]The special rules under the Unemployed Father section require generally that the father: (1) has not been employed within the 30 days prior to the receipt of aid; (2) has not refused a bona fide offer of employment or training for employment within 30 days; (3) has been employed for a minimum of 18 months within the four years and 3 months prior to receiving aid or was qualified to receive unemployment compensation within a year of receiving aid; (4) is registered with the public employment offices in the state; and (5) is not qualified to receive unemployment compensation. 42 U.S.C. § 607(b) (1970).

states have elected to participate in AFDC-UF, of which eighteen[47] permit strikers to receive benefits and five[48] do not. Welfare expansion continued when three years later the Food Stamp Act of 1964 was amended to prohibit states from denying food stamps to strikers as long as they are otherwise qualified.[49] This will confer a benefit on the indigent striker in all states.

These recent amendments appear to reflect a growing social concern for people in need. When the needy person is a striker, however, the welfare policy conflicts with the labor policy of free collective bargaining by upsetting the balance of economic forces.[50] Furthermore, because AFDC-UF benefits are not administered uniformly with regard to strikers in different states, longer strikes and uncompetitive wage settlements are seemingly encouraged in those states which provide greater public aid to the strikers.[51]

The controversy over public assistance to the striker has not escaped the notice of the judiciary. In two state court litigations[52] the payment of welfare benefits to strikers has been found consistent with state welfare regulations. These cases, however, do not note the frustration of free collective bargaining. In dealing with the state welfare policy the courts agreed that legislation should be interpreted so as not to interfere with the right to strike, which would be the case if public assistance were denied to the striker. The cases concurred in holding that public assistance is granted on the basis of need, and that as long as the recipient is deserving and looking for a job, the courts will not interfere with his right to receive public assistance solely because he is also on strike.

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[47]California, Colorado, Delaware, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia. Brief for the Chamber of Commerce of the United States as Amicus Curiae for rehearing at 1a, ITT Lamp Div. v. Minter, 435 F.2d 989 (1st Cir. 1970), *cert. denied*, 402 U.S. 933 (1971).

[48]Kansas, Maryland, Nebraska, Oregon, and Utah. *Id.*

[49]See note 3 *supra*.

[50]See text accompanying notes 2, 3 *supra*.

[51]The G.E. strike of 1969-70 arguably demonstrates that strikers with greater access to welfare benefits are not as anxious to return to work as are strikers without the benefit of public assistance. In that strike, workers who lived in New York voted consistently to remain out on strike; New York provides welfare to strikers. Workers from states other than New York participating in the same strike voted to return to work. *See* New York Times, March 17, 1970 at 42, col. 2.

[52]In Strat-O-Seal Mfg. Co. v. Scott, 72 Ill. App. 2d 480, 218 N.E.2d 227 (1966), a taxpayer brought suit to enjoin the use of state funds for public assistance payments to a striker, arguing that the striker's standard of living was not the result of "unavoidable causes" and that the strikers had refused "suitable employment or training." In Lascaris v. Wyman, 61 Misc. 2d 212, 305 N.Y.S.2d 212 (Sup. Ct. 1969), a county welfare commissioner brought a declaratory judgment action against the Commissioner of the New York Department of Social Services concerning the rights of striking employees to welfare benefits. Both courts held that an otherwise eligible striker was not precluded from receiving public assistance. In so holding both courts relied heavily on administrative precedent in their own states, concluding that the legislature could change such precedent at its will.

The courts' analyses may be criticized for confusing two principles which deserve separate treatment. First, if the decisions were based solely on the need of the otherwise qualified recipient, the opinions would be sound. But both decisions acknowledge the second principle, the right to strike. It is submitted, however, that the right to strike carries with it no right to receive public assistance.[53] The right to strike would not have been impaired had the court denied the strikers the right to welfare. The courts' language leads to the conclusion that the right to strike would be without meaning if public assistance were not available, and that therefore the right to strike carries with it the right to receive public assistance. The courts appear to read too much into the right to strike.

In *ITT Lamp Division v. Minter*,[54] the legality of a state's administering public assistance to strikers was recently challenged as a violation of federal labor policy. It was argued that the federal interest in labor policy was so substantial that the state was preempted from any activity which would alter the federal scheme. The plaintiff contended that the giving of AFDC-UF benefits to strikers gave economic support to them, thereby disrupting free collective bargaining, and thus impinging upon federal labor policy.[55] The court rejected the argument. It first doubted that public assistance significantly interfered with federal labor policy and went on to reason that the state interest in distributing welfare to indigent strikers was not "so insubstantial compared to the federal interest that Congress must be supposed to have deprived the state of such power. . . ."[56]

The court in *Minter*, however, was not oblivious to the fact that a conflict may well exist between a federal labor policy premised on free collective bargaining and the extension of public assistance to strikers. The opinion was carefully limited to saying that federal labor policy has not so clearly defined free collective bargaining that the judiciary can define incompatible state activities. Indeed, the court notes that the challenged state activity was really a federal-state activity because federal money was so conspicuously involved in the AFDC-UF payments. The court suggests that to the extent that there is a problem, it is not for the courts but for Congress as creator of the labor and welfare policies to resolve.[57]

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[53]That state court litigation has misconstrued the right to strike in respect to the availability of public assistance is not to conclude that a striker may not have a right to public assistance under some other theory of law. For example, it may be argued that such a denial violates the equal protection of the laws clause, U.S. CONST. amend. XIV, or that federal law confers such a right in the Social Security Act of 1935, 42 U.S.C. § 607 (1970). *See* Francis v. Davidson, Civil No. 71-853-K (D. Md. 1971).

[54]435 F.2d 989 (1st Cir. 1970), *cert. denied*, 402 U.S. 933 (1971).

[55]See text accompanying notes 13-29 *supra*.

[56]435 F.2d at 994.

[57]*Id.* at 993-94.

The recent amendment authorizing striker participation in the food stamp program, enacted after the *Minter* decision, confirms the court's opinion that Congress did not clearly intend to protect collective bargaining from the effects of welfare distribution. It must be supposed, therefore, that Congress either believes that striker participation does not alter the balance of economic forces in collective bargaining, or alternatively, that welfare policy is more important than the labor policy. Both explanations are open to criticism.

First, there can be little doubt that strikers take advantage of welfare when it is available.[58] In practice, therefore, the union has an additional strike fund exactly equal to the cost of public assistance during a strike.[59] It is difficult to believe that Congress can think that public assistance does not affect labor-management relations when the two are engaged in a labor dispute.[60]

Second, though welfare policy purports to help the needy, in reality it helps only the needy who are willing to meet the requirements of the welfare regulations (*e.g.*, availability for work). Labor policy, therefore, should not be too severely criticized because of its reliance on brute economic realities. Indeed, labor policy is in practice based on the same premise as welfare in that a person in need will do what is required of him to support himself. The welfare recipient will be available for a job, and the striker will make concessions in contract negotiations. It is not altogether unreasonable, therefore, to presume that were public assistance clearly not available to the striker, the striker would avoid putting himself in the position of needing it.

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[58]For example, during the General Motors Strike of Sept. 14-Nov. 20, 1970, the State of Michigan Department of Social Services reported that non-public assistance households participating in the food stamp program totaled:

August, 1970	108,774
September, 1970	128,785
October, 1970	404,534
November, 1970	430,550
December, 1970	258,667
January, 1971	170,455

The number of General Motors families participating in the Aid to Dependent Children Program were reported as:

October, 1970	2,851
November, 1970	22,797
December, 1970	18,817

Supplement to Petitioner's Brief for rehearing at 72a, 74a, ITT Lamp Div. v. Minter, 435 F.2d 989 (1st Cir. 1970), *cert. denied*, 402 U.S. 933 (1971).

[59]James Compton, Assistant to the President of the International Union of Electrical Workers (IEW), is reported to have said that the thirty million dollars of public aid received by strikers during the 1969-1970 G.E. strike was ten times greater than the union strike fund. Gannon, Workers on Public Aid During Walkouts Draw Increasing Criticism, Wall Street Journal, July 14, 1971 at 1, col. 6.

[60]*But cf.* House Agricultural Committee, H.R. REP. No. 1402, 91st Cong., 2d Sess., U.S. CODE CONG. AND AD. NEWS, 91st Cong. 2d Sess. 6034, 6035 (1970).

It should be noted, however, that the frustration of free collective bargaining is only disagreeable to the extent that bargaining is relied on to induce a healthy commercial environment. The wage-price freeze enacted on August 15, 1971,[61] acknowledged an inherent restriction on the collective bargaining process; it will be pursued only so long as it produces favorable results. Though the exact future of labor management relations is unclear, it appears that a wage-price board will limit wage increases.[62] Presuming that government guidelines become a practice, the theory behind free collective bargaining may be altered to the degree that welfare distributions to strikers will no longer disrupt federal labor policy.

The rationale behind the free play of economic forces in collective bargaining has been that economic sanctions coerce reasonable concessions.[63] If wage increases are limited by some supervening authority (*e.g.*, wage-price boards) reasonable wage demands are theoretically insured, and therefore the need for the economic sanctions is reduced. Management, however, is not compelled by the wage limitation to negotiate a settlement at the upper limit. In effect, the free play of economic forces is permitted to the extent that the supervening authority considers wage increases reasonable. By authorizing welfare distributions to strikers, the government acknowledges that it has handicapped labor in negotiations by placing a limit on what can be negotiated, but reciprocates by aiding labor in its struggle with management to achieve that reasonable limit. Arguably free collective bargaining has merely been refined; government will not permit labor to gouge unreasonable concessions from management, nor will it permit management to coerce labor through unconscionable economic pressure.

Finally, it must be acknowledged that as government expands the governed become increasingly dependent on the balances established by legislation rather than the free play of social or economic forces. It is submitted that the authorization of striker participation in public assistance frustrated a labor policy which remained primarily dependent on the free play of economic forces. Subsequent federal initiative, however, has altered the premise of free collective bargaining so that welfare distributions may not substantially frustrate labor policy, and in practice may promote industrial harmony.

FRED W. BATTEN

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[61]Exec. Order No. 11,615, 36 Fed. Reg. 15727 (1971).

[62]Exec. Order No. 11,627, 36 Fed. Reg. 20139 (1971).

[63]See text accompanying notes 26-28 *supra*.