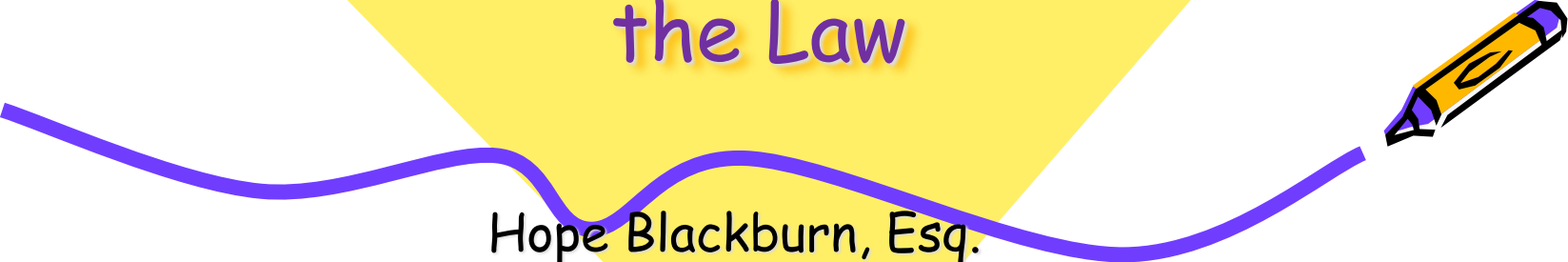




# One Strike and You're Out!

## Teacher Job Actions, Strikes & the Law

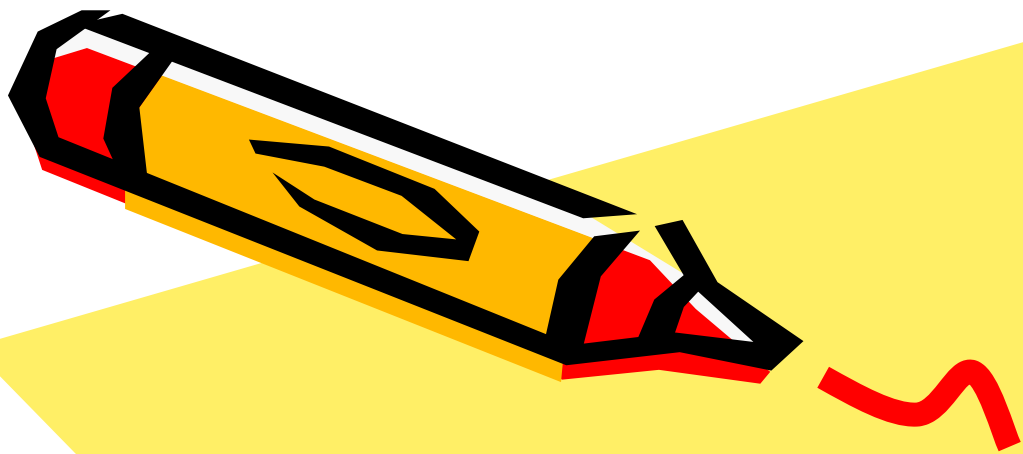


Hope Blackburn, Esq.  
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Kim Belin, Esq.

# Today's Agenda

- History -- Public Employee Strikes
- Job Actions NJ
- Strikes
- Context/Experience





# History

Public Employee Strikes



# A Telegram to Mr. Samuel Gompers: Boston September 14, 1919

*Mr. Samuel Gompers*

*President American Federation of Labor*

*New York City, N.Y.*

Replying to your telegram, I have already refused to remove the Police Commissioner of Boston. I did not appoint him. He can assume no position which the courts would uphold except what the people have by the authority of their law vested in him. He speaks only with their voice. The right of the police of Boston to affiliate has always been questioned, never granted, is now prohibited. The suggestion of President Wilson to Washington does not apply to Boston. There the police have remained on duty. Here the Policemen's Union left their duty, an action which President Wilson characterized as a crime against civilization. Your assertion that the Commissioner was wrong cannot justify the wrong of leaving the city unguarded. That furnished the opportunity, the criminal element furnished the action. **There is no right to strike against the public safety by anybody, anywhere, any time.** You ask that the public safety again be placed in the hands of these same policemen while they continue in disobedience to the laws of Massachusetts and in their refusal to obey the orders of the Police Department. Nineteen men have been tried and removed. Others having abandoned their duty, their places have, under the law, been declared vacant on the opinion of the Attorney General. I can suggest no authority outside the courts to take further action. I wish to join and assist in taking a broad view of every situation. A grave responsibility rests on all of us. You can depend on me to support you in every legal action and sound policy. I am equally determined to defend the sovereignty of Massachusetts and to maintain the authority and jurisdiction over her public officers where it has been placed by the Constitution and law of her people.

- Calvin Coolidge, Governor of Massachusetts



# New Jersey

- When the New Jersey Employer-Employee Relations Act was extended to public employees in 1968, only the states of New York and Wisconsin had enacted similar comprehensive legislation.
- When the Legislature extended the Act to public sector employers and employees, it also created the New Jersey Public Employment Relations Commission ("PERC").
- PERC -
  - Unfair Labor Practices
  - Scope of Negotiations



# Employer-Employee Relations Act

N.J.S.A. 34:13A-1

- It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.



# Public Employment Relations Commission ("PERC")

N.J.S.A. 34:13A-5.2

- The Commission is a tripartite body composed of two members representative of public employers, two members representative of public employee organizations, and three members representative of the public.



# N.J.S.A. 34:13A-5.3

- Employee organizations;
- Right to form or join;
- Collective negotiations;
- Grievance procedures.





## N.J.S.A. 34:13A-5.4

- a. Public employers, their representatives or agents are prohibited from:
  - (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.
  - (2) Dominating or interfering with the formation, existence or administration of any employee organization.
  - (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.
  - (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act.
  - (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.
  - (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.
  - (7) Violating any of the rules and regulations established by the commission.



# Cont'd

- b. Employee organizations, their representatives or agents are prohibited from:
- (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.
- (2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances.
- (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.
- (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement
- (5) Violating any of the rules and regulations established by the commission.



# Negotiations

- Committee -- Authority

(Bergenfield Board of Education, PERC No. 90, 1 NJPER 44.)

- Timing

- Composition of Bargaining Teams

- Good Faith Requirement

Neither party is required to agree to a proposal of the other. But there must be a willingness to negotiate the issues with an open mind and a sincere desire to reach an agreement.

- Reduce to Writing



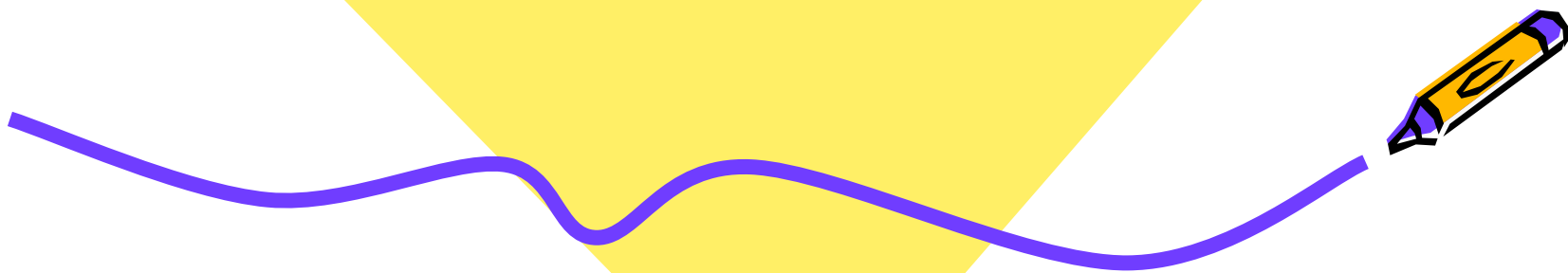
# PERC Process

- Negotiate
- Impasse - Fighting impasse
- Mediation
- Fact Finding
- Super-Conciliation





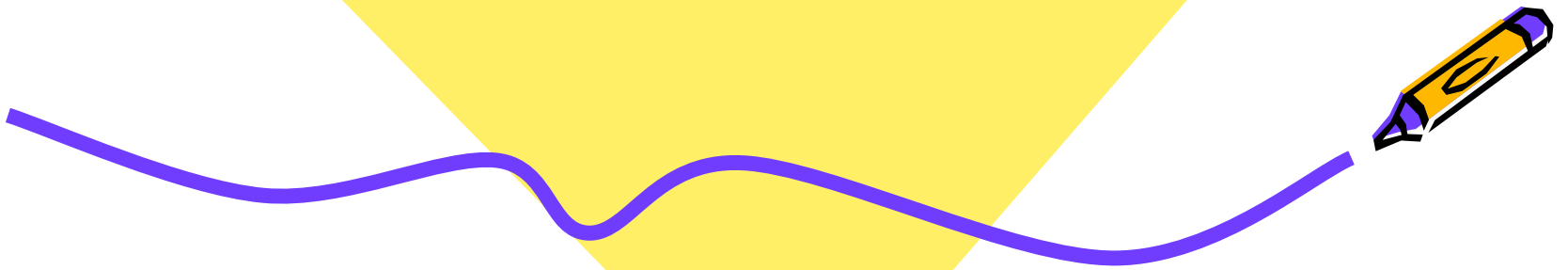
NJ -- Teachers

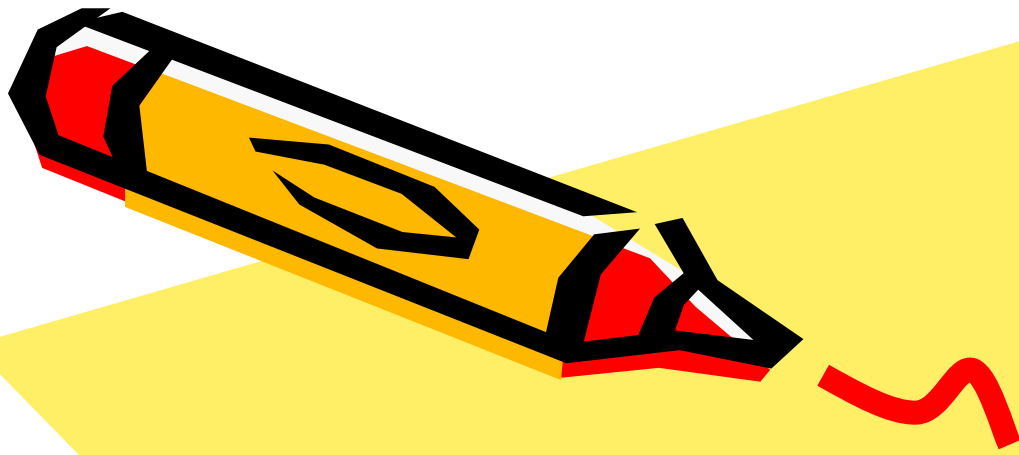




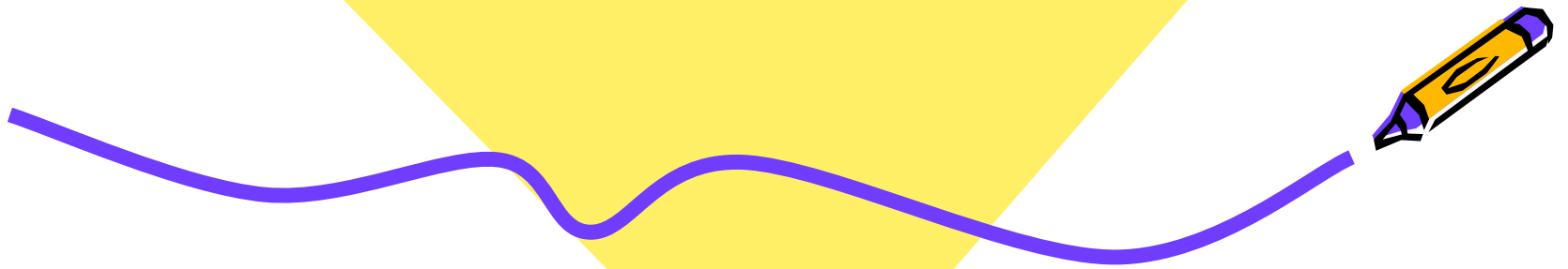
Strikes!

BUT FIRST....





# Other Concerted Activities



# Examples...

- Mass attendance at board meetings;
- Informational picketing;
- News releases and petitions enlisting support;
- Demonstrations;
- Working to the Rule of the Contract;
- Boycotts of District Functions;





# Constitutional and PERC Rights and Concerted Activities

- Not all union activity is deemed to be protected activity!
- Union Activity **ceases to be protected when they interfere with the employee's job performance and responsibilities.**



# Manalapan-English Board of Education

PERC No. 78-91, 4 PER 4134

- Board did not violate the Act when it censured the Assn's use of students to carry communications regarding negotiations to parents.
- Delicate balance between employee freedom and Board interest in promoting educational efficiency.



# Sayerville Board of Education

PERC NO. 86-120, NJPER 17145

- PERC held that the board did not illegally and improperly interfere with employees' protected activities when it reduced pay of employees who were late for work due to attendance at prolonged meeting.



# Board Response

- Right to Communicate Board's Position
  - Free to communicate inaccuracies;
  - Draft own Press Release;
  - Assess impact of escalating public information campaign.
  - One spokesperson



# Response Message

- Under the PERC law, boards cannot unilaterally modify the terms of an expired contract and its provisions continue to control school employees' terms and conditions of employment



# Concerted Activities

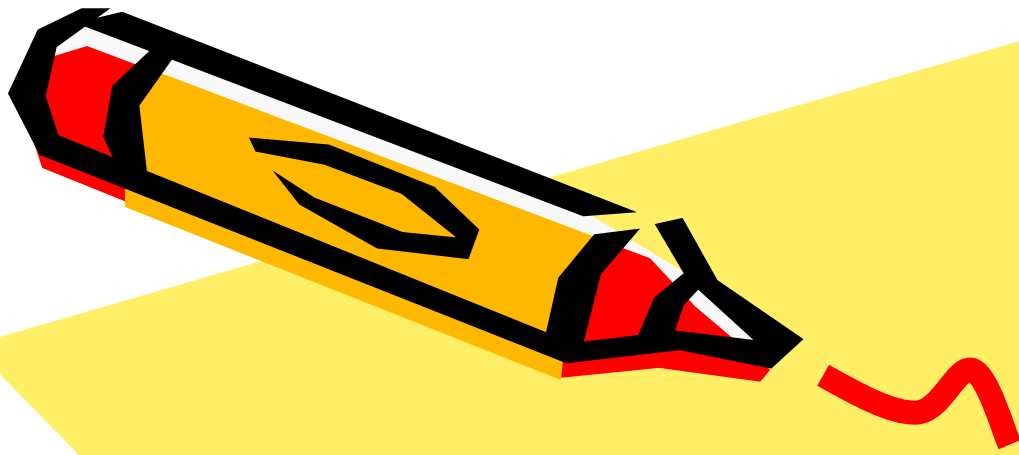
- Entitlement under N.J.S.A 18A:25-3;
- Schedule recesses on these holidays?
- In service on these holidays?
- Preparation is KEY!



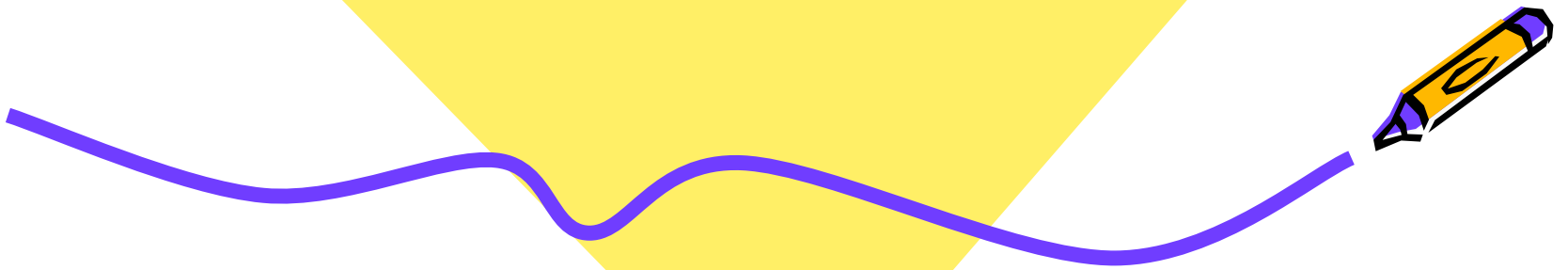
# Consider Local Rights

- Locally adopted Policies;
- Negotiated Contracts;
- Established Practices;
- Job descriptions





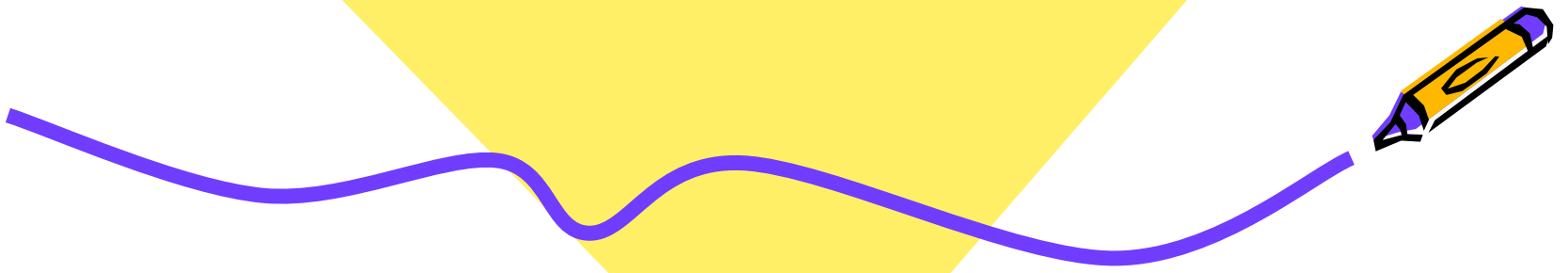
Now to the Strikes:







History:



# In re Block

50 N.J. 494 (1967)

- Defendant teachers' union presented a list of demands to the board of education, threatening a work stoppage unless the proposals were met. Defendants teachers and union leaders met and discussed a strike; 400 teachers failed to report to work, and picket lines were established.
- Because the strike was illegal, a restraining order was issued. The order was read to and served upon defendants. Defendants expressed a refusal to comply, and stayed out of work two more days.
- Defendants were convicted of contempt and sentenced to fines and jail terms, some suspended with probation. Defendants appealed.



# In re Block

## 50 N.J. 494 (1967)

- The court affirmed the convictions and sentences, holding that the restraining order was not vague but plain in its restraints. The evidence amply supported the findings of guilt. The court held defendants were not entitled to a jury trial, and that the restraining order was not unconstitutional under U.S. Const. amend. XIII, because defendants could quit at any time. The court held that the appointment of the board of education's attorney as the prosecutor was subject to the trial court's discretion. R.R. 4:87-4.



# In re Block

50 N.J. 494, 499-500 (1967).

- "... nor can defendants claim a right to strike under the State Constitution, Art. I, ¶ 19, upon the thesis that they are in private employment because teaching can be pursued under private auspices. We rejected the relevancy here of the distinction between 'governmental' and 'proprietary' functions in Delaware River and Bay Authority [v. International Organization of Masters, Mates and Pilots], supra, 45 N.J., [138], at 146. **When government undertakes itself to meet a need, it necessarily decides the public interest requires the service, and its employees cannot reverse or frustrate that decision by a concerted refusal to meet that need.** In any event, teachers are ill-situated to profit from the distinction we have rejected, since the maintenance of a free public school system is mandated by the State Constitution itself. Art. VIII, § 4, ¶ 1."



# In re Buehrer

50 N.J. 501 (1967)

- 30 defendants were convicted in summary proceedings for contempt of court arising out of the violation of an order enjoining a strike by school teachers of the City of Newark.
- 27 plead guilty and three were convicted upon trial.
- Some defendants challenged alleging insufficient evidence and refused jury trial and imposition of probation.
- Trial court judgment affirmed.



# In re Buehrer

- *Defendants say the trial court gave no weight to their claim that they struck and defied the order because of a frustration born of an inability to obtain for the school system what they believed it had to have. The prosecution disputes this claim of high purpose. The trial court of course did not evaluate the teachers' demands upon the Board, and neither do we. The notion that some higher right justifies concerted defiance of law can have no role in the courtroom. It cannot excuse; on the contrary, it emphasizes the deliberate nature of the violation. Nor can it meliorate the wrong, especially when the plea comes from public servants who should set the good example."*



# Union Beach Bd. of Ed. v. NJEA

53 N.J. 29 (1968).

Following plaintiff board of education's decision not to reemploy certain teachers, defendants, an education association, a teachers' union, and related individuals, orchestrated a mass resignation of teachers and interfered with plaintiff's recruitment of replacement teachers.

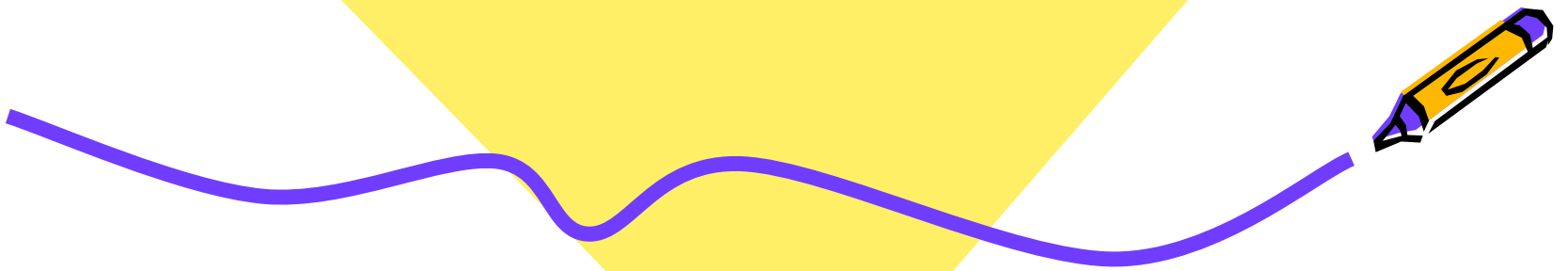
Plaintiff filed suit, seeking to restrain defendants from such activities and the trial court found in its favor. On appeal, the court affirmed the decision because public employees were prohibited from striking.

The court held that defendants' concerted actions, designed to deny plaintiff the necessary manpower by removing existing teachers and by obstructing access to the labor market, were illegal under N.J. Stat. Ann. § 2A:98-1. Public employees had no right to coerce a public body by disabling it. The clean-hands doctrine and U.S. Const. amend. I did not apply where defendants had teachers resign en masse, limited plaintiff's choice of new teachers, and, thereby, caused injury.





Process?





# Process

- Complaint- OTSC R. 4:52
- Notice
- Service R. 4:4-3 and R. 4:4-4
- Adjudication
- Enforcement



# Public Employees - Illegal Strikes

Directive #14-68

February 17, 1968

Issued by: Edward B. McConnell

Administrative Director

..the Supreme Court has agreed upon the following general policy to be followed where injunctive relief against an illegal strike by public employees is sought and granted:

1. Every violation of an injunction, whether temporary or final, restraining an illegal strike by public employees should be promptly prosecuted by the judge who entered the order, either on application of the party who sought the injunction, or, if no such application is made, on the judge's own initiative. This should be made clear to all parties at the time the injunctive order is applied for and entered.



2. No judge should participate in any way in negotiations between the parties in an effort to settle their dispute because the responsibility for mediation of labor disputes in public employment has been specially placed by statute in the Public Employment Relations Commission (N.J.S.A. 34:13A-5.2), and it would be inappropriate for a judge to interfere with or become involved in what is clearly a non-judicial matter. Moreover, such participation might compromise the judge's impartial consideration of any applications for relief that might be made. If injunctive relief has been granted such involvement might compromise the judge's obligation to prosecute violations of the order.



## Directive (con't.)

3. Where it appears that an injunctive order has been violated, the judge entering the order must determine, on the basis of affidavits or sworn testimony, whether the violations should be dealt with criminally by reference to the Grand Jury for indictment or whether to proceed by way of contempt in accordance with R. 1:10-2(c) although ordinarily the latter course would be pursued. To determine the facts, i.e., service of the injunctive order and the violation of it, the judge may rely on affidavits or may subpoena witnesses and take sworn testimony.



## Directive (con't)

4. Since by R. 1:10-2(c) the judge who entered the order alleged to be violated is disqualified from hearing the contempt proceedings, the order to show cause should be made returnable before the judge assigned by the Chief Justice to sit in the event of a disqualification (see order of the Chief Justice dated September 9, 1968). If for any reason the judge so assigned cannot hear the matter, the Chief Justice should be so advised, through the Administrative Director, so that another judge may be assigned.



# Rule 1:10-1

## Contempt of Court

- A judge conducting a judicial proceeding may adjudicate contempt summarily without an order to show cause if:
  - (a) the conduct has obstructed, or if continued would obstruct, the proceeding;
  - (b) the conduct occurred in the actual presence of the judge, and was actually seen or heard by the judge;
  - (c) the character of the conduct or its continuation after an appropriate warning unmistakably demonstrates its willfulness;
  - (d) immediate adjudication is necessary to permit the proceeding to continue in an orderly and proper manner; and
  - (e) the judge has afforded the alleged contemnor an immediate opportunity to respond.



# Contempt (con't.)

- The order of contempt shall recite the facts and contain a certification by the judge that he or she saw or heard the conduct constituting the contempt and that the contemnor was willfully contumacious. Punishment may be determined forth with or deferred. Execution of sentence shall be stayed for five days following imposition and, if an appeal is taken, during the pendency of the appeal, provided, however, that the judge may require bail if reasonably necessary to assure the contemnor's appearance.



# Practical Considerations

- Local analysis:
  - Policies
  - Job Descriptions
- Response:
  - Timing
  - Signaling
- Evaluations/ Discipline?





# Opening School During a Strike

- Student Safety
- Community Service
- Pressure on the Union
  - Economic
  - Political
  - Moral



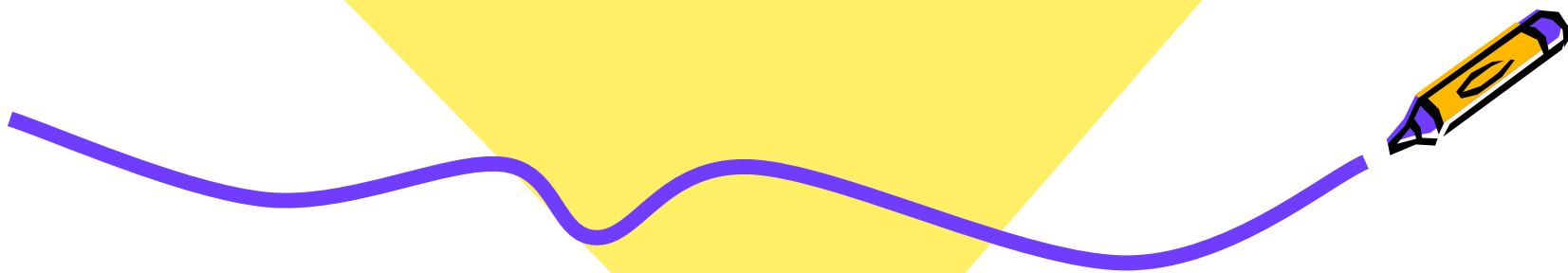
# School Open

- Strike Plan
- Public Relations
- Effect on Negotiations
  - Board side
  - Union side





# Recent Events



# Jersey City School Strike

- March 2018.
- First strike since 1998.
- Teachers walked off the job on a Friday to protest high health care costs.
- School remained open half day with substitute teachers.
- Friday afternoon Judge ordered teachers to return to work on Monday.
- Deal reached on Sunday, after 13 hour session of negotiations.





Questions??

