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# Walking Out on School Kids

## *How Oklahoma Law Enabled the 2018 Teacher Strike, and How to Prevent the Next One*

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### Introduction

In Spring 2018, against the backdrop of state budget shortfalls, teachers in Oklahoma public schools went on strike.\* Their demands included increased pay and additional funding for public education. The strike threw the state into chaos. Schools closed, leaving parents, students, and employers in the lurch. Teachers timed the strike for maximum impact by scheduling it to begin on the first day of state testing, threatening to jeopardize federal funding. Teachers occupied the public spaces of the State Capitol, staging loud demonstrations that could not be ignored and largely preventing the Legislature from conducting the business it was elected to do. Legislators were shouted down by angry teachers. In the end, the Legislature passed the state's first tax increase in 26 years in order to meet teacher union demands.

### The teacher strike spectacle occurred despite Oklahoma's anti-strike law ...

The teacher strike spectacle occurred despite Oklahoma's anti-strike law, which is supposed to prevent teachers from engaging in precisely this type of behavior, as school boards and administrators abetted the fiasco instead of demanding teachers report for work. How could this be?

In short, Oklahoma's anti-strike law is woefully ineffective. The statute applies only in the context of active collective bargaining negotiations, and limits its reach to teachers' unions, as organizations, rather than regulating the conduct of individual teachers. It also fails to establish a penalty sufficient to deter violation of its provisions. The statute, therefore, is irrelevant to the way a teacher strike influences policy change, which is via general disruption and the legislative process. It is aimed at the wrong actors—unions, not employees themselves. Perhaps most significantly, the consequences for violating the statute worry no one subject to it enough to achieve compliance. In other words, the statute is useless.

Public employee strikes are an unjust method of extracting additional benefits from the public purse. Public employees, especially teachers, hold positions of extraordinary trust. A public employee strike is a strike against government itself and by extension, the citizenry. Therefore, striking is a strong-arm tactic that has no place in representative government. It undermines the sovereignty of the people because it places the interests of their government secondary to the interests of the employees who are supposed to be carrying out the public will. As Franklin D. Roosevelt observed, a "strike of public employees manifests nothing less than an intent on their part to prevent or obstruct the operations of Government until their demands are satisfied. Such action, looking toward the paralysis of Government by those who have sworn to support it, is unthinkable and intolerable."<sup>1</sup>

The next strike debacle can be prevented. The Legislature should enact a new anti-strike law that simply prohibits public employees from striking or participating in an organized work stoppage, punishable by forfeiture of employment and other benefits. If the Legislature seeks to avoid future hostage negotiations with teachers' unions, it should straightforwardly outlaw the conduct that leads to such negotiations and provide a penalty sufficient to deter bad behavior. Other states have taken this approach, and it has achieved precisely the desired outcome.

### Public Employee Strikes Are Unjust in Representative Government

Prior to the latter half of the twentieth century, government-employee unions were nearly inconceivable. Despite the Progressive-era rise of organized labor, public employee unionism was widely discredited by the chaos of the 1919 Boston police strike. That strike led to rioting and looting, and turned then-governor Calvin Coolidge into a national figure when he broke the strike. Coolidge's oft-quoted line, "there is no right to

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strike against the public safety by anybody, anywhere, any time,” encapsulated public opinion.<sup>2</sup> President Woodrow Wilson—otherwise an erstwhile ally of organized labor—went further, calling the strike “an intolerable crime against civilization.”

Union stalwart Franklin Roosevelt also rejected government employee unionism. In a letter to the Federation of Federal Employees in 1937, he asserted that collective bargaining “cannot be transplanted into the public service. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer” because “the employer is the whole people, who speak by means of laws.”<sup>3</sup>

Each of these criticisms acknowledge the fundamental reality that public sector unions undermine government sovereignty. The will of the people is expressed through the actions of the government, which can only be achieved through its employees. If an unelected—and therefore democratically unaccountable—organization can compel the government to act by robbing it of the employees it needs to do the people’s business (i.e., by striking), then that organization is the true sovereign.

In recognition of this principle, the National Labor Relations Act of 1935 gave private-sector unions the power to compel employers to bargain, but excluded government unions. It declared that federal, state and local governments were not “employers” under its terms.<sup>4</sup>

Likewise, a substantial majority of states, including Oklahoma, have laws on the books seeking to ban public employee strikes.<sup>5</sup> These prohibitions on government worker strikes, however, vary in their effectiveness. There certainly has been no shortage of strikes in the United States since public employees began to form unions in earnest in the 1960s.<sup>6</sup> Around the time of the Oklahoma teacher strike, teachers in West Virginia, Arizona, Colorado, Kentucky, and North Carolina staged walkouts and strikes, despite striking being putatively unlawful in each of those states except Colorado.<sup>7</sup> In other states, teachers were inclined to strike, but were deterred from doing so by the heavy consequences imposed by law in their states.<sup>8</sup>

Ultimately, to be effective, anti-strike laws must be broad enough that they cannot be circumvented with crafty union maneuvering, and state officials must possess the political will to withstand the pressure of being seen as harming an often sympathetic plaintiff. If either element is missing, a state is at risk of being bullied by striking public employees. In the case of the Oklahoma teacher strike, neither a well-crafted law nor sufficient nerve on the part of officials was present. In fact, many officials, including the administrators and school boards who sit opposite the unions in collective bargaining negotiations, were complicit in the strike.<sup>9</sup> Instead of counteracting the unions and protecting taxpayers, school boards and elected officials joined their cause, taking steps to minimize the pain felt by striking teachers and maximize the pressure placed on other elected officials.

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## Oklahoma’s Weak Teacher Strike Law

Oklahoma’s teacher strike law is too narrow and provides almost no deterrent to would-be strikers. The statute, quoted in its entirety below, is found in the section of the Oklahoma Statutes setting out the process for collective bargaining negotiations between school districts and teachers’ unions. 70 O.S. Section 509.8 stipulates:

The procedure provided for herein for resolving impasses shall be the exclusive recourse of the organization. *It shall be illegal for the organization to strike or threaten to strike as a means of resolving differences with the board of education.* Any member of an organization engaging in a strike shall be denied the full amount of his wages *during the period of such violation.* If the organization or its members engage in a strike, then *the organization shall cease to be recognized as representative of the unit* and the school district shall be relieved of the duty to negotiate with such organization or its representatives. (emphasis added).

This statutory provision is flawed in ways that became obvious during the 2018 teacher strike.

First, the statute is only operative during an “impasse” in collective bargaining negotiations between local school districts and unions. That is, the law is irrelevant to the process teacher strikes are designed to influence—the state-level legislative process. The Legislature is where the action is, so to speak, since state law establishes the minimum teacher salary schedule. Districts may pay more than the state minimum, so teachers surely have an interest in the collective bargaining process, but achieving a universal teacher pay raise requires lifting the state minimum through a change in state law. Likewise, much of the battle over generalized education funding is a legislative, not local, battle. Therefore, it makes little sense to target the strike prohibition to the discrete collective bargaining context while exempting strikes aimed at the Legislature.

Second, the law regulates the wrong entities. It seeks to regulate unions’ behavior rather than that of individual teachers. The statute makes it illegal “for the *organization* to strike or threaten to strike” and ends recognition of the union as representative of the collective bargaining unit if it does so. Thus, the law regulates a behavior (striking), an entity (the union), and provides a consequence for violation (de-recognition of the union as bargaining representative). It does not impose any requirements or consequences on teachers as public employees, on school districts as employers, or on officials as representatives of taxpayers.

As a result, teachers can strike with relative impunity. This was brought into stark relief during the 2018 strike, with teachers expressing no concern that their jobs might be in jeopardy or that they would suffer any adverse consequence whatsoever. In fact, it appears that no individual administrator, teacher, or other government employee in Oklahoma lost his or her job or suffered adverse employment consequences for participation in or facilitation of the strike. Interestingly, it appears that no school district in the state even exercised its authority to stop recognizing the unions as collective bargaining representatives during the strike. Apparently, no one paid any price at all for the massive imposition visited on students, parents, employers, and taxpayers.

Third, and relatedly, the only potential punishment individual teachers risk by striking is the limited loss of wages *during the period of the strike*. The 2018 strike lasted nine days. Considering that teachers in Oklahoma receive generous paid vacation and sick leave, even had this provision been enforced (it wasn't), the vast majority of teachers would have received not a dime less in wages than if they had not gone on strike.

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Last, the statute places the responsibility for bringing its purpose into effect with local school boards, giving the state no recourse in the event of a strike. That is, while the statute appears to cause a striking union to lose its right to be recognized as bargaining representative, it does not force a local school board to abide. In fact, Oklahoma court cases have established that a school board, if it desires, can immediately re-engage with a union that has been stripped of its status under this statute.<sup>10</sup> As noted, in 2018, local administrators and school boards were derelict, or worse, complicit, in the teacher strike. With such subterfuge against the taxpayer's interests, the statute was effectively meaningless.

## **A Better Approach – Model Legislation to Prevent the Next Strike**

A truly effective anti-strike law would be clear and concise, forthrightly regulating the conduct sought to be curbed and providing a strong enough penalty to actually deter misconduct. Other states have managed to enact such laws, and in those states, strikes are virtually (if not totally) nonexistent. Texas, for example, simply bans strikes by public employees, punishable by automatic loss of employment and benefits.<sup>11</sup> Moreover, striking teachers have their teaching certificate revoked. There has not been a single public employee strike in Texas since the law was passed in 1993 (incidentally, at a time when nearly every state office was held by a Democrat and both houses of the legislature had Democrat majorities).<sup>12</sup>

In fact, Oklahoma law already takes a similar approach with striking police and firefighters. While flawed in its own right, the statute that bans police and fire strikes at least imposes discipline or loss of employment on striking individuals. It also has a broader application to any individual who “willfully absents himself from his position or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment.”<sup>13</sup>

The following model legislation squarely bans public employee strikes for any purpose, not just in the context of collective bargaining negotiations. It subjects public employees violating this prohibition to an automatic loss of employment, loss of benefits

such as pensions, and a loss of their teaching certificate. It would effectively end public employee strikes.

## **Model Bill**

### **Prohibition On Strikes By Public Employees**

- (a) Public employees may not strike or engage in an organized work stoppage against the state, a political subdivision of the state, or any public school district.
- (b) A public employee who violates Subsection (a) automatically forfeits his or her employment with the state, subdivision, or public school district, all civil service rights, pensions, reemployment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment.
- (c) A public employee who is employed as a teacher or administrator and violates Subsection (a) shall have his or her teaching certificate(s) revoked.
- (d) The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.

## **Conclusion**

Oklahoma continues to suffer the reverberations of the 2018 strike. Far from placating the unions, the Legislature's acquiescence to their demands emboldened public education radicals. Appeasement always does.

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In the post-strike election, numerous education activists ran for and obtained legislative seats, shifting the balance of power in the Legislature and significantly undermining the chances for serious education reform. Even modest proposals, such as returning the public schools to five day school weeks, have engendered fierce opposition. More substantial reform measures, like a proposal to raise the cap on a popular education tax credit, were unceremoniously killed in their crib. Full-throated school choice, nearly enacted into law just a few short years ago, has not even been part of the conversation.

Today, as Oklahoma seeks a return to some semblance of normalcy post-pandemic, it should not be surprising that re-opening the public schools has been the primary roadblock in the state's efforts. Teachers' unions have learned well the lessons of the 2018 strike: unbending obstinacy and elevation of adults' economic interests over children's well-being and educational advancement will not be punished, but rewarded.

The Legislature should make sure this lesson is unlearned.

- 1 Franklin D. Roosevelt, "Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service," The American Presidency Project, <https://www.presidency.ucsb.edu/node/208681>.
- 2 Calvin Coolidge, "A Telegram to Mr. Samuel Gompers: Boston September 14, 1919," <https://www.coolidgefoundation.org/resources/telegram-to-samuel-gompers/>.
- 3 Franklin D. Roosevelt, "Letter on the Resolution of Federation of Federal Employees Against Strikes in Federal Service," The American Presidency Project, <https://www.presidency.ucsb.edu/node/208681>.
- 4 29 U.S.C. §§ 151-169.
- 5 Melissa Maynard, "Public Strikes Explained: Why There Aren't More of Them," *Pew Stateline*, Sept. 25, 2012, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2012/09/25/public-strikes-explained-why-there-arent-more-of-them> (reporting that 39 states, in some form, prohibit striking by public employees).
- 6 US Bureau of Labor Statistics, Work Stoppages Database, <https://www.bls.gov/web/wkstp/monthly-listing.htm>, Daniel DiSalvo, "The Trouble with Public Sector Unions," *National Affairs* (Fall 2010) <https://www.nationalaffairs.com/publications/detail/the-trouble-with-public-sector-unions>.
- 7 The Colorado Supreme Court has held that public employees have a qualified right to strike under Colorado law. See *Martin v. Montezuma-Cortez School Dist.*, 841 P.2d 237 (Colo. 1992). The remaining states listed either ban public employee strikes via statute or courts have held strikes to be unlawful. E.g., Hoppy Kercheval, "Strikes by West Virginia School Teachers and Other Public Employees are Illegal," *Metro News West Virginia*, June 5, 2019, <https://wvmetronews.com/2019/06/05/strikes-by-west-virginia-school-teachers-and-other-public-employees-are-illegal/>.
- 8 "What Happens if Texas Teachers Strike?" *The Classroom Teacher*, Texas Classroom Teachers Association (Spring 2018), <https://tcta.org/node/14745-what-happens-if-texas-teachers-strike>.
- 9 Matt Pearce, "In Oklahoma Schools, Bosses are Helping Teachers Go On Strike," *Los Angeles Times*, March 29, 2018, <https://www.latimes.com/nation/la-na-oklahoma-teachers-20180327-story.html>.
- 10 Independent School Dist. No. 89 of *Oklahoma County v. Oklahoma City Federation of Teachers*, 1980 OK 89, 612 P.2d 719 (Okla. 1980). The Court held that the statute only causes the union to lose its right to be recognized during the strike. The union is not de-certified or otherwise effected.
- 11 Tex. Gov't. Code Sec. 617.003.
- 12 US Bureau of Labor Statistics, Work Stoppages Database, <https://www.bls.gov/web/wkstp/monthly-listing.htm>.
- 13 11 O.S. § 51-101.