patterns influencing group behavior, such naïveté amply illustrates the wisdom of trusting these complex problems primarily to specialists in industrial relations.[40]

In this case there was evidence from which the Board could reasonably conclude that the compulsory audience interfered with the exercise of the employees' rights to self-organization guaranteed by the Act. Hence, a favorable review of the Board's findings would seem to be justified.[41] Should the circuit court of appeals so decide, the Board will have succeeded in protecting employees' freedom of choice from the dangers inherent in the employer's control of working time and his dominant position in the plant. At the same time it will have preserved to employers an adequate area within which they may exercise their right to communicate to employees their opinions on labor problems and policies.

Municipal Corporations—Tax Anticipation Warrants—Validity of Warrants with Respect to Subsequent Reduction of Assessment—[Illinois].—The plaintiffs, holders of unpaid tax anticipation warrants issued by the West Chicago

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it is imaginary, but whether it is real, in that it affects the movement and conduct of men. Such fears are actual, and must be recognized by the courts as other emotions of the human mind. That fear is real in the sense indicated, and is the most essentially human of all emotions, there can be no doubt." Everett v. Paschall, 61 Wash. 47, 51, 111 Pac. 879, 880 (1910).

An even more fundamental error, however, is the tacit assumption of the learned author that all the consequences of incurring "an employer's strong displeasure" are capable of legal remedy. The Board has admitted its inability to proceed on charges involving objectively trivial types of discrimination, Matter of A. S. Abell Co., 5 N.L.R.B. 644 (1938); yet it is submitted that what may be incognizable by a court, either because it is de minimis or intangible, may be vitally important to an employee. Gardner, Human Relations in Industry 16–23 (1945); Whitehead, Leadership in a Free Society 11–21 (1936); Roethlisberger & Dickson, Management and the Worker 361–64, 543–45 (1939).

[40] The Supreme Court has recognized that "Perhaps the purport of these utterances may be altered by imponderable subtleties at work, which it is not our function to appraise." NLRB v. Virginia Electric & Power Co., 314 U.S. 469, 479 (1941). See Whyte (ed.), Industry and Society (1946); Gardner, Human Relations in Industry (1945); Mayo, Social Problems of an Industrial Civilization (1945). It should be noted that in the present state of the social sciences no conclusive evidence could be presented to "prove" propositions as complex as those indicated herein. It is suggested, however, that work being done in these fields is sufficiently indicative of the conclusions advanced above to make reasonable such inferences by the Board. To recognize the tenuous nature of the findings of the social sciences is not at all to suggest that anyone unfamiliar with developments along these lines is equally competent to deal with the problems arising within their general framework.

[41] The Eighth Circuit Court of Appeals has recently rejected the Board's finding that a compulsory audience was coercive. NLRB v. Montgomery Ward & Co., 19 Lab. Rel. Rep. Man. 2008 (C.C.A. 8th, 1946). Should the Second Circuit Court uphold the Board in the instant case, a clear conflict between the circuits would be apparent. And in accordance with tradition such conflict would presumably be resolved by the Supreme Court. Compare Republic Aviation Corp. v. NLRB, 142 F. 2d 193 (C.C.A. 2nd, 1944), with LeTourneau Co. of Georgia v. NLRB, 143 F. 2d 67 (C.C.A. 5th, 1944). The Supreme Court granted certiorari because of the conflict between these two cases. Republic Aviation Corp. v. NLRB, 323 U.S. 688 (1944); NLRB v. LeTourneau Co., 323 U.S. 698 (1944). The Board's position was sustained in Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945), which reversed the Fifth Circuit Court of Appeals and affirmed the Second Circuit Court of Appeals on the point of law involved.

Park Commissioners to anticipate the collection of taxes levied by the Commissioners for the year 1929, filed a bill in equity against the latter's successor, the Chicago Park District, for an accounting as to taxes collected. The 1929 warrants had been issued in the sum of $2,300,000 pursuant to a resolution of the West Chicago Park Commissioners passed in that year. Under the Illinois Warrant Act such warrants could be issued by a municipal corporation in an amount up to 75 per cent of the taxes it levied.[1] The warrants here issued would have been within the allowed ratio if it were computed on the basis of the 1929 rate of levy, as determined by a prior resolution of the Commissioners, applied to the regular quadrennial property assessment of 1927. At the time of issuance a special assessment for the year 1929, ordered by the State Tax Commission, had not been completed. When finished in 1931, the special assessment showed an aggregate property valuation of approximately 144 million dollars less than that in 1927, with the result that the amount of 1929 taxes ultimately realized was appreciably reduced and the warrants which had been issued exceeded 75 per cent of this amount. On appeal, judgment for the defendant reversed and *held*, inter alia, the defendant is liable under the Warrant Act for the payment of those warrants which had been issued within the statutory ratio; in applying that ratio the amount of taxes levied is to be determined by the rate applied to the valuation finally assessed for the year 1929; and the warrants are to be given validity in numerical order of issuance. *Berwind v. Chicago Park District.*[2]

The desire to protect taxpayers has led courts to construe strictly the rights of municipal security holders.[3] Negotiable bonds in the hands of bona fide purchasers have been declared void where their issuance by the municipality was unlawful.[4] Tax anticipation warrants and other municipal securities used for short-term borrowing have often been treated as non-negotiable and payable only when sufficient money is held in the special fund on which they were drawn.[5] In Illinois the holders of tax warrants in the past have had their securities further restricted by the rule that the warrants create no obligation on the part of the municipal corporation, but constitute merely a contract of assignment of incoming taxes with its treasurer, who alone is liable for negligence in

[1] Ill. Rev. Stat. (1945) c. 146½, § 2.

[2] 393 Ill. 317, 65 N.E. 2d 785 (1946).

[3] Fairbanks, Morse & Co. v. Wagoner, 81 F. 2d 209 (C.C.A. 10th, 1936); C. B. Nash Co. v. Council Bluffs, 174 Fed. 182 (C.C. Iowa, 1909); Lang v. Cavalier, 59 N.D. 75, 228 N.W. 819 (1930); Decator v. Peabody, 251 Mass. 82, 146 N.E. 360 (1925); 6 McQuillin, Municipal Corporations § 2364 (rev. ed. 1936).

[4] Brenham v. German-American Bank, 144 U.S. 173 (1892); Lehman v. San Diego, 83 Fed. 669 (C.C.A. 9th, 1897); Chemical Bank & Trust Co. v. Oakland Co., 264 Mich. 673, 251 N.W. 395 (1933); Bankers Trust Co. v. Statesville, 203 N.C. 399, 166 S.E. 169 (1932); Barnes v. Lacon, 84 Ill. 461 (1877).

[5] Tyler v. Shelby County, 47 F. 2d 103 (C.C.A. 5th, 1931); Hornblower v. Pierre, 241 Fed. 450 (C.C.A. 8th, 1917); Keel v. Pulte, 10 S.W. 2d 694 (Tex. Com'n App., 1928); State ex rel. Wehe v. Pasco Reclamation Co., 90 Wash. 606, 156 Pac. 834 (1916); Washington-Oregon Corp. v. Chehalis, 76 Wash. 442, 136 Pac. 681 (1913); 6 McQuillin, Municipal Corporations § 2400 (rev. ed. 1936).

collecting and keeping the funds.[6] One appellate court decision, *Harrold v. City of East St. Louis*,[7] however, has imposed liability on the corporation itself for the diversion of funds.

While in the present case the court follows the *East St. Louis* decision and holds the defendant corporation liable for part of the funds diverted, the fact that certain of the warrant holders are left completely without remedy points to the inadequacy of the Warrant Act for protecting the investor in this type of security. The Act provides that the warrants must not total more than 75 per cent of the taxes "levied."[8] In applying this provision the court defines the "levy" as the certification by the Park Commissioners of a rate which they believed would produce the desired amount of taxes. The court reasons that although this rate could later be reduced by the county clerk when the tax was finally extended, as happened in the present case, the significant rate with respect to the warrants was the rate as originally levied. The significant valuation, on the other hand, was that for the then current tax year, 1929, even though it may not have been determined until a later date.[9] Under this construction of the Act, an overissue of warrants might result whenever the assessment is delayed.

The defendant's contention that the rate as finally extended by the county clerk governs the validity of warrants is without support in the Illinois decisions[10] and would have resulted in even harsher treatment of the plaintiffs. In the principal case the county clerk reduced the Commissioners' rate of levy to keep the aggregate tax rate of property in the district within the statutory limit. If this reduced rate had been used in computing the levy, an even larger amount of warrants would have been invalidated as being in excess of the 75 per cent ratio.

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[6] Springfield v. Edwards, 84 Ill. 626 (1877). In 1930 the Illinois legislature made an unsuccessful attempt to declare warrants on whose payment municipal corporations were in default valid municipal obligations. Ill. L. (1930) 115. This was held unconstitutional in Berman v. Board of Education, 360 Ill. 535, 196 N.E. 464 (1935), because it required taxation for non-corporate purposes, the court reasoning that the legislature could not turn "moral" obligations into legal obligations.

[7] 197 Ill. App. 121 (1915).

[8] Ill. Rev. Stat. (1945) c. 146½, § 2.

[9] A definition of "levied" to include the application of the rate to the latest available valuation, that of 1927, would, of course, have resulted in recovery by all the warrant holders. While the language of the Warrant Act is perhaps general enough to make such definition possible, the court's interpretation seems more logical since the Cities and Villages Act at that time called explicitly for levy by rate rather than by amount. Ill. Rev. Stat. (1929) c. 24, § 123, repealed by Ill. L. (1933) 254. Thus the Park Commissioners had no authority to apply the rate to, or fix, the assessed valuation to determine the amount of the taxes. Although it is evident that in the principal case they considered the 1927 assessment in arriving at the amount of issuable warrants, the fact is of no legal importance. When ordered, only the valuation for the current year as found by the assessors was relevant, even if incomplete at the time when the warrants were issued.

[10] People v. Chicago & Northwestern R. Co., 340 Ill. 102, 172 N.E. 13 (1930); People v. Cook, 336 Ill. 330, 168 N.E. 275 (1929); People v. Chicago, Burlington & Quincy R. Co., 266 Ill. 150, 107 N.E. 322 (1914); Gray v. Board of School Inspectors, 231 Ill. 63, 83 N.E. 95, (1907).

Apart from the ambiguity in its definition of the legal ratio, the Warrant Act makes the granting of remedies which might otherwise be open to the plaintiffs difficult in the principal case. Recovery in quasi-contract is often possible with respect to unauthorized local improvement contracts.[11] However, this relief is not available where the contracts, as here, violate positive statutory prohibitions, because to hold otherwise, courts have reasoned, would give effect to the ultra vires acts of municipal officers.[12] Another possible solution, the pro rata payment of all warrants issued, is dismissed by the court as contrary to the custom of Illinois[13] and possibly to an amendment of the Warrant Act, which has been construed by the Illinois Supreme Court to obligate payment of warrants in the numerical order of issuance.[14] This Illinois practice, however, relates exclusively to the *payment* of valid warrants in numerical order where total funds are insufficient to meet payment on all.[15] In the principal case the court relies on these cases to *validate* the warrants in numerical order. It is submitted that these two functions, although analogous, are quite different in effect. The warrant holder has notice from the face of the instrument of the mode of payment. He takes the risk of non-payment, often in consideration of a relatively high rate of interest, when he buys a warrant with a high serial number. On the other hand, there is nothing to warn him of an invalidation in numerical order. To reach a more equitable result the court might, therefore, have analogized the instant case to payments of municipal bonds from an insufficient fund, where pro rata payments are admittedly in order.[16] This was apparently the reasoning of a recent federal case which held pro rata payments applicable in a similar situation.[17]

An attempted revision of taxing methods within the Chicago Park District

[11] Brownell v. St. Petersburg, 128 F. 2d 721 (C.C.A. 5th, 1942); Transbay Construction Co. v. San Francisco, 35 F. Supp. 433 (Cal., 1940); Rae v. Reading, 24 F. Supp. 566 (Pa., 1938); Ritchie v. Wichita, 99 Kan. 663, 163 Pac. 176 (1917); F. V. Smith Contracting Co. v. New York, 70 Misc. 132, 128 N.Y. Supp. 351 (1910); Chicago v. McKechney, 205 Ill. 372, 68 N.E. 954 (1903); 5 McQuillin, Municipal Corporations § 2091 (rev. ed. 1936).

[12] Hackettstown v. Swackhamer, 37 N.J.L. 191 (1874); Denver v. Moorman, 95 Colo. 111, 33 P. 2d 749 (1934); Hobbs, Wall & Co. v. Moran, 109 Cal. App. 316, 293 Pac. 145 (1930); Ensley v. J. E. Hollingsworth & Co., 170 Ala. 396, 54 So. 95 (1910); 5 McQuillin, Municipal Corporations § 2092 (rev. ed. 1936).

[13] That the payment of warrants in numerical order is a well-established practice in Illinois is emphasized by the court in Lubezny v. Ball, 389 Ill. 263, 59 N.E. 2d 645 (1945), and Leviton v. Board of Education, 385 Ill. 599, 53 N.E. 2d 596 (1944).

[14] Lubezny v. Ball, 389 Ill. 263, 59 N.E. 2d 645 (1945).

[15] Ibid.; Leviton v. Board of Education, 385 Ill. 599, 53 N.E. 2d 596 (1944).

[16] Brown-Crummer Inv. Co. v. Burbank, 17 F. Supp. 469 (Cal., 1936); Jewell v. Superior, 135 Fed. 19 (C.C.A. 7th, 1904); Sibley v. Mobile, 22 Fed. Cas. 59, No. 12,829 (C.C. Ala., 1876); Thompson v. Clark, 6 Cal. 2d 285, 57 P. 2d 490 (1936); State ex rel. Sturdivant Bank v. Little River Drainage District, 334 Mo. 753, 68 S.W. 2d 671 (1934); 6 McQuillin, Municipal Corporations § 2504 (rev. ed. 1936); 2 Dillon, Municipal Corporations § 893 (5th ed., 1911).

[17] Norfolk & Western R. Co. v. Board of Education, 14 F. Supp. 475 (Ill., 1936), order modified, 88 F. 2d 462 (C.C.A. 7th, 1937). This judgment, collaterally attacked in the Illinois Supreme Court, was held res judicata, despite its conflict with the Illinois cases. State Life Ins. Co. v. Board of Education, 68 N.E. 2d 525 (Ill., 1946).

has been made with the passage of the Butler laws.[18] These provide for either a "pegged" levy of a fixed amount of taxes or a levy at a fixed rate, whichever method will provide the most revenue. This guarantee of a minimum revenue might appear to insure the payment of all tax warrants issued on its basis. However, under the construction of the Warrant Act put forward by the court in the present case, the Butler laws under certain circumstances fail to protect the warrant holders where, as here, the warrants are attacked on the ground of overissue. Should the levy be made under the new law by adopting the statutory rate at a time when the assessed valuation for the current year is unknown, the situation in the principal case might conceivably recur. Though the necessary revenue could be obtained, since the statute allows increasing the rate to that necessary to produce the "pegged" amount of taxes, the rate as originally "levied" might be held to govern the validity of the warrants, thus leaving the holders remediless despite the fact that sufficient money to pay their claims lay in the treasury.

The holding in the present case is further evidence that in cases involving municipal securities courts are often faced with the problem of balancing two peculiar and conflicting considerations. Constitutional and statutory debt limits have been imposed on municipalities. The issuance of tax warrants after these limits have been reached is in effect an evasion of the limitations. However, courts have evidently recognized the need of municipalities to borrow by means of warrants when all other methods have been exhausted and have tacitly approved this device.[19] On the other hand, the same desire to prevent excessive taxation which led to the enactment of debt limitations makes courts reluctant to allow an increase in municipal indebtedness. Both of these objects are partly achieved in the present case at the expense of the holder of municipal securities. Such a policy, however, may result in the discrediting of these securities and add more difficulty to the already confused state of many municipal finance systems.[20]

Patents—Extent of Use of Patent—Validity of Requirement of Assignment of Improvement Patents—[Federal].—The defendant patentee granted the plaintiff an exclusive manufacturing license for ten years, renewable at the licensee's option every five years thereafter. As a condition of the license the plaintiff was required to promise to assign to the licensor any improvement patents which he might obtain pertinent to the machine covered by the defendant's original patent, reserving an exclusive license to himself. The contract, including both the original and the improvement licenses, was terminable in case of breach by the plaintiff or its reorganization under Chaper X of the Bank-

[18] Ill. Rev. Stat. (1945) c. 105, § 333.19.

[19] Tax Anticipation as a Device for the Evasion of Constitutional Restrictions on Municipal Indebtedness, 45 Harv. L. Rev. 704, 710 (1932).

[20] For a comprehensive analysis and criticism of the taxing systems in Illinois, see the symposium in 35 Ill. L. Rev. 621 et seq. (1941).