Public Employee Collective Bargaining Contracts: The Chicago Teachers

A question of current interest in Illinois is whether the Chicago Board of Education has the power to bind itself under the provisions of a collective bargaining contract with a union representing school board employees. The Board is a municipal body and like other such bodies has only those powers which are delegated to it by state statutes. The power to enter into a collective bargaining contract with a labor union must be either expressly granted by statute or implicit in the Board's enabling legislation. There is no general legislation in Illinois dealing with the power of public employers to enter into collective bargaining contracts, and the School Code of 1961, the Board's enabling legislation, does not expressly grant such power. Thus, if the Board has this power, it must be inferred from the School Code.

Since no Illinois appellate court has ever passed on the collective bargaining authority of the Board or any other municipal body and since decisions from other jurisdictions on implied authority vary widely, 

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1 The Chicago affiliate of the National Education Association and an intervening taxpayer are presently seeking to enjoin the Board from entering into an exclusive collective bargaining contract with the local affiliate of the American Federation of Teachers. See Petition of James D. Broman for Leave to Intervene, Chicago Div. Illinois Educ. Ass'n v. Board of Educ., Equity No. 65 CH 5524, Cook County Cir. Ct., Ill., Oct. 10, 1965. In the Circuit Court the complaints of both the NEA affiliate and the taxpayer were dismissed. See Opinion and Decree, id., 1966. Both are appealing.


3 "[T]he powers of a municipal corporation include (1) powers expressly conferred by the constitution, statutes, or charter; (2) powers necessarily or fairly implied in, or incident to, the powers expressly granted; and (3) powers essential to the declared objects and purposes of the municipality. . . . This enumeration of power is exclusive and no other powers exist . . . ." 2 MCQUILLIN, MUNICIPAL CORPORATIONS § 10.09 (3d ed. 1949). See, e.g., City of Chicago v. Schultz, 341 Ill. 208, 173 N.E. 276 (1930); Sullivan v. Cloc, 277 Ill. 56, 115 N.E. 135 (1917). The power of municipal bodies to contract is similarly limited. RYNE, THE LAW OF MUNICIPAL CONTRACTS 27 (1952); 10 MCQUILLIN, MUNICIPAL CORPORATIONS § 29.05 (3d ed. 1949).

4 ILL. REV. STAT. ch. 122 (1965). Although this comment specifically deals only with the Chicago Board of Education, the analysis is in large part applicable to other Illinois municipal bodies.

5 Holding that authority exists: Local 266, International Bhd. of Electrical Workers v. Salt River Agricultural Improvement and Power Dist., 78 Ariz. 30, 275 P.2d 393 (1954) (emphasizing "proprietary" character of Improvement and Power District); Local 611, International Bhd. of Electrical Workers v. Town of Farmington, 75 N.M. 393, 405 P.2d 238 (1965) (employees of electric utility). Holding that authority does not exist: Operat-
an examination of the legislative intent underlying the School Code of 1961 is necessary. If no clear intent is revealed, it will be necessary to explore the possibility of infringing power simply because of the Board’s need for such power.\textsuperscript{6} Analysis of other matters which the courts have considered may also prove helpful: whether entering into a collective bargaining contract constitutes an illegal “delegation of power”\textsuperscript{7}; whether municipal collective bargaining agreements violate the prohibition against binding future administrations unreasonably; and whether exclusive representation provisions in municipal contracts violate the equal protection and right to petition clauses of the Constitution.\textsuperscript{7}

\textsuperscript{6} See notes 24-28 \textit{infra} and accompanying text.

\textsuperscript{7} The right of teachers to strike is not at issue in this comment. It is assumed that teachers’ strikes are illegal. See notes 29 & 33 \textit{infra}. It is also assumed that teachers’ unionization is permissible. If teachers were not legally permitted to unionize, it would follow that contracts made by their unions would be invalid, but no legislation appears to prohibit their unionization. In fact, legislation proscribing unionization among any kind of municipal employees is virtually nonexistent, and it seems unlikely that courts would judicially impose such a prohibition. See City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947) (sanitation employees); City of Cleveland v. Division 268, Amalgamated Ass’n of Street Employees, 30 Ohio Op. 395 (C.P. 1945) (transit workers).

It should be emphasized that it is the power, not the duty, of the Board which is at issue. The question of the Board’s authority to enter into a collective bargaining contract is raised only after it decides it wishes to enter such an agreement. Employers who are within the scope of the National Labor Relations Act or similar state legislation have not only the power but also the duty to bargain collectively and to agree to exclusive representation. Labor-Management Relations Act (Taft-Hartley Act) \S 101, 61 Stat. 143 (1947), 29 U.S.C. \S\S 158(a)(5), 159(a) (1964). See, e.g., \textit{Mass. Ann. Laws} ch. 150A, \S 4(5) (1965). But public employment is specifically excluded from the coverage of the National Labor Relations Act and most similar state legislation. Labor-Management Relations Act (Taft-Hartley Act) \S 101, 61 Stat. 143 (1947), 29 U.S.C. \S 152(2) (1964); see, e.g., \textit{Mass. Ann. Laws} ch. 150A, \S 2(2) (1965). Even in those states where public employment is not explicitly excluded from coverage it is generally excluded by construction according to the principle “that labor laws generally will not be construed as affecting public employment . . . unless the intent to cover public employment is clear.” 1962 \textit{Illinois Attorney General’s Report and Opinions} 239. A few state labor statutes, however, expressly apply to public employment. E.g., \textit{Minn. Stat. Ann.} \S\S 179.51-58 (Supp. 1965).

For other discussions of collective bargaining among teachers see Selz, \textit{Rights of School Teacher to Engage in Labor Organization Activities}, 44 \textit{Marq. L. Rev.} 36 (1960); Wildman, \textit{Collective Action by Public School Teachers}, 18 IND. & LAB. REL. REV. 3 (1964);
I. POWERS NECESSARILY OR FAIRLY IMPLIED

The Illinois School Code of 1961, in the sections granting authority to the Chicago Board of Education, provides:

The board shall exercise general supervision and management of . . . the public school system of the city, and shall have power:

(1) To make suitable provision for the establishment and maintenance . . . of schools . . .

. . .

The specifications of the powers herein granted are not to be construed as exclusive, but the board shall also exercise all other powers that may be requisite or proper to the maintenance and development of the public school system. . . .

The School Code further provides that the Board shall have the power, "subject to the limitations of this Article, to . . . employ teachers and other educational employees and fix their compensation." It could be argued that power to bargain collectively is "requisite and proper to the maintenance and development of the public school system," and that the power to employ and to fix compensation implies power to do so through collective bargaining as well as by other means. Presumably, if the terms of employment or procedures for arriving at them were prescribed by statute, then the methods and results of collective bargaining might not be substituted; moreover, if the statute preempted most matters otherwise appropriate for collective bargaining, a legislative intent to withhold authority to bargain collectively might be indicated. However, none of the areas of negotiation apparently


8 ILL. Rev. STAT. ch. 122, § 34-18 (1965).

9 Ibid. The limitations referred to include age limits, standards for continued professional growth and good health of employees, and certain minimum compensation levels.

10 The Arizona Supreme Court stated this principle with respect to civil service systems: "If a civil service scheme provides for the regulation of matters normally contained in a collective bargaining agreement the conflicting terms of both could not exist concurrently. The inconsistency would be resolved in favor of the statute." Local 266, International Bhd. of Electrical Workers v. Salt River Project Agricultural Improvement and Power Dist., 78 Ariz. 30, 36, 275 P.2d 393, 397 (1954).
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contemplated for the Chicago Board's contract are precluded by statute. Although specific provisions have yet to be negotiated, the contract is expected to deal with working conditions, salaries and fringe benefits, and "other professional problems" and to provide for exclusive representation by one union.\(^{11}\) The Chicago Board of Education would not be precluded by statute from including in a collective bargaining contract clauses like those agreed to by the New York City Board of Education in 1962. The New York contract provided for reduction of instructional load, increases in specialized services, teacher aids, reduction of work day for certain classes of teachers, reduction in class size, relief from non-teaching chores, definition of teacher assignments, rotation, program preferences, the application of seniority to substitutes, leaves of absence, vacations, sabbaticals, pensions and retirement,\(^{12}\) and salary schedules.\(^{13}\)

One approach to determining whether the General Assembly in enacting the Board's enabling legislation intended impliedly to authorize collective bargaining is to examine the Assembly's treatment of other collective bargaining legislation. General legislation empowering municipal bodies to enter into collective bargaining contracts has been unsuccessfully proposed in nearly every session of the General Assembly since 1945.\(^{14}\) But consistent failure to pass such general legislation need not indicate that the General Assembly intended in 1961,\(^{15}\) when it passed the School Code, that the Chicago Board of

\(^{11}\) See Petition of James D. Broman for Leave to Intervene, \textit{supra} note 1.

An exclusive representation provision ordinarily requires the employer to recognize or bargain with the union representing a majority of the employees in the bargaining unit and with no other union, permits a representative of the majority union to be present at any grievance proceeding, and guarantees the union such privileges as access to certain records and the opportunity to observe employment conditions. See \textit{Rhyne}, \textit{op. cit. supra} note 7, at 426-524; \textit{Cornell}, \textit{supra} note 7, at 58-59.

\(^{12}\) The area of pensions and retirement would seem to be pre-empted by \textit{ILL. REV. STAT. ch. 108}, §§ 17-101 to 17-159 (1965).

\(^{13}\) See Wildman, \textit{Collective Actions by Public School Teachers}, 18 \textit{IND. & LAB. REL. REV.} 3, 9 (1964). For examples of collective bargaining contracts entered into by other boards of education see \textit{American Federation of Teachers, Collective Bargaining Contracts} (1962). For contracts entered into by other municipal bodies see \textit{Rynne}, \textit{op. cit. supra} note 7, at 426-524; \textit{Cornell}, \textit{supra} note 7, at 58-59.


\(^{15}\) The relevant year for determining intent is the year of enactment. \textit{Arnold v. City of Chicago}, 387 Ill. 532, 56 N.E.2d 795 (1944). It has been suggested that re-enactments without substantial change may be ignored. See \textit{Note}, 43 \textit{CALIF. L. REV.} 905, 908 (1955). Although in the School Code of 1961 no significant changes were made in the particular sections from which collective bargaining power might be inferred, it is reasonable to assume, because there was considerable rearrangement throughout the Code (see Hutson, \textit{Introduction to the School Code of 1961}, in \textit{ILL. ANN. STAT. ch. 122} (Smith-Hurd 1962)), that the General Assembly reconsidered the language of the relevant sections in 1961.
Education should not have collective bargaining power. The Assembly might simply have been unwilling to give blanket express approval for collective bargaining to all types of municipal bodies. In creating the Chicago Transit Authority, the General Assembly did specifically empower it to enter into collective bargaining agreements, but this does not necessarily indicate a legislative intent that such power should not exist unless granted expressly. It is not unlikely that the legislature was concerned that any question relating to the collective bargaining power of the Transit Authority be clearly and immediately settled, since the Transit Authority was faced with the peculiar problem of acquiring private enterprises staffed with employees accustomed to the benefits of collective bargaining. The several reasonable yet irreconcilable explanations of the legislature’s treatment of collective bargaining legislation prevent that treatment from providing any clear indication of legislative intent.

Another possible approach to determining legislative intent would be to examine prior judicial and non-judicial interpretations of similar statutes in Illinois and other jurisdictions and to assume that the legislature was aware of those interpretations and intended its statute to be similarly interpreted. Such an approach, however, is not helpful in construing the School Code of 1961. While a few school board collective bargaining contracts were in existence before 1961, no court had occasion to consider seriously their legal validity and it was not clear whether the parties to those contracts expected them to be le-

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16 Legislation authorizing municipal collective bargaining has been passed in each of the sessions in which it has been brought to a vote in either body of the General Assembly. Such legislation was passed by the House and postponed in the Senate in 1963 and was passed by both the Senate and the House before being vetoed by the Governor in 1945. Legislative Reference Bureau, Legislative Synopsis and Digest of the General Assembly, State of Illinois, yrs. 1945, 1963.

17 The Transit Authority has power to execute collective bargaining contracts and to submit disputes over wages, salaries, working conditions, and retirement and pension provisions to binding arbitration. Ill. Rev. Stat. ch. 111-3, § 328a (1965).

18 That the legislature was aware of the existence of collective bargaining benefits in private companies and was concerned about the problems of the transfer is evidenced by the requirement in the statute that seniority credit be given the employees in accordance with the terms of the labor agreements of acquired companies. Ill. Rev. Stat. ch. 111-3, § 329 (1965).

19 For instance, locals of the American Federation of Teachers had contracts with the school boards of Eau Claire, Wisconsin, and Proviso Township, Illinois. See American Federation of Teachers, Collective Bargaining Contracts (1962).

20 See Norwalk Teachers’ Ass’n v. Board of Educ., 138 Conn. 269, 83 A.2d 485 (1951) (a declaratory judgment suit which went no further than to say some negotiations would be permissible).
gally valid or merely morally binding. Regarding municipal bodies other than school boards, the Arizona Supreme Court has held a collective bargaining contract valid, while appellate courts in three other states have held to the contrary. The passage in a few other states of legislation specifically approving collective bargaining by municipal bodies may have appeared to the Illinois General Assembly to represent a judgment by other legislatures that enabling legislation similar to that of the Chicago Board of Education could not be interpreted to imply collective bargaining power, but it may also have been viewed merely as an attempt to clarify existing collective bargaining power or to extend collective bargaining power to additional bodies.

Absent any clear indication as to whether the General Assembly intended to imply collective bargaining power in the School Code, such power may be inferred if sufficiently necessary for the accomplishment of the Board's purposes or the implementation of expressly delegated powers such as the power to provide for the maintenance of the schools, the power to employ, and the power to fix compensation. It seems impossible to abstract from the Illinois cases a meaningful standard of sufficient need. The apparently conflicting formulas offered by the courts—"essential," "indispensable," "not absolutely indispensable," and "reasonably necessary"—provide little guidance as to the quantum of need actually required to justify the inference of municipal powers, while the holdings of the cases themselves suggest little more than a standard which fluctuates between dire necessity and mere convenience. In the absence of a clear judicial con-

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22 City of Los Angeles v. Los Angeles Building Council, 94 Cal. App. 2d 36, 210 P.2d 305 (1949); Mugford v. City of Baltimore, 185 Md. 266, 44 A.2d 745 (1945); City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947).
23 See notes 8 & 9 supra.
25 Ibid.
28 Powers have been held not implied in the following situations: (1) Power to pass an ordinance prohibiting the distribution of handbills and circulars is not implied by a city's power to regulate its streets or from its general police power. City of Chicago v. Schultz, 341 Ill. 208, 173 N.E. 276 (1930). (2) Power to pass an ordinance requiring the licensing of electricians and the inspection of electrical installations is not implied in such express municipal powers as the power to prevent the dangerous construction of chimneys, fireplaces, hearths, stoves, etc., although such implied power might be "not only salutary but necessary." Arms v. City of Chicago, 314 Ill. 816, 222-26, 145 N.E. 407, 411 (1924). (3) Power to regulate "garages" does not imply power to regulate "private
sensus, examination of the Board's need for collective bargaining authority suggests that a court would be acting reasonably whether it did or did not find that need sufficient to justify the inference of implied power.

The only disadvantage of collective bargaining to the Board appears to be the risk of being bound for a period of time to contractual terms to which it need not now agree and which might prove unexpectedly undesirable if the Board's needs were to change or if the market price of labor were to decline.29

Garages," although denial of such power might be inimical to the public welfare. Crear Clinch Coal Co. v. City of Chicago, 341 Ill. 471, 477, 173 N.E. 484, 486 (1930). (4) Power to regulate "ordinaries" and "coffee houses" does not imply power to regulate restaurants. Potson v. City of Chicago, 304 Ill. 222, 156 N.E. 594 (1922). (5) A city's authority to perform the proprietary function of maintaining a water supply does not imply power to contract to supply water for fifty years to a state educational institution in exchange for five dollars and a promise that the institution would be located near the city limits. Eastern Illinois State Normal School v. City of Charleston, 271 Ill. 602, 111 N.E. 573 (1916). (6) A city's general contracting power does not imply a power to take an assignment from a developer of the obligations owed by the residents of his development. City of Marquette Heights v. Vrell, 22 Ill. App. 2d 254, 160 N.E.2d 598 (1959).

Powers have been held to be implied in the following situations: (1) Power to regulate "Homes" and "Nursing Homes" with respect to ventilation, fire prevention provisions and sanitation, and power to license such institutions, is implied in a city's police power. Father Basil's Lodge, Inc. v. City of Chicago, 393 Ill. 246, 65 N.E.2d 809 (1946). (2) Power to operate a nursery outside its limits is implied in a city's express power to create and regulate parks although the needed shrubs could have been purchased rather than grown. People ex rel. Sweitzer v. City of Chicago, 363 Ill. 409, 2 N.E.2d 30 (1936). (3) A forest preserve board has implied power to annex its forest preserve district to an adjacent village because this would lead to the most successful and efficient management of the district's property. Houston v. Village of Maywood, 11 Ill. App. 2d 483, 138 N.E.2d 37 (1956). (4) A city's power to bind itself to pay for an accountant is implied in its mayor's power to examine the books, records, and papers of any office of the city. Ward v. City of Du Quoin, 173 Ill. App. 515 (1912). (5) Its express power to contract gives a drainage district implied power to consent by stipulation to a decree binding it to build a levee and lock and to dredge a channel. People ex rel. Stead v. Spring Lake Drainage & Levee Dist., 253 Ill. 479, 97 N.E. 1042 (1912).

29 A provision for arbitration over new contractual terms might be treated differently from the other provisions of a collective bargaining contract on the ground that it would expose the Board to the special risk of being bound to terms to which it might never have consented. Thus, even where a power to bargain collectively existed, power to agree to arbitrate new contractual terms might be denied. See the opinion of the court in Chicago Div. Illinois Educ. Ass'n v. Board of Educ., supra note 1, suggesting that the Board of Education's collective bargaining contract must leave the final determination of all disputes to the Board.

The implied grant of a power to bargain collectively need not deprive the Board of its power to have strikes enjoined or create a right to strike on the part of public employees. Strikes interrupt public service, while collective bargaining does not. Although without the right to strike employees would be without an important weapon for pressing the municipal body to accede to favorable terms, and to perform those terms once they had been incorporated into a contract, employees would not be left powerless, since they might be able to secure favorable terms by enlisting public support against
The advantages of collective bargaining power appear to stem from the reduction in harmful teacher discontent which such power might make possible. Teachers might be less discontented with substantive terms of employment if their own representative had negotiated for and signed an agreement providing for such terms, and the granting of collective bargaining privileges might reduce teacher discontent simply because it would give the teachers something they desire. The desire of teachers for collective bargaining privileges was clearly manifested by their threat to strike to obtain such privileges in the fall of 1965 as well as by their current collective bargaining requests. Strikes among other municipal employees make it clear that collective bargaining has become an important issue in public employment.

The granting of collective bargaining privileges appears less disadvantageous to the Board than any alternative compensation which would equally satisfy the teachers. This economy seems less likely in light of the possibility of obtaining a clear judicial decision denying collective bargaining power, since such a decision might eliminate


A court might find it more difficult to believe that teachers have a serious desire for collective bargaining than to believe that employees with unionized counterparts in private industry have such a desire. Courts may have this distinction in mind when they ascribe their validation of collective bargaining contracts to the fact that the employees concerned performed "proprietary" rather than "governmental" functions. See, e.g., Local 266, International Bhd. of Electrical Workers v. Salt River Project Agricultural Improvement and Power Dist., 78 Ariz. 30, 275 P.2d 393 (1954) (employees of an improvement and power district); Local 611, International Bhd. of Electrical Workers v. Town of Farmington, 75 N.M. 393, 405 P.2d 233 (1955) (employees of an electric utility). But see City of Cleveland v. Division 268, Amalgamated Ass'n of Street Employees, 30 Ohio Op. 395 (C.P. 1945) (refusing to attach any significance to the distinction). However, in addition to the strike threat, the high degree of unionization of the teachers indicates that they strongly desire many of the union privileges of private employees. In December, 1965, the Chicago Teachers' Union, local affiliate of the American Federation of Teachers, had 13,503 members. In June, 1965, the Chicago Education Association, local affiliate of the National Education Association, had 3,238 members. During the 1964-65 school year the Board of Education employed approximately 22,640 teachers. These figures are on record at the Chicago headquarters of the respective organizations.

resentment toward the Board which may exist presently as a result of an appearance that the Board can give collective bargaining privileges at virtually no cost to itself, but simply refuses to do so. However, even recognizing the possibility of a clear judicial decision with such an effect, the conferring of collective bargaining privileges with accompanying contractual security and opportunity to participate in decision making would appear considerably less expensive in most situations than alternative means of compensating the teachers.

If discontent is not eliminated by some alternative form of compensation, it could cause such harmful effects as inefficient teacher performance, personnel recruitment difficulties, and strikes. Although a strike resulting from teacher discontent could be enjoined, an injunction could be violated and the Board might be understandably reluctant to jail violators because of political interests, fear of creating an interminable deadlock, and the problems—more serious with teachers than with some other municipal employees—of replacing jailed workers. A strike, in addition to halting school operations, would diminish student respect for teachers, administrators, or both. Examination of the Board's situation, then, reveals a need for collective bargaining power which would justify a court, in light of previous decisions, in finding that the Board has collective bargaining power.

A court inclined to find the Board's need sufficient to imply collective bargaining power should not be deterred, as some courts passing on municipal collective bargaining contracts have been, by view-

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34 See cases cited note 33 supra.
36 Seitz, supra note 7, at 42.
37 See City of Los Angeles v. Los Angeles Building Council, 94 Cal. App. 2d 36, 210 P.2d 305 (1949); Fellows v. LaTronica, 151 Colo. 300, 377 P.2d 547 (1962); Dade County v. Amalgamated Ass'n of Street Employees, 157 So. 2d 176 (Fla. Ct. App. 1963) (per curiam), appeal dismissed, 166 So. 2d 149 (Fla.), cert. denied, 379 U.S. 971 (1964); Mugford v. Mayor and City Council of Baltimore, 185 Md. 266, 44 A.2d 745 (1945); City of
ing such contracts as impermissible "delegations of power." Courts have not explained what is meant by "delegation," but if, as appears likely, "delegation" consists of the municipal body's binding itself and thereby limiting its freedom of action in the future, it is identical with "contracting," which has the same binding effect. Other types of contracts have frequently been sustained as proper exercises of implied power. Seen in this light, the belief that a municipality can never bind itself is mistaken and the "delegation" label should not defeat any contract for which power would otherwise be implied.

Although "delegation" should pose no obstacle to a court willing to


38 A typical statement is: "To the extent that they [matters of wages, hours, and working conditions] are left to the discretion of any City department or agency, the City authorities cannot delegate or abdicate their continuing discretion. Any exercise of such discretion is at all times subject to change or revocation in the exercise of the same discretion." Mugford v. Mayor and City Council of Baltimore, 185 Md. 266, 44 A.2d 745 (1945).

39 However, the courts may be concerned with an entirely different problem when they employ the "delegation" label to strike down collective bargaining contracts. "Delegation" may refer to the giving of power to the majority union to bargain for members and non-members alike. The courts may fear that this power will be used to discriminate against non-members. But the school board, since its responsibility is public and its actions are highly newsworthy, is less likely than a private employer to agree to terms which are patently discriminatory. In addition, courts could require the majority union to give fair representation to all employees, as is required of majority representatives protected by the National Railway Labor Act and the National Labor Relations Act. Syres v. Local 23, Oil Workers Int'l Union, 350 U.S. 892, reversing 223 F.2d 739 (5th Cir. 1955); Wallace Corp. v. NLRB, 323 U.S. 248 (1944); Steele v. Louisville & N.R.R., 323 U.S. 192 (1945). The rationale of those cases, that the union assumes the duty to represent all employees when it uses the authority of the Act to become their exclusive representative, could be applied to a union taking advantage of the authority granted by state statute to become the exclusive representative of a municipal body's employees. See Cox, The Duty of Fair Representation, 2 Vill. L. Rev. 151 (1957). If the courts find they have no power to impose such a requirement, they might, rather than invalidating all municipal collective bargaining contracts, sustain only those contracts which include a clause requiring fair representation of all employees.

infer the power to bargain collectively, several principles which might limit collective bargaining power deserve attention.

II. LIMITING PRINCIPLES

Binding a Future Administration

A contract binding the Chicago Board of Education beyond the contracting officers' term of office would not only prevent those officers from making subsequent adjustments taking into account increased experience and unexpected needs, but would render at least temporarily ineffectual any public pressure exerted on the selection of successors. While a few cases suggest that any such contract by a municipal body is illegal,\(^1\) a more practical view which also finds judicial support\(^2\) is that such a contract may be valid if made in good faith and if its duration beyond the contracting officers' term of office is "prompted by the necessities of the situation."\(^3\) A contract might properly extend beyond the contracting officers' term if that term were of far shorter duration than that involved in the usual collective bargaining contract in public employment. Unreasonable limitation on the duration of a contract might expose the municipal body to the discontent of workers who believe they have received inadequate security and to the expense of negotiating a new contract in the near future. However, since members are appointed to the Chicago Board of Education only once a year,\(^4\) it appears that a contract exceeding the term of all its members would be unjustified.

Equal Protection

Several courts have suggested that exclusive representation provisions of municipal collective bargaining contracts may deny to minority employees or their unions the equal protection of the laws guaranteed by the fourteenth amendment to the United States Constitution, but the nature of the abridgment is never made completely

\(^1\) E.g., City of Springfield v. Clouse, 356 Mo. 1239, 206 S.W.2d 539 (1947), invalidating a collective bargaining contract and stating, inter alia: "Of course, no legislature could bind itself or its successor to make or continue any legislative act." Id. at 1251, 206 S.W.2d at 545.


\(^3\) Id. at 559.

\(^4\) ILL. REV. STAT. ch. 122, § 34-3 (1965). The members of the Board are appointed by the Mayor with the approval of the City Council. Thus, the effect of the public is only indirect and it is only this effect which would be abridged by a contract extending beyond one year.
clear. An Ohio court has suggested that "no such law permitting a public board or body to designate one organization as exclusive bargaining agency has been enacted, because its unconstitutionality would be beyond question."\(^{46}\) The court referred to the fourteenth amendment clauses regarding the abridgment of privileges and immunities and the denial of equal protection and then stated that an intention that employees should stand on an equal basis "would be violated by according to some employees the right to bargain collectively . . . through representatives of their own choosing, while denying that right to others through exclusive recognition of one union."\(^{46}\)

On the other hand, in *Civil Service Forum v. New York City Transit Authority*\(^{47}\) a minority union contended that a municipal collective bargaining contract excluding it from representing its members in grievance proceedings discriminated in favor of majority unions and gave such unions "preferential advantages" over the minority union and its members, thereby depriving them of "equal protection of the laws." The New York Supreme Court rejected this argument, stating that such a contract was more efficient than separate contracts with each union and was within "the broad powers conferred upon the Authority."\(^{48}\)

There would appear to be no denial of equal protection to the unions\(^{48}\) since a "majority union" can receive reasonable special treat-

\(^{46}\) City of Cleveland v. Amalgamated Ass'n of Street Employees, 30 Ohio Op. 395, 408 (C.P. 1945). By the same reasoning, abridgment of the equal protection guaranteed by the due process clause of the fifth and fourteenth amendments would occur under the exclusive representation provisions of the National Labor Relations Act and state labor statutes. However, the constitutionality of those provisions is not doubted.

It should be noted that a taxpayer, as opposed to a minority employee, or a minority union, might not have standing to raise the equal protection and the right to petition questions, because he could show no injury to his rights. However, he might establish standing to oppose a collective bargaining contract by asserting that the contract would raise labor costs and thereby raise taxes. Golden v. City of Flora, 408 Ill. 129, 96 N.E.2d 506 (1951). Once a taxpayer's standing is established, a court might examine the equal protection and right to petition questions on its own motion. See 1 Davis, Administrative Law Treatise § 22.07 (1953).

\(^{47}\) City of Cleveland v. Amalgamated Ass'n of Street Employees, 30 Ohio Op. 395, 407 (C.P. 1945) (quoting with approval from intervening minority union's brief). See also the lower court decision in Mugford v. Mayor and City Council of Baltimore, 9 CCH Lab. Cas. 66996, 67000 (Md. Cir. Ct. 1944), 9 Mun. L.J. 118, 119 (1944), stating that "such preferences" as those embodied in an exclusive representative provision "are forbidden in the public service."


\(^{49}\) Conceivably a court could hold that a union, if it is only an association, is not a "person" entitled to equal protection. An unincorporated union is not a citizen entitled to either the rights guaranteed by the privileges and immunities clause of the fourteenth
ment if such treatment is for a legitimate municipal purpose.\textsuperscript{50} Collective bargaining can be expected to serve the legitimate purpose of minimizing teacher discontent, and exclusive representation may be the cheapest and most effective means to bargain collectively. In both negotiations and grievance proceedings an employer saves time and simplifies procedure by conferring with only one union. Agreement may be expedited when each party has become familiar with the interests and techniques of the other. Compromise is more likely when a union knows that if it yields on some points, it, rather than a rival union, will be the recipient of the employer's corresponding concessions and the resulting appreciation of the employees.

The same considerations suggest that members of minority unions are not denied equal protection by exclusive representation. Assuming that the majority union will be required by the courts or the contract to represent all employees fairly,\textsuperscript{51} the minority employees would suffer only in that their preference for a particular representative would not prevail. The sacrifice of the minority employees' interests, like the sacrifice of the more substantial interests of the minority unions, would not appear to constitute an illegal abridgment of equal protection. In fact, even if the courts should be unable to impose a duty of fair representation on the majority union, the resulting danger to the interests of the minority employees under an exclusive representation provision might be justified by the desirability of quick and inexpensive settlement with employees.\textsuperscript{52}

\footnote{amendment, Hague v. CIO, 307 U.S. 496, 514 (1939), or the right to assert diversity of citizenship, United Steelworkers of America v. R. H. Bouligny, Inc., 382 U.S. 145 (1965). But corporations are entitled to equal protection rights, Louis K. Liggett Co. v. Lee, 288 U.S. 517 (1933); Santa Clara Co. v. Southern Pac. R.R., 118 U.S. 394 (1886), and the Supreme Court, without discussing the question of standing, passed on the merits of an equal protection question raised by unincorporated unions in Alabama State Federation of Labor v. McAdory, 325 U.S. 450 (1945).}

\footnote{50 McGowan v. Maryland, 366 U.S. 420 (1961) (state may favor one group over another if not arbitrary).}

\footnote{51 See note 39 supra.}

\footnote{52 Some courts have noted an argument against municipal collective bargaining based on the statement that "the government is established and operated for all the people and not for the benefit of any person or group." Local 611, International Bhd. of Electrical Workers v. Town of Farmington, 75 N.M. 398, 399, 405 P.2d 293, 295 (1965). Though this proposition is never explained, it may well be based on notions about equal treatment between employees and the remainder of the public rather than among employees or among unions. The argument may be that equal protection is denied when public employees are permitted to have their gains protected in contracts while other interest groups are not. The answer to this is that public employees have a different relationship with the government than do interest groups which are denied contracts and are forced to rely, for instance, on lobbying. Public employees are in a business relationship with the municipal government and give considerations for the government's binding promises. Other interest groups, such as building contractors who have business
The Right to Petition

The first amendment to the United States Constitution, applicable to the states through the fourteenth amendment, provides: "Congress shall make no law . . . abridging . . . the right of the people . . . peaceably to assemble, and to petition the government for the redress of grievances." An exclusive representation provision in a municipal collective bargaining contract stating that the employer will negotiate only with the majority union may be thought to limit the constitutional right of the non-members to petition the municipal body, their employer. A related and more troublesome question is raised in the unusual situation where a contract provides that the municipal body will engage in grievance proceedings with the majority union or individual employees but not with minority groups. Such a provision was examined by the New York Supreme Court in Civil Service Forum v. New York City Transit Authority and the contention that it violated the right to petition was rejected without discussion. It would seem that the right to petition applies to both individuals and groups; the right might create a duty on the part of the government to give petitions some attention, if only to read them. A contract forbidding the government to give even such minimum attention to minority petitions thus might be unconstitutional. Even if this contention were accepted, however, the state could constitutionally deny a minority group access to any grievance proceeding which involved more than an opportunity simply to state a complaint. The right to petition surely does not include, for instance, the right to a series of appeals and eventual arbitration. Furthermore, no court has suggested that it is unconstitutional for the government to refuse to negotiate at all relationships with the municipal government, receive contractual protection as full as that afforded by a collective bargaining contract.

53 De Jonge v. Oregon, 299 U.S. 353 (1937). It would seem that petitions to state and local governments as well as to the federal government are protected. State constitutions also protect the right to petition. E.g., N.Y. Const. art. I, § 9; Ill. Const. art. II, § 17.

54 See Note, supra note 7, 1965 Wis. L. Rev. at 678-79. Arguably there is only a right to petition as a citizen, not as an employee, but it would be difficult to determine in what capacity a citizen was requesting better pay for teachers if he were both a teacher and a resident of the school district, possibly with school age children.


56 This notion is supported by the close relationship between the right to petition and the right to assemble. Some courts treat both as one right. See, e.g., De Jonge v. Oregon, 299 U.S. 353 (1937). There is remarkably little authority discussing the right to petition.

57 Were the government obligation less, the right to petition would be indistinguishable from the right to free speech. See Brown, The Right to Petition: Political or Legal Freedom?, 8 U.C.L.A. L. Rev. 729, 732-33 (1961).
with employees; refusal to negotiate with minority groups, accordingly, should not be unconstitutional.

An additional argument for the constitutionality of contractual limits on representation rights is that since the government must be free to establish reasonable procedures for hearing grievances, it may, while permitting all groups to present grievances, require that the grievances be presented through the agency of a certified representative, the majority union.

III. CONCLUSION

Because of the absence of any clear indication of the General Assembly’s intent respecting collective bargaining power in the sections of the School Code of 1961 relating to the Chicago Board of Education, the Board’s need for such power must be examined to determine whether it can be implied. Such an examination suggests that the assistance collective bargaining power might provide in relieving teacher discontent is such that a court would be justified in either inferring or denying such power. A court otherwise prepared to find implied collective bargaining power should not be discouraged by the illusory problem of “delegation of power,” but the duration of the contract should be limited to the one year period during which the Board retains the same membership. An exclusive representation provision would not deny equal protection to minority teachers, nor would it unconstitutionally deny the right to petition if the Board at least examines suggestions made by minority unions.