Fordham Urban Law Journal

Volume 3 | Number 3 Article 14

1975

Criminal Law- Reckless Endangerment and Coercion- Union Officials May be Liable to Criminal Prosecution in Strike of Essential Public Employees. People v. Vizzini, 78 Misc. 2d 1040, 359 N.Y.S.2d 143 (Sup. Ct. 1974).

James Clark Quinn

CRIMINAL LAW—Reckless Endangerment and Coercion—Union Officials May Be Liable to Criminal Prosecution in Strike of Essential Public Employees. *People v. Vizzini*, 78 Misc. 2d 1040, 359 N.Y.S.2d 143 (Sup. Ct. 1974).

Defendants, officers of the Uniformed Firefighters Association (UFA), were charged with reckless endangerment in the second degree, attempted coercion, reckless endangerment of property, and related crimes.[1] The basis of these charges was the five and one-half hour New York City fireman's strike called by defendants despite express Taylor Law[2] prohibitions against strikes by public employees.[3] Defendants moved to dismiss the indictment on the grounds that a strike by firemen could not be the basis of a criminal prosecution,[4] arguing that the Taylor Law provided the exclusive remedies and sanctions for public employee labor disputes. The New York Supreme Court denied defendants' motion to dismiss,[5] and permitted them to plead guilty to one charge of reckless endangerment.[6]

---

1. People v. Vizzini, 78 Misc. 2d 1040, 1042, 359 N.Y.S.2d 143, 146-47 (Sup. Ct. 1974).

2. N.Y. CIV. SERV. LAW § 210 (McKinney 1973).

3. Defendants Richard Vizzini, John O'Sullivan, and Dominick Gentiluomo were officers of the Uniformed Firefighters Association, the union representing New York City's 10,000 firemen. N.Y. Times, May 29, 1974, at 20, col. 3. While the Association was involved in negotiating a contract with New York City, a resolution was adopted by the membership of the UFA authorizing the Executive Board to conduct a strike ballot. A mailed secret ballot was then conducted under the auspices of the Honest Ballot Association. The results indicated that the firemen had actually voted 4,119 to 3,827 *not* to authorize the strike. *Id.* Nov. 17, 1973, at 1, col. 8. Subsequently, the defendant Vizzini arranged with the other officers to suppress the results of the strike ballot. He announced that the membership had voted to authorize the Executive Board to call a strike and pledged a strike to more than 3,000 off-duty firemen at a union rally. *Id.* Nov. 6, 1974, at 1, col. 6. The next day, Vizzini announced that the firemen went on strike, and the first strike in the 108 year history of the New York City Fire Department began.

4. 78 Misc. 2d at 1042, 359 N.Y.S.2d at 147.

5. *Id.* at 1049, 359 N.Y.S.2d at 153.

6. The court also required that the defendants make a three-year no-strike pledge, in which they pledged not to "advocate, threaten, cause, call, or support a strike." The defendants also agreed not to appeal the

New York State has utilized various statutory procedures to deal with the problem of public employee strikes. In 1947, the state legislature passed the Condon-Wadlin Act,[7] which carried severe penalties for public employee strikes.[8] The harsh strictures of Condon-Wadlin were, however, rarely imposed because of provisions mandating the dismissal of striking public employees.[9] Repealed in 1967,[10] the Act was replaced by the more lenient Taylor Law,[11] which provides for penalties against both the individual striker and the union.[12]

The Taylor Law also established procedures for resolving public

---

court's ruling. N.Y. Times, June 19, 1974, at 1, col. 4. They were subsequently sentenced to a three-year probationary period with a stern warning by Justice Roberts that any violation of their no-strike pledge would permit him to impose the appropriate criminal penalties. *Id.*, July 25, 1974, at 37, col. 1.

7. Law of Mar. 27, 1947, ch. 391 [1947] N.Y. Laws 842 (repealed 1967).

8. *Id.* Public employee strikes were prohibited under the Condon-Wadlin Act. If a strike did occur, the striker's employment was terminated. Should he reenter public employment, his compensation could not exceed that which he earned at the time of the strike and he was prohibited from receiving any salary increases for three years. Further, the striker had to serve for the succeeding five years without tenure, on probation, and at the pleasure of the appointing authority. *Id.*

9. In New York City, the Condon-Wadlin "automatic" penalty provisions were used only twice in the twenty years of the Act's existence. DiMaggio v. Brown, 19 N.Y.2d 283, 289, 225 N.E.2d 871, 874, 279 N.Y.S.2d 161,165 (1967). Municipalities were generally reluctant to seek strict application of the statute. N.Y. Times, Jan. 5, 1966, at 17, col. 5. Indeed, in New York City, following the transit strike of 1965-66, the pay increase granted the striking transit workers was prohibited in a successful court suit brought by a citizen. Weinstein v. New York City Transit Authority, 49 Misc. 2d 170, 267 N.Y.S.2d 111 (Sup. Ct. 1966). The state legislature thereupon acted with unusual haste and compromise, and one of serveral bipartisan bills was passed granting retroactive forgiveness to the strikers.

10. Law of Apr. 21, 1967, ch. 392 [1967] N.Y. Laws 1102.

11. N.Y. CIV. SERV. LAW §§ 200-14 (McKinney 1973).

12. *Id.* § 210. The striker is subject to probation of one year during which time he serves without tenure, *id.* § 210(2)(f), and a loss of two day's pay for every day on strike, *id.* § 210(2)(g). The union is subject to a loss of its union checkoff rights and a judicial fine for violation of the Taylor Law. N.Y. JUDICIARY LAW § 751(2)(a) (McKinney Supp. 1974).

employee disputes.[13] If, during the course of negotiations between the government and the police or fire unions, the State Public Employment Relations Board (PERB) determines that an impasse exists, the Board is required to appoint a mediator.[14] If the mediator fails to end the controversy within fifteen days, either party may request the appointment of a fact-finding commission.[15] If the matter is unresolved after thirty days, the fact-finder makes advisory recommendations and findings of fact.[16] If this action fails to settle the dispute, a 1974 amendment to the Taylor Law empowers the PERB to refer the matter to an arbitration panel[17] which, after holding public hearings, makes final and binding[18] recommendations[19] to the parties.

The provisions of the Taylor Law dealing with police and fire unions refer only to negotiations with unions outside of New York City.[20] Disputes involving New York City's police and firemen are

13. N.Y. CIV. SERV. LAW § 209 (McKinney Supp. 1974).
14. *Id.* § 209(4)(a).
15. *Id.* § 209(4)(b).
16. *Id.*
17. *Id.* § 209(4)(c)(i).
18. *Id.* § 209(4)(c)(vi).
19. *Id.* § 209(4)(c)(iv). The provisions of the New York Civil Service Law mandating binding arbitration when an impasse is reached were recently ruled unconstitutional on the grounds that they permitted the arbitration board to make legislative decisions dealing with expenditures of tax money. City of Amsterdam v. Helsby, 79 Misc. 2d 676, 362 N.Y.S.2d 698 (Sup. Ct. 1974). The arbitration panel is composed of one member selected by the city, one selected by the union, and one member approved by both. The court noted that this provision gave the 25,000 citizens of Amsterdam the same representation on the panel as the 90-100 police and firemen represented by the union. *Id.* at 683, 362 N.Y.S.2d at 705. The court then found the provisions unconstitutional as a violation of the one-man, one-vote principle. *Id.* at 685, 362 N.Y.S.2d at 707-09. The court noted that cities are free to submit voluntarily to compulsory arbitration, as New York City has done, *see* text accompanying notes 20-27 *infra*, but they cannot be compelled by the state to accept it. 79 Misc. 2d. at 696, 362 N.Y.S.2d at 718.
20. N.Y. CIV. SERV. LAW § 209(4) (McKinney Supp. 1974). Therefore, the foregoing arbitration provisions apply only with respect to police and firemen outside of New York City. The provisions dealing with public employees other than police and firemen provide for a PERB-appointed

covered by the New York City Collective Bargaining Law,[21] the city's implementation of the state's Taylor Law. This law permits the city's Office of Collective Bargaining (OCB) to appoint a mediation panel.[22] If mediation is unsuccessful and the Director of the OCB determines that all collective bargaining procedures have been exhausted, he may appoint an impasse panel.[23] That panel holds hearings, takes whatever action it deems necessary to break the impasse,[24] and issues a report which is submitted to the parties.[25] A dissatisfied party may appeal the decision to the OCB,[26] which then makes a final determination that is binding upon the parties.[27] These provisions, in effect at the time of the firemen's strike, were unable to prevent the walkout.[28]

Other states have developed a variety of methods to deal with public employee disputes. In 1970, Hawaii and Pennsylvania became the first states to permit public employee strikes, though on

---

mediator, *id.* § 209(3)(a), and fact-finding board, *id.* § 209(3)(b). If the dispute is not resolved eighty days before the end of the fiscal year of the governmental unit, the fact-finding board makes recommendations to the chief executive officer of the governmental unit involved, and to the employee organization, and also makes its recommendations public shortly thereafter. *Id.* § 209(3)(c). If the impasse continues after this, the PERB shall have the power to "take whatever steps it deems appropriate to resolve the dispute," including making recommendations and assisting in setting up voluntary arbitration. *Id.* § 209(3)(d). If the union and the public employer do not accept the recommendations of the fact-finding board, the chief executive officer of the government involved shall submit his recommendations to the legislative body, which conducts a public hearing and thereafter takes "such action as it deems to be in the public interest, including the interest of the public employees involved." *Id.* § 209(3)(e).

21. NEW YORK, N.Y., ADMIN. CODE ANN. ch. 54, §§ 1173-3.0 to -12.0 (Supp. 1974).

22. *Id.* § 1173.7-0(b)(2).

23. *Id.* § 1173-7.0(c)(2).

24. *Id.* § 1173-7.0(c)(3)(a).

25. *Id.*

26. *Id.* § 1173-7.0(e)(4)(a).

27. *Id.* § 1173-7.0(e)(4)(b).

28. These sections of the Collective Bargaining Law, *see* text accompanying notes 19-25 *supra*, were passed on January 12, 1972, and were to take effect immediately. City of New York Local Law No. 1, LOCAL LAWS OF CITIES, COUNTIES, TOWNS AND VILLAGES, N.Y., 144 (1972).

a limited basis.[29] However, both states recognize the importance of uninterrupted services of police and firemen, and strikes by these and other groups essential to the public health, safety, and welfare are prohibited.[30] Alaska[31] and Vermont[32] also permit limited strikes in the public sector; however, strikes by police or firemen are prohibited.[33] Rhode Island has classified public employees into four categories[34]—police,[35] firemen,[36] teachers,[37] and others.[38] All are required to meet and bargain with the public employer[39] and are pro-

29. Haemmel, *Government Employees and the Right to Strike—The Final Necessary Step*, 39 TENN. L. REV. 75, 85 (1971). Hawaii permits strikes after exhaustion of mediation, fact-finding, permissive arbitration, the passage of sixty days following the recommendations of the fact-finding commission, and after ten days' notice has been given. Strikes which pose a danger to the public health and safety are prohibited. HAWAII REV. STAT. §§ 89-11 to -12 (Supp. 1974). Pennsylvania expressly prohibits strikes by guards at prisons and mental hospitals, or employees directly concerned with and necessary to the functioning of the courts. PA. STAT. ANN. tit. 43, § 1101.1001 (Supp. 1974). Strikes by other services are prohibited if they create a "clear and present danger . . . to the health, safety, or welfare of the public." *Id.* § 1101.1003. Separate provisions of the labor law mandate binding arbitration in the case of police and firemen. *Id.* § 217.1-.7.

30. *See* note 29 *supra*.

31. ALASKA STAT. § 23.40.200 (1972).

32. VT. STAT. ANN. tit. 21, § 1730 (Supp. 1974).

33. In both of these jurisdictions, strikes by others which are harmful to the public health, safety, or welfare are also prohibited. ALASKA STAT. § 23.40.200(b) (1972); VT. STAT. ANN. tit. 21, § 1730(3) (Supp. 1974).

34. R.I. GEN. LAWS ANN. §§ 28-9-1 to -9-26 (1968).

35. *Id.* §§ 28-9.2-1 to -9.2-14.

36. *Id.* §§ 28-9.1-1 to -9.1-14.

37. *Id.* §§ 28-9.3-1 to -9.3-16; *see* text accompanying notes 39-40 *infra*.

38. R.I. GEN. LAWS ANN. §§ 28-9.4-1 to -9.4-19; *see* text accompanying notes 39-40 *infra*.

39. The negotiation provisions with respect to teachers and municipal employees are basically the same as for police and firemen and provide for mediation or arbitration and good faith bargaining by the city and the employees. *See* R.I. GEN. LAWS ANN. §§ 28-9.3-9, .4-5, .4-10. These proceedings are initiated at the request of either party, whereas in the case of police and firemen, the arbitration provision is mandatory. *Id.* §§ 28-9.1-7 (firemen), 28-9.2-7 (police).

hibited against striking.[40] If no solution is reached, disputes are submitted to binding arbitration.[41]

All of the above statutes, including New York's Taylor Law, are civil in nature. The court in *Vizzini* rejected defendants' arguments that the Taylor Law provided the exclusive remedies with respect to a public employee strike,[42] and ruled that the Taylor Law will not protect a union leader from liability[43] for conduct which, if engaged in by another citizen, would be criminal.[44]

In *Vizzini*, individuals who precipitated a strike of public employees were subjected to criminal prosecutions for reckless endangerment under the New York Penal Law.[45] Reckless endangerment is divided into two degrees. The first degree forbids conduct by the defendant evincing a depraved indifference to human life which

---

40. *Id.* §§ 28-9.1-1 (firemen), 28-9.2-2 (police), 28-9.3-1 (teachers), 28-9.4-1 (other municipal employees).

41. *Id.* §§ 28-9.2-7 to -9 (police), 28-9.1-7 to -9 (firemen); *see* note 39 *supra*.

42. 78 Misc. 2d at 1044, 359 N.Y.S.2d at 148-49.

43. The court reasoned that where the legislature intended to excuse a union from liability it did so with specific legislative enactments. *Id.*, 359 N.Y.S. 2d at 149.

44. The court here relied on Caso v. District Council 37, 43 App. Div. 2d 159, 350 N.Y.S.2d 173 (2d Dep't 1973). This was a civil action brought by the Nassau County Executive to recover damages caused by a strike of New York City sewer treatment plant personnel. The union called its men out on strike and the plants were left unattended and billions of gallons of raw untreated sewage was released which eventually wound up on Nassau beaches. The court upheld the nuisance action of the county and rejected the claims of the union that the Taylor Law provided the exclusive remedies in labor actions. Interestingly, the court in *Caso* specifically rejected the theory of an earlier civil damage action brought by businessmen for damages as a result of New York City's transit strike, stating: "The assumption in *Jamur* [Jamur Prods. Corp. v. Quill, 51 Misc. 2d 501, 273 N.Y.S.2d 348 (Sup. Ct. 1966)] that the risk of damage in the subway strike was unforeseeable should be rejected, since it is the very inevitability of extensive damage which led to the prohibition of public strikes." 43 App. Div. 2d at 163, 350 N.Y.S.2d at 177.

45. N.Y. PENAL LAW §§ 120.20, .25 (McKinney 1967); *see* text accompanying notes 46-49 *infra*.

creates a grave risk of death to another person.[46] The second degree[47] crime requires that the conduct be engaged in recklessly,[48] and that it create a substantial risk of serious physical injury to another person.[49] It need not be proved that the acts in question were directed against any specific individual.[50] Either actual knowledge of the serious risks involved, or knowledge which would inform a reasonable man of such risks, is sufficient to bring the actor's conduct within the purview of the statute.[51]

Defendants contended that the reckless endangerment statute was intended to prohibit and punish specific physical acts such as

46. N.Y. PENAL LAW § 120.25 (McKinney 1967) provides: "A person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person."

47. *Id.* § 120.20 provides: "A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which crates a substantial risk of serious physical injury to another person."

48. The Penal Law defines "reckless" in the following manner: "A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation." *Id.* § 15.05.

49. *See* People v. Graham, 41 App. Div. 2d 226, 227, 342 N.Y.S.2d 361, 363 (2d Dep't 1973); People v. Smith, 76 Misc. 2d 867, 352 N.Y.S.2d 92 (J. Ct. 1973).

50. People v. Graham, 41 App. Div. 2d 226, 227, 342 N.Y.S.2d 361, 363 (2d Dep't 1973).

51. People v. Mason, 198 Misc. 452, 456, 97 N.Y.S.2d 462, 466 (County Ct. 1950). That the actor does not view his conduct as dangerous is of no consequence, as his lack of realization of the danger may be attributable to his "abnormally reckless temperament or from unexpectedly favorable results of previous conduct of the same sort." People v. Eckert, 2 N.Y.2d 126, 131, 138 N.E.2d 794, 797, 157 N.Y.S.2d 551, 556 (1956) (citations omitted). The requirement of scienter is distinguishable from that required to establish civil liability in negligence actions, since the latter requires merely that the actor fail to perceive the risk. DOWSEY, CHARGES TO THE JURY AND REQUESTS TO CHARGE IN A CRIMINAL CASE IN NEW YORK, Pt. 1, Form # 220, at 11-10 (1969).

shooting a rifle into a crowd or driving recklessly at high speeds.[52] The present statute has in fact been applied to such situations.[53] Historically, reckless endangerment was dealt with on an ad hoc basis within detailed Penal Code provisions for a wide variety of specific offenses.[54] For example, under the former Penal Law, a person who broke a contract to work, thereby creating a danger to life or causing bodily injury, or exposing valuable property to destruction, was guilty of a misdemeanor.[55] Common to these specific offen-

52. 78 Misc. 2d at 1048, 359 N.Y.S.2d at 152.

53. *See, e.g.*, People v. Graham, 41 App. Div. 2d 226, 342 N.Y.S.2d 361 (2d Dep't 1973) (defendant put gun to person's chest and pulled the trigger, not realizing that the gun was not loaded, and was convicted of first degree reckless endangerment); People v. Nixon, 33 App. Div. 2d 403, 309 N.Y.S.2d 236 (3d Dep't 1970) (defendant pointed shotgun at police officer and refused orders to drop the weapon); People *ex rel.* Clifford v. Krueger, 59 Misc. 2d 87, 297 N.Y.S.2d 990 (Sup. Ct. 1969) (defendant fired a rifle shot into his sister's house, no one was injured).

54. There are many examples of the reckless conduct statutes in the old Penal Law. N.Y. PENAL LAW OF 1909 (McKinney 1967), for example, dealt with the following: running horses on public highway (*id.* § 194); failure to protect the public from attack by wild animals and reptiles (*id.* § 197); dueling (*id.* §§ 730-37); throwing knives or shooting at a human being in course of an exhibition (*id.* § 831); hazing (*id.* § 1030); negligently furnishing insecure scaffolding (*id.* § 1276); raising unauthorized pressure of steam in boiler (*id.* § 1891); generation of unsafe amount of steam (*id.* § 1892); driving vehicles or riding animals on the sidewalk (*id.* § 1909); refusal to labor by breaking contract (*id.* § 1910); placing recepticals on window sills (*id.* § 1917); abandonment of containers which might attract children (*id.* § 1920); failure to fence off ice-cutting operations on a lake or river (*id.* § 1922); failure to cover abandoned wells or cesspools (*id.* § 1923).

55. *Id.* § 1910 provided: "A person, who wilfully and maliciously, either alone or in combination with others, breaks a contract of service or hiring, knowing, or having reasonable cause to believe, that the probable consequence of his so doing will be to endanger human life, or to cause grievous bodily injury, or to expose valuable property to destruction or serious injury, is guilty of a misdemeanor." It appears that the application of the reckless endangerment statute is limited to the leaders of the union, *i.e.*, those who actually call the men out on strike. While injunctive relief is ordinarily granted against the strikers, the union itself, and/or the union leaders, *see* Annot., 37 A.L.R.3d 1147, 1154 (1971), liability for the criminal action is apparently limited to those who, by their action, create a sub-

ses, however, was a legislatve judgment that the prohibited conduct created a substantial risk of bodily injury to innocent persons—a risk out of proportion to any possible utility of the conduct.[56] The present statute is not limited to these cases; it is designed to encompass all acts which create substantial risk of injury to another person.[57]

The essential role of continued fire protection in a city has long been recognized in the statutory[58] and common law[59] histories of

---

stantial risk of injury. In the case of individual firemen the creation of the risk by one man's striking would be difficult to prove. The creation of the risk is far more apparent vis-a-vis the leader who calls 10,000 firemen off the job.

56. The reckless endangerment sections of the present Penal Law largely originate from section 211.2 of the American Law Institute's Model Penal Code, Proposed Official Draft of 1962: "Recklessly endangering another person. A person commits a misdemeanor if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury."

57. N.Y. PENAL LAW, § 120.20, Practice Commentary (McKinney 1967). *See also* People v. Graham, 41 App. Div. 2d 226, 342 N.Y.S.2d 361 (2d Dep't 1973). The reckless endangerment statute has been challenged as unconstitutionally vague and indefinite. However, when read in conjunction with section 15.05 of the Penal Law (defining "reckless"), the statute has been held to be constitutional. People v. Nixon, 33 App. Div. 2d 403, 406, 309 N.Y.S.2d 236, 239 (3d Dep't 1970); People v. Luchetti, 33 App. Div. 2d 566, 305 N.Y.S.2d 259 (2d Dep't 1969) (mem.). "The standards laid down by the statute are clear in their meaning and are capable of reasonable application to varying fact patterns." People v. Nixon, 33 App. Div. 2d 403, 406, 309 N.Y.S.2d 236, 239 (3d Dep't 1970). A statute meets the court's test of constitutionality "so long as it affords 'some comprehensible guide, rule or information as to what must be done and what must be avoided, to the end that the ordinary member of society may know how to comply with its requirements.'" People v. Klose, 18 N.Y.2d 141, 146, 219 N.E.2d 180, 182, 272 N.Y.S.2d 352, 355 (1966), *quoting* People v. Grogan, 260 N.Y. 138, 145, 183 N.E.2d 273, 276 (1932); People v. Meola, 7 N.Y.2d 391, 394, 165 N.E.2d 851, 853, 198 N.Y.S.2d 276, 279 (1960). *See also* Nash v. United States, 229 U.S. 373 (1912); United States v. Brewer, 139 U.S. 278 (1890). What is forbidden by the reckless endangerment statute is the creation of a substantial risk of injury.

58. *See* text accompanying notes 28-40 *supra*. The old Penal Law in New York made it a criminal offense to interfere with the lawful efforts of firemen to extinguish fires. N.Y. PENAL LAW OF 1909, § 1914 (McKinney

various jurisdictions. The gravity of the situation is apparent in New York City where there were eighty fires in the five and one-half hour period of the strike.[60] A protracted strike of firemen in New York City has the potential for a disastrous loss of lives and property.[61] Labor unions and their leaders are obviously aware of this

---

1967): "A person who at any burning of a building is guilty of any disobedience to lawful orders of a public officer or fireman, or of any resistance to, or interference with, the lawful efforts of a fireman or company of firemen, to extinguish the same, or of any disorderly conduct likely to prevent the same from being extinguished, or who forbids, prevents or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor." *See also id.* § 1906(4) which required a person, under penalty of a misdemeanor, to assist in fighting forest fires. Indeed, the present N.Y. PENAL LAW § 195.15 (McKinney 1967) states: "A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any fireman in extinguishing a fire, or prevents or dissuades another from extinguishing or helping to extinguish a fire." Originally a class B misdemeanor, the offense was raised to class A misdemeanor after certain riotous incidents in New York City during which persons interfered with firemen attempting to extinguish fires. It is not quite clear why the defendants in the instant case were not charged with this offense. As the Practice Commentaries to the section point out, it was intended to cover conduct that was "not necessarily 'by means of intimidation, physical force, or interference, or, by means of any independently unlawful act', as is required by section 195.05." It is possible, however that the statute was designed to cover acts at the scene of specific fires, and thus would preclude action against Vizzini and his co-defendants. There have been no cases prosecuted under this statute, however, and it is extremely difficult to predict the precise use to be made of it.

59. *See* Fletcher v. Civil Serv. Comm'n, 6 Ill. App. 3d 593, 286 N.E.2d 130 (1972); Rockford v. International Ass'n of Firefighters, 98 Ill. App. 2d 36, 240 N.E.2d 705 (1968); Garavalia v. Stillwater, 283 Minn. 335, 168 N.W.2d 336 (1969); Grandview v. Moore, 481 S.W.2d 555 (Mo. App. 1972); City of Dover v. International Ass'n of Firefighters, Local 1312, ___ N.H. ___, 322 A.2d 918 (1974).

60. Altogether there were eighty fires during the five and one-half hour period of the strike, but headquarters personnel, probationary firemen and non-strikers went to the scene of 338 alarms, 187 of which were classified as "mischievous." N.Y. Times, Nov. 6, 1973, at 31, col. 1.

61. The damage in New York City was kept to a minimum during the strike by citizen volunteers, police, and probationary firemen who assisted the skeleton force of non-striking firemen. Fire Commissioner O'Hagan

potential.[62]

An interesting situation is presented if an offical of a public employee union threatens to call a strike, but in fact does not. Such conduct by the leaders of fire and other essential service unions may constitute criminal coercion.[63]

The New York Penal Law imposes criminal liability for coercion where one person compels another to act or refrain from acting by instilling in him a fear that if a demand is not complied with the actor will (among various other things) "engage in . . . conduct constituting a crime."[64]

The statute also imposes criminal liability for threatening to "cause a strike . . . injurious to some person's business . . . ."[65] Labor leaders are exempt from this specific provision, but where the

---

blamed false alarms on the strikers and criticized picketing firemen who blocked fire engines. In the Bronx, it was estimated that fewer than 10% of the sixty fire companies in the borough were prepared for some sort of fire-fighting. Commissioner O'Hagan estimated that "no borough in the city was even as much as 50% operational." N.Y. Times, Nov. 7, 1973, at 30-31. During the strike period, 2,200 firemen are normally on duty, yet only 138 UFA members actually reported for work. In addition, 275 officers of the Fire Department were prepared to perform duties normally assigned to UFA members.

62. *See* note 3 *supra*.

63. N.Y. PENAL LAW § 135.60(6)(McKinney 1967). The coercion section of the Penal Law provides that if one attempts to induce action by the threat of criminal activity, he is criminally liable. The action need not be that of the defendant, and may also be a threat of action by someone else. DOWSEY, *supra* note 51, at 8-32. Coercion consists of intimidating a person to do or refrain from doing something by instilling in him a fear that, on non-compliance with the demand, one of the several prohibited consequences will occur. *Id.* at 8-31. The threats may be either express or implied. *Id.* If the threat is of conduct that is criminal and the threat induces the action or non-action by the victim, the conduct is regarded as coercive. The law does not define the proscribed conduct in detail, and the area is broad enough to cover any type of illegal activity, excluding threats of physical injury and property damage, as these two areas are covered in another section of the statute. *Id.* at 8-34. *See also* N.Y. PENAL LAW §§ 135.60(1)-(2) (McKinney 1967).

64. N.Y. PENAL LAW § 135.60(3) (McKinney 1967).

65. *Id.* § 135.60(6).

threatened strike is for the benefit of union members, the section does not exempt threats by union leaders to engage in criminal conduct.

The *Vizzini* decision establishes that public union leaders may be held criminally liable when their conduct falls within the ambit of a criminal statute.[66] Thus, if a public union leader calls a strike which creates a substantial risk of serious injury to other persons, he is guilty of reckless endangerment;[67] if he threatens to call such a strike, he may be guilty of coercion.[68]

The decision in *Vizzini* subjects all leaders of essential public service unions to criminal liability if their actions place the public in "immediate peril."[69] The reckless endangerment and coercion charges lodged against the UFA leaders could apply with equal force to police unions—and possibly hospital workers and sanitation workers—if the union's action in striking would place the citizens of New York in immediate peril.[70] Nevertheless, it is doubtful that such laws will prevent strikes by public employee unions. The injunctive remedies and penalties set out in the Taylor Law have not deterred such strikes, nor have the various contempt judgments and fines levied against unions had a noticeable effect.[71] Indeed, public employees are prepared to strike in spite of legislative prohibitions.[72] If a union feels it is being cheated or that the employer is not negotiating in good faith, or that there is no other way to achieve its

66. 78 Misc. 2d at 1044, 359 N.Y.S.2d at 149.

67. *Id.* at 1047, 359 N.Y.S.2d at 151.

68. *See* N.Y. PENAL LAW § 135.60(6) (McKinney 1967)

69. 78 Misc. 2d at 1046, 359 N.Y.S.2d at 150.

70. *Id.*

71. Indeed, in the instant case, the UFA was fined $650,000 for contempt of court's orders. In summation, Justice Fine stated: "The strike was called after the court on November 5, 1973 had conferred with the parties and had suggested a method of settling the matter which would have avoided the strike. Due to the intransigence of the Union and its officers the settlement was not effectuated. However, on the next day while the strike was in progress, a settlement on practically the same terms was accepted by them and the strike was called off." 171 N.Y.L.J. 2, col. 3, (Sup. Ct. Jan. 30, 1974).

72. Lev, *Strikes by Government Employees: Problems and Solutions*, 57 A.B.A.J. 771 (1971).

objectives, there is apparently very little the employer or the state can do to prevent a strike.

James Clark Quinn