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PUBLIC OFFICERS AND EMPLOYEES

Labor Practices: Expand Prohibition Against Labor Strikes for State Employees to Include Essential Public Employees Whose Participation in Strikes Would Endanger the Health, Safety, Welfare, and Morals of Georgia Citizens

CODE SECTIONS:	O.C.G.A. §§ 45-19-1 to -5 (amended)
BILL NUMBER:	HB 1373
ACT NUMBER:	914
GEORGIA LAWS:	1998 Ga. Laws 1155
SUMMARY:	The Act expands the coverage of Georgia law prohibiting labor strikes by state employees to prohibit labor strikes by all essential public employees. Those public employees whose absence would endanger the health, safety, public welfare, and morals of the populace of Georgia are not allowed to strike, nor are they allowed to encourage other public employees to strike.
EFFECTIVE DATE:	July 1, 1998

History

In 1997, the City of Atlanta School Board chose not to award salary increases to most "classified employees," such as school bus drivers, cooks, and custodians, after it conducted a study concluding that Atlanta's classified employees "were earning more money than many of their suburban peers."[1] On September 10, 1997, 204 of the 317 school bus drivers employed by the City of Atlanta called in sick "to retaliate against the School Board's decision to withhold raises" that year.[2] The strike left "thousands of children stranded on street

1. Gail H. Towns, *No Raises for Bus Drivers: Atlanta School System Stands by a Report that Says Classified Employees Make More Money Than Metro Counterparts*, ATLANTA J. & CONST., Sept. 12, 1997, at C2.

2. Editorial, *Bus Strike Endangered Kids*, ATLANTA J. & CONST., Sept. 12, 1997, at A14 [hereinafter *Bus Strike*]; *see* Bill Torpy & Mara Rose Williams, *Bus Strike: Kids, Parents Left in Lurch by Event*, ATLANTA J. & CONST., Sept. 11, 1997, at B2; Gail H. Towns & Mike Morris, *Atlanta School Bus Strike Drivers End Sickout, Back on Routes*, ATLANTA J. & CONST., Sept. 11, 1997, at B1.

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corners."[3] "Some [students] waited for nearly two hours for [bus] drivers to make extra runs to pick them up."[4] Some students skipped school altogether, and others walked to school.[5] Special education students at East Rivers Elementary School were stranded at their bus stops because two buses did not show up to transport them to school.[6] The strike affected more than 26,000 students across the City of Atlanta.[7]

State Representative Bob Irvin of the 45th District, alarmed at the potential harm to the safety of Atlanta's children, contacted the legislative counsel of the General Assembly to determine whether the state government had any authority to end the strike.[8] The legislative council advised him that no Georgia law existed that would make the strike illegal and force bus drivers back to work.[9] After discovering that no legal remedy existed to prevent strikes by municipal employees and nonstate employees, Representatives Irvin, Kathy Ashe of the 46th District, Earl Ehrhart of the 36th District, H. Doug Everett of the 163rd District, and Bob Lane of the 146th District, united to sponsor HB 1373 to prevent another school bus driver strike or similar situation from happening.[10] Representative Ehrhart explained his rationale for supporting HB 1373:

> [As a result of the City of Atlanta school bus drivers' strike,] five- and six-year-olds were left waiting at the bus stops, and no one picked them up, and there was no recourse for the government. . . . This is the perfect example of why [public employees] are not allowed to strike. [The danger to the children] was frightening. The government was trying to prevent them from striking, and [it] had no recourse.[11]

Similarly, Representative Everett explained: "We don't want police, firemen, public safety workers, or even trash patrol workers to

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3. *Bus Strike*, *supra* note 2.
4. Gail H. Towns, *Atlanta School Bus Strike: "Sick" Drivers Expected to Be Recovered*, ATLANTA J. & CONST., Sept. 11, 1997, at B1.
5. *See id.*
6. *See* Torpy & Williams, *supra* note 2.
7. *See* Towns, *supra* note 4.
8. *See* Telephone Interview with Rep. Bob Irvin, House District No. 45 (May 29, 1998) [hereinafter Irvin Interview].
9. *See id.*
10. *See id.*
11. Telephone Interview with Rep. Earl Ehrhart, House District No. 36 (May 27, 1998) [hereinafter Ehrhart Interview].

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strike. . . . Their jobs are vital. They have people in the palms of their hands. People in those positions should not be able to endanger the safety and welfare of other citizens."[12]

Representative Ashe, who co-sponsored HB 1373, stated: "It seemed unfair that we [prohibited strikes by] state employees but [did] not [prohibit strikes in] other levels [of government]. Other levels such as municipality employees and others are as necessary. . . . [HB 1373] just made good common sense."[13]

HB 1373

The Act amends prior law,[14] which prohibited strikes by state employees, to include additional public employees in the prohibition.[15] The Act changes Code sections 45-19-2 to -5, which formerly applied only to employees at the state level, so that the prohibition against labor strikes in those Code sections now applies to "public employees," defined in the Act to include employees of the State's political subdivisions.[16] In all, the General Assembly considered five versions of the bill.[17]

HB 1373, As Introduced

HB 1373, as introduced, stated that a public employee is "any person holding a position by appointment or employment in the government of this state or the government of a county, municipality, school system, or other political subdivision of this state or in any agency, authority, board, commission, or public institution of this state or political subdivision thereof."[18] According to Representative Irvin, the bill, as introduced, applied to all state and local government employees.[19]

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12. Telephone Interview with Rep. H. Doug Everett, House District No. 163 (May 26, 1998) [hereinafter Everett Interview].

13. Telephone Interview with Rep. Kathy Ashe, House District No. 46 (May 26, 1998) [hereinafter Ashe Interview].

14. *See* 1962 Ga. Laws 459 (formerly found at O.C.G.A. §§ 45-19-1 to -5 (1992)).

15. *See* O.C.G.A. §§ 45-19-1 to -5 (Supp. 1998).

16. *Compare* 1962 Ga. Laws 459, § 2, at 460 (amended in 1990 Ga. Laws 8, § 45, at 37) (formerly found at O.C.G.A. § 45-19-1 (1992)), *with* O.C.G.A. §§ 45-19-1 to -5 (Supp. 1998).

17. *See* HB 1373, as introduced, 1998 Ga. Gen. Assem.; HB 1373 (HCA), 1998 Ga. Gen. Assem.; HB 1373 (HFA1), 1998 Ga. Gen. Assem.; HB 1373 (HFA2), 1998 Ga. Gen. Assem.; HB 1373 (SFA), 1998 Ga. Gen. Assem.

18. HB 1373, as introduced, 1998 Ga. Gen. Assem.

19. *See* Irvin Interview, *supra* note 8.

House Committee Amendment

Representative Tom Bordeaux, of the 151st District, would not support the original version of HB 1373 because its coverage was not limited to "essential public employees."[20] As a result, Representative Bordeaux quickly drafted the following amendment in the House Industrial Relations Committee:

> "Public employee" means any person holding a position by appointment or employment in the government of this state or the government of a county, municipality, school system, or other political subdivision of this state or in any agency, authority, board, commission, or public institution of this state or political subdivision thereof *which position provides essential public services the nonperformance of which would endanger the public health, safety, welfare, or morals.*[21]

First House Floor Amendment

After the Committee meeting was over, Representative Irvin realized that the House Committee amendment narrowed the scope of the existing law regarding state employees.[22] Prior to the Act, Code sections 45-19-1 to -5 provided that no state employees could strike, whether they were essential or not.[23] Representative Irvin was concerned that the placement of the "essential public services" language at the end of the definition of public employees would narrow the prohibition against strikes for state employees to cover only essential state employees, even though the previously existing law prohibited strikes by all state employees.[24] Representative Irvin explained that:

> [the version of the bill discussed in committee] would have narrowed the group of state employees [covered under the previously existing law] and that was not the intention. It was not intended to narrow the existing laws about state

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20. *See* Irvin Interview, *supra* note 8.

21. HB 1373 (HCA), 1998 Ga. Gen. Assem. (emphasis added); *see* Supplemental Telephone Interview with Rep. Bob Irvin, House District No 45 (June 11, 1998) [hereinafter Supplemental Irvin Interview].

22. *See* HB 1373 (HCA), 1998 Ga. Gen. Assem.; Supplemental Irvin Interview, *supra* note 21.

23. *Compare* 1962 Ga. Laws 459 (formerly found at O.C.G.A. §§ 45-19-1 to -5 (1992)), *with* O.C.G.A. §§ 45-19-1 to -5 (Supp. 1998).

24. *See* Supplemental Irvin Interview, *supra* note 21.

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> employees. So, I had legislative counsel draft a new amendment that would not disturb the existing law prohibiting strikes by state employees and to add to the strike prohibition for local government employees who provided essential public services. I took the amendment to Tom [Bordeaux], and he agreed [that this] had been his intention and [that] he did not object to the amendment.[25]

As a result, the essential public services language was moved to the middle of the definition of public employees so that it would only narrow the new groups of employees covered under the Act.[26] This version of the bill ultimately passed.[27] Therefore, the Act now provides that:

> "Public employee" means any person holding a position by appointment or employment in the government of this state or any person holding a position which provides *essential public services without which the public health, safety, welfare, or morals would be endangered*, by appointment or employment in the government of a county, municipality, school system, or other political subdivision of this state or in any agency, authority, board, commission, or public institution of this state or political subdivision thereof.[28]

Thus, the Act defines public employees as those employees: (1) "holding a position by appointment or employment in the government of this state"; (2) any person who holds their position by "appointment or employment in the government of a county, municipality, school system, or other political subdivision of this state" and whose position provides "essential public services without which the public health, safety, welfare, or morals would be endangered"; and (3) any person who holds a position in "any agency, authority, board, commission, or public institution of this state or political subdivision thereof."[29]

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25. *Id.; see also* Telephone Interview with Rep. Tom Bordeaux, House District No. 151 (June 17, 1998) [hereinafter Bordeaux Interview] (explaining that he agreed the essential public services limitation only applied to new set of public employees covered under the Act and was not meant to narrow previously existing law prohibiting strikes by *state* employees).

26. *See* HB 1373 (HFA1), 1998 Ga. Gen. Assem.; Supplemental Irvin Interview, *supra* note 21; Bordeaux Interview, *supra* note 25.

27. *See* O.C.G.A. § 45-19-1 (Supp. 1998).

28. *Id.* (emphasis added).

29. *Id.; see* Supplemental Irvin Interview, *supra* note 21.

Second House Floor Amendment

On the House floor, Representative Irvin authored an additional amendment, which passed in the House.[30] He amended Code section 45-19-2 by qualifying the requirement that "[n]o public employee shall promote, encourage, or participate in any strike."[31] Additionally, the amendment provided that the rights to collective bargaining currently recognized by Georgia law are not abridged by the Act.[32] Representative Irvin explained that this language was added because the Act was not intended to change current law affecting collective bargaining.[33] He explained that "[i]t was not intended to give a right to collective bargaining, nor was it intended to take away a right to collective bargaining."[34] Moreover, Representative Irvin stated that this language was not intended to affect the collective bargaining rights of firemen.[35] Representatives Ashe and Ehrhart agreed that the language was written into the Act to avoid preemption by federal law.[36]

Senate Floor Amendment

The final change to the bill occurred in the Senate,[37] when Senator Rick Price of the 28th District and Senator Steve Henson of the 55th District authored a floor amendment to the bill. The House version of Code section 45-19-2 provided that "[n]o public employee shall promote, encourage, or participate in any strike. Provided, however, that no right to collective bargaining currently recognized by *Georgia* law is abridged by this act."[38] The Senate floor amendment merely deleted the word "Georgia."[39]

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30. O.C.G.A. § 45-19-2 (Supp. 1998); *see* HB 1373 (HFA2), 1998 Ga. Gen. Assem.
31. *Id.*
32. *See id.*
33. *See* Irvin Interview, *supra* note 8.
34. *Id.*
35. *See id.*
36. *See* Ashe Interview, *supra* note 13; Ehrhart Interview, *supra* note 11.
37. *See* HB 1373 (SFA), 1998 Ga. Gen. Assem.
38. HB 1373 (HFA2), 1998 Ga. Gen. Assem. (emphasis added).
39. *Compare* HB 1373 (SFA), 1998 Ga. Gen. Assem., *with* HB 1373 (HFA2), 1998 Ga. Gen. Assem.

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Applicability

Essential Public Services

Part of the Act's prohibition against strikes affects those public employees providing "essential public services."[40] According to Representative Bordeaux, to determine whether a public employee holds a position that provides an essential public service, one must examine the "circumstances surrounding the job and not just the job description."[41] For instance, while "[s]ecretarial positions would not be crucial under normal circumstances, a Georgia Emergency Management Agency secretary might" provide an essential public service during a disaster.[42] Representative Irvin considers a public service essential when the nonperformance of that service would endanger the public health, safety, welfare, or morals of Georgia citizens.[43] Representative Irvin explained that while he prefers all employees performing public services to be covered by the Act, the Act's definition of essential public services probably would not include employees such as secretaries or those involved in the zoning process.[44] He further explained that courts ultimately will have to interpret the term and decide whether the striking employees provide essential public services.[45] Representatives Ashe and Ehrhart explained that the legislative intent of the Act was to cover as many employees as possible.[46]

Services that Protect Public Health and Safety

The Act covers public employees who provide essential public services without which the public health and safety would be threatened.[47] According to Representative Ashe, trash collectors, water service workers, and all employees whose absence may cause "something terrible" to happen are employees without whom the public health and safety would be endangered and are employees covered within this section.[48] According to Representative Ehrhart,

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40. *See* O.C.G.A. § 45-19-1 (Supp. 1998).
41. Bordeaux Interview, *supra* note 25.
42. *Id.; see* Irvin Interview, *supra* note 8.
43. *See* Irvin Interview, *supra* note 8.
44. *See id.*
45. *See id.*
46. *See* Ashe Interview, *supra* note 13; Ehrhart Interview, *supra* note 11.
47. *See* O.C.G.A. § 45-19-1 (Supp. 1998).
48. Ashe Interview, *supra* note 13; *accord* Ehrhart Interview, *supra* note 11.

employees such as bus drivers, garbage collectors, and policemen would be covered under this Code section as well.[49]

Services that Protect the Public Welfare

According to Representative Ehrhart, the language in the Act referring to those public positions providing services in which an employee's absence would endanger the public welfare "was meant to be broad."[50] Representative Ehrhart further stated: "We were trying to cover everyone. . . . We were trying to reach those employees that we could not think of when [we wrote the legislation]."[51] Additionally, according to Representative Ashe, legislators supporting the bill intended the phrase "public services without which the public . . . welfare . . . would be endangered" to be all inclusive and intended not to exclude anyone by using it.[52]

Services that Protect Public Morals

None of the sponsoring legislators could pinpoint a specific position that might affect public morals.[53] Representative Bordeaux stated that he did not have specific types of employees in mind when he drafted this section of the amendment; he only thought of general areas in which government services traditionally might be needed.[54]

M. Katharine Duncan

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49. *See* Ehrhart Interview, *supra* note 11; *see also* Irvin Interview, *supra* note 8 (explaining that prohibition on strikes includes firemen, police officers, school bus drivers, and water system workers).

50. Ehrhart Interview, *supra* note 11.

51. *Id.*

52. O.C.G.A. §§ 45-19-1 to -5 (Supp. 1998); *see* Ashe Interview, *supra* note 13.

53. *See* Ashe Interview, *supra* note 13; Ehrhart Interview, *supra* note 11; Everett Interview, *supra* note 12; Irvin Interview, *supra* note 8.

54. *See* Bordeaux Interview, *supra* note 25.

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