STATE LABOR LEGISLATION AFFECTING THE CONDUCT AND
ORGANIZATION OF LABOR UNIONS, 1937-1947

A Thesis Presented for the
Degree of Master of Arts

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The Ohio State University
1947

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CHAPTER I

INTRODUCTION

Development in State Labor Law, 1937-1947

While perhaps it is recording no subtle fact to note that there are laws relating to labor organization and conduct on the statute books today that were not there last year and that there are many such laws extant today that were not so ten years ago; it is possibly worthwhile to suggest that this ten years growth of labor legislation is of a nature that might fundamentally alter the context of industrial relations and is a development of labor policy on state and national levels that veers sharply from the direction indicated by the New Deal signposts.

The letter of the law being one thing and the spirit another, it is still too early to predict with confidence the outcome of this current development. While the letter of the law can be easily read and skillfully interpreted by those properly trained to do so, the spirit and intent is sometimes slow in manifesting itself. The latter in this case will depend upon the attitudes by which the parties affected approach the question of
industrial relations under the new set of rules promulgated, the interpretations of the courts, and by a host of other factors.

So torrential has been the rush of new laws in the past legislative session of the state legislatures that it is dangerous to make any statistical accounting lest the figures prove obsolete before the ink has dried. Courting this danger, however, at the present time there are thirteen states that directly prohibit the closed shop and five others that make the union shop conditional upon the voted approval of a stipulated majority of the employees to be affected by the pending contract. In 1947 alone, ten states passed anti-boycotting laws, nine enacted statutes dealing with picketing, ten sought to prevent strikes in the public utilities, and seven banned strikes by public employees. All in all, twenty eight states enacted laws in 1947 dealing with the conduct and organization of labor unions.

Following the passage of the National Labor Relations Act in 1935 and the judicial substantiation of that act in 1937, five states passed labor relations acts modeled closely on the federal act.¹ These "Baby Wagner Acts"

¹ Utah, Chap. 55, Laws, 1937.
Wisconsin, Chap. 51, Laws 1937.
Massachusetts, Chap. 436, Acts 1937.
purported to establish in the area of intra-state commerce that which the national act had accomplished in that area of commerce which was interstate in nature. Like the Wagner Act, the five state acts attempted to make realistic the legal rights of organization and collective bargaining enjoyed by labor unions and labor organizations for many years. Stated bluntly, these new laws guaranteed that employees might organize and bargain collectively with employers and that such employers could not prejudice these efforts by exerting job controls and other pressures during this process. Coupled with the federal and state limitations of the use of the injunction in labor disputes the development was of deep significance in labor law. Here was a substantial modification of earlier legalistic concepts that had become archaic in the light of the technological innovations and economic and social developments of the nineteenth and twentieth centuries. The attempt had been made to rectify "the inequality of bargaining power between employees who do not possess full freedom of association

2
or actual liberty of contract and employers who are organized in corporate or other forms of ownership association..."3

The state labor relations acts were recognitions of economic factors and in most of these acts the declarations of policy were couched more in socio-economic than in legalistic terms. As in the Wagner Act, the declaration of policy in the 1937 Utah Act held that refusal by employers to accept the organization of employees and to accede to the procedure of collective bargaining led to industrial unrest and strife. The inequality of bargaining powers had adverse affects in that the flow of commerce was burdened and the depressing of wage rates curtailed purchasing power and led to depression. Consequently the public policy of the state of Utah was declared to be the elimination of these obstructions to industry and commerce where these had occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association self organization and designation of representatives of own choosing for negotiating

3 National Labor Relations Act of 1935. Section one.
purposes. 4

If the policy declaration of the Wagner Act can be looked upon as the basic philosophical statement of the progressive labor union legislation of the thirties, then the policy declaration of the Wisconsin Employment Peace Act enacted May 2, 1939 might be regarded as the springboard of the reaction of the forties.

The term reaction in its political and economic sense can be defined as a return to a situation or a set of rules existing at a prior period. It is far more difficult to decide whether the entire current movement in state labor legislation is basically a reaction, a modification of a previous progression, or a new progression than it is to analyze a particular law for the purpose of ascertaining its progressive or reactionary characteristics. Very much depends upon the fundamental premises upon which an individual bases his observations. There are many who even after a decade of the Wagner Act refuse to accept the idea of legally enforced bargaining with men organized under the aegis of positive legislation and regard any restrictions upon labor organizations as a wedge to further restrictions.

4 Utah, Chap. 55, L 1937, Sec 2. The wording of this policy declaration is practically identical to that of the Wagner Act and to the acts of the other four states.
There are also many men of good will who have accepted collective bargaining as something here to stay but who chafe at some of the restrictions and developments that have resulted from the legal enforcement of earlier economic rights that evolved by modification of still earlier common law doctrines. To the labor unionist with memories of the not too distant past when job controls, yellow dog contracts, imported strike breakers, thugs, and the ugly concomitants of determined employer opposition were the rule rather than the exception, any attempt to restrict the gains made during the New Deal Era is suspiciously tainted with the flavor of the jungle warfare that so long characterized employer-employee relations. To the union group, consequently, the current trend is a reaction and a prelude to further onslaughts that will end only when all legislation protecting labor including the gamut of social security and protective measures enacted in the past four decades become dead letters. The challenge to the unionist is one that can best be met by containing and counter offensive activities as the tactics of the moment demand.

The purpose of the digression of the past few paragraphs is to indicate that the difficulties underlying the analysis of labor law are not wholly semantical
in character but are the difficulties inherent in the group characteristics of our society. Any law that enlarges the rights of one group abridges those of another. It is in this context that the policy declaration of the Wisconsin law can best be analyzed.

The declaration states that there are three major interrelated interests and that these are the public, the employee, and the employer groups. The policy of the state is to promote the interests of each with due regard to the situation and rights of the others. Industrial peace, regular and adequate income, and uninterrupted production of goods and services are the factors promotive of these interests and these are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable adjustment machinery for controversies. Whatever the right of disputants with respect to each other in controversies, they should not be permitted to intrude directly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by lawful means. The carry

5 While many of the state laws go to great pains to define the employer and the employee it is interesting to note that none has been ambitious enough to attempt to define exactly what is meant by the public.
over from the Wagner Act type of policy declaration is found only when one reaches the third section of the Wisconsin declaration. Here it is stated that negotiations of terms and conditions of employment should result from voluntary employer-employee agreements. The employee has the right to associate with others in organizing and bargaining collectively through representatives of his own choosing without intimidation or coercion from any source. Finally, the policy of the state is declared to be that of establishing fair standards of conduct in employment relations and to provide a convenient and expeditious tribunal by which the interests may have their rights and obligations adjudicated.

It is sufficient to note at this point that however this policy declaration is interpreted - and it seems that the interpretation might be twisted "properly" according to which paragraph is read more thoroughly, the departure from the earlier "Baby Wagner Acts" is significant. It is important in the evolution of labor law in the period under consideration for several reasons. First, there is an admixture of socio-economic and legalistic phraseology with the latter more in evidence than in the earlier acts. Secondly, by emphasizing the rights of the employer and the employee groups and the
public the stage is set for an infringement upon the position previously attained by the labor and industry groups. Finally, it is more than labor legislation being also group legislation and the heavy emphasis upon the rights of the public appears more frequently in the state legislation that followed.

Having set the stage with this policy declaration, the Wisconsin Law in another section followed a precedent that had been set by Minnesota in 1939 and that was followed by several other states in their modifications of the existing labor relations acts and in the enactment by several states in new acts. This precedent came in the form of a section of unfair labor practices for employees as well as for employers. The unfair labor practice sections of the earlier acts were listings of the devices and activities to which an employer might not resort as his employees organized and attempted to bargain collectively. By including such a section for employees, these acts became much more than attempts to facilitate organization and bargaining; in fact they became elaborate and restrictive rules of conduct in the collective bargaining game.

In June 1939, Pennsylvania followed Wisconsin in modifying its labor relations act; and although no change was made in the policy declaration, a section
was included listing unfair labor practices for employees. These were concerned with labor violence and sit down strike tactics.

A significant extension of the new trend in labor relations acts appeared in the Colorado Labor Peace Act enacted April 1, 1943. In addition to repealing the Wisconsin policy declaration almost verbatim, the Colorado act contained a section setting up restrictions on the internal conduct of unions. Persons could not be denied union membership because of race, color, religion, sex, or by unfair or unjust discrimination. Also dealt with were the questions of initiation fees, financial reports, and union elections.

The restrictive trend reached a new height in the Delaware Law of 1947. It is obvious that Delaware borrowed heavily from the Colorado Act repeating almost word for word the list of unfair employee practices. For the first time such an act contained a list of unfair employee practices and omitted such a section for employers. Neither the Colorado nor the Delaware Statutes have as stated purposes the equalization of bargaining power between employers and employees.

In a number of other ways these state labor relations acts have restricted unions. This has been done in instances by redefining the term labor dispute to include
only those in the proximate relationship of employer and employee. The effect of this upon unions is, of course, a shattering one for the door is thus opened to the en-jointer of sympathy activities; and organization of a firm by outside unions is prejudiced. Where the described proximate relationship is absent any difficulty that arises is no longer legally a labor dispute and is consequently beyond the protective pale of anti-injunction legislation. Several of the acts have made union security contracts conditional upon the voted approval of a stated fraction of all the employees to be covered by such agreements. By these and other provisions the position of the union in the American economy has been weakened.

Since only ten states at the present time have statutes which may be included under the heading - now more convenient than accurate - of labor relations acts, an analysis of the trend in such acts can reveal only a fraction of the development in labor law on the state level within the past ten years. Union regulation by the states has come in many guises. Alabama in the Bradford Act of 1943 attempted to deal with a variety of union affairs including union membership, picketing, strikes, boycotts, work permits, and political contributions by labor organizations. The Florida Union Regulation Act of 1943
required that business agents for unions be licensed, initiation fees be limited, unions make financial reports annually, and prohibited such activities as jurisdictional strikes and certain forms of picketing. In addition to this inclusive type of law there has been a widespread movement among states to regulate specific types of union conduct and activity through single purpose legislation. The closed shop, the checkoff, boycott, picketing, jurisdictional disputes and the strike, in short the basic issues of union security and conduct have evoked legislative comment as to the proper and improper bounds of unionism.

Labor law which has had a tortuous common law development has thus undergone a significant statutory evolution. In a short ten year period this evolution has undergone a mutation so considerable that the intent of the laws enacted at the start of the period differs greatly from that of the later laws.

It is impossible to pick out a single motif that universally characterizes such laws from the mass of laws varying by state as to purpose, severity and extent, revealing different conceptions of the role of unionism, revealing geographically the political power of the labor groups and chronologically, perhaps, the
end of an uneasy wartime truce. However the subjects repeatedly dealt with reveal certain basic underlying issues and conflicts in the labor-management relationship. Among these are the issues of union security, bargaining power, and the question of the so called public interest. In addition the laws reflect and are reflected in the increasing political activities of unions and a recrudescence of anti-union notions characteristic of the period before the statutory enactment of the Wagner Act philosophy. There is a danger involved in noting such issues separately lest the impression be conveyed that they are not a part of one another. Actually they all blend together and emerge as an attitude towards labor unions.

From the time of the early conspiracy trials to the present, the labor union has always faced the problem of maintaining its existence. Employer opposition, economic depression, and jurisdictional disputes have plagued unionism in its attempts to achieve a secure foothold in the economy. To bolster security the labor unionist has sought to obtain contracts which favored if they did not absolutely provide for union security. Common law doctrine has varied in its attitude toward the closed shop and other forms of membership maintenance. While
the Wagner Act and the early state labor relation laws created an atmosphere favorable to union security, the new laws have drastically limited contractual provision of all-union places of employment.

Justice Holmes writing his dissent in Vegalahn v. Gunther in 1896 and referring to business and labor wrote that "Combination on the one side is potent and powerful. Combination on the other is the necessary and desirable counterpart if the battle is to be carried on in a fair and equal way." The framers of the Wagner Act sought to accomplish what Holmes had suggested. None of the new laws explicitly attempt to lessen the bargaining power of labor. However the incidence of labor law can be as vague as that of tax law and any law that strengthens the union increases its bargaining position. Conversely new regulations can in a manner both foreseen and otherwise place a union in a bargaining position less favorable than that previously enjoyed. The ideal condition is one in which labor and management can bargain on the most equal terms. This suggests a criterion by which labor law might be evaluated.

As already noted the policy declarations of many of the new labor laws consider not only the state attitude in regard to labor-management relationships but are
concerned also with the question of the public interest. The power of the titanic corporation and the strong nation wide craft or industrial type of union has created a new condition in the relationship of the two. No longer is a controversy between them limited in its ramifications to the division of a firm's profits or a question of working conditions peculiar to the business involved or limited to a local community. A strike in steel or coal can disrupt an entire economy, create hardship among those not party to the dispute, can in fact have international implications. Consequently it has become incumbent upon the government to take steps to minimize such disputes. An example of this can be found in the several state laws that have provided for state operation of utilities in the event that a labor dispute causes a disruption of service. Through the medium of labor law there has been an admission that the invisible hand doctrine needs more and more implementation and that the state's role of policeman assumes new and expanding aspects.

Labor Law and Economic Theory.

A growing dissatisfaction with the explanation of the workings of the labor market advanced by the neoclassical economists has resulted from the inability of
that school to provide a realistic picture of the process of wage determination. Since the development in state labor law has certain implications that bear upon the problem of distribution theory, a brief digression might be made at this point to note a probable relationship between labor law and economic theory.

While the Keynesian "revolution" was a shattering attack upon the classical and neo-classical postulate of the non-existence of involuntary employment, it will be recalled that Lord Keynes left intact the other premise of the earlier wage theorists, to wit that labor is rewarded on the basis of the productivity of the marginal labor unit. 6

The familiar attack upon the marginal productivity theory of wages is made on the basis of the unrealistic assumptions involved. Among these assumptions are a condition of free competition, a supposition that employers have complete knowledge of their marginal revenue and cost curves, the mobility of workers, the equality of bargaining power between labor and management, and a quick adjustment of wage rates and volume of employment to the margin of value productivity.

The fact, in itself that a theoretical superstructure has ignored certain qualifying factors arising from an existing institutional arrangement does not necessarily rule out the theory as a partial explanation of long run tendencies in wage rate determination. So long as the assumptions are kept in mind, the marginal productivity theory is not too bad a starting place in attempting to arrive at some sort of short run theoretical explanation of existing wage rates. Certainly any wage rate above the point of marginal productivity must result either in a diminution of the labor force or a depletion of capital. Conversely any wage rate set at a subsistence margin can be regarded as a minimum wage level. Between these two there is a range, and an explanation of the precise point of money earnings must involve some consideration of the host of assumptions involved in the marginal theory.

Several types of labor market situations might be posited:

1. Monopoly on the demand side and perfect competition on the supply side.

2. Monopoly in both the demand and supply of labor.

3. Competition on the demand side and monopoly on the supply side.
4. Perfect competition in the demand and supply of labor.

Aside from these there would be the various combinations involving partial monopoly on either the supply or demand side and either pure competition or absolute monopoly on the other. Finally there would be the very typical situation of monopolistic competition on the demand side and some imperfection in the competition on the supply side. Since this last situation is the one encountered most frequently in the market place, it is evident that no short run general theory can promise a determinate solution. The task of theory here, it would seem, is to limit the wage range that is subject to influence by some of the neo-classical assumptions. One approach that might be used to achieve this would be to set up criteria to judge the effect of the variable institutional factors that play upon the determination of wages. For instance, what is the degree of labor mobility and how does this affect the particular firm? What is the degree of competition among the firms competing for the available laborers? How deeply entrenched are the "going and tested" wage rates in the community? What degree of unionization has been achieved and what is the relative degree of bargaining strength of both employers and employees?
It is this last point that ties this discussion to the analysis of labor law. Neither geographically nor from a point of time has there been absolute uniformity in the appearance of the state labor laws. The extent of union restriction achieved varies from state to state. The Taft-Hartley Act serves to supply a nationally-uniform base for government attitude towards labor unions, but some of the state labor laws regulate aspects of unionism that are left untouched by the federal act. As a consequence of this, the labor-management fight over the division of the product is carried on under sets of rules that differ in practically every state. The exact extent of the diminution of union bargaining strength is difficult to determine. How is one to measure, for instance, the impairment of the union position as a result of a requirement that the checkoff must be authorized by the individual employee involved? Nevertheless, where the union position has been left relatively untouched, organized labor is in a superior bargaining position. At the same time, the producer might be competing with the products of other producers from states which have drastically limited the bargaining strength of unions. Inasmuch as this can result in a price differential due to a wage differential that arises from differences in
bargaining strength, the former producer is at a competitive disadvantage and is forced to attack the union in his own firm.

In an interdependent economy, a legal diminution of the group position in organized labor in a particular locality can have extensive competitive ramifications unless all organized labor is subjected to the same legal restrictions. The irregularity in state labor law coupled with the refusal by some states to admit that secondary use of the labor weapons of striking, boycotting, and picketing is necessary if unions are to protect achieved standards constitutes a threat to the standards of all labor; for the competitive position of union establishments is prejudiced in favor of the non-union firm. Furthermore the extent of the limitation of the traditional union weapons varies from state to state.

A possible ultimate outcome of such a situation could be an increasing attack upon the union position as the competitive advantages that arise from the differing union regulatory measures of the various states become more manifest.
A Statement of the Problem.

That the evolution of statutory labor law on the state level has been uneven in growth and has varied from state to state is due, in part at least, to the unwieldy base of common law upon which it rests. The common or judicial law, reflecting the economic philosophies of the judges, bearing unevenly upon capital and labor in many instances, and undergoing different interpretations in different states could only result ultimately in a confusion which has not as yet been completely dissipated.

To focus the problem sharply, at the present time the labor law of the country is in a stage of development. Long a result of judicial interpretation, the law now promises to become more completely legislative in origin; although it is to be expected that extensive common law doctrine will carry over into the new body of law. The revolution in labor law accomplished by the Wagner Act has set up a counter-revolution or if the latter is too drastic a term at least has resulted in a trend that rests upon a fundamentally different premise from the Wagner Act.

However, nowhere has any law apparently dared to deny that employees have the right to organize and
bargain collectively through representatives of their own choosing. If this premise is under attack, the assault is not a frontal one but one rather of sniping and attrition. Ther being 48 states and the territories and an equivalent number of court systems it might well be expected that the law in its development will vary in considerable degree, and to date that fact has been substantiated.

As already indicated, labor law is not law that affects only the laboring group. Despite the many rabid protestations and exhortations heard today concerning individualism and laissez-faire the fact remains that our economy is in essence highly cooperative, and if the law does not render justice, there will be a manifestation of that injustice through a breakdown of that cooperation. It becomes highly important then to understand this new body of law and to set up a criterion of judgment that rises above single group interests and enables an evaluation to be made on the basis of the greatest justice to the greatest number. That the following chapters will attempt to do and if the result does not reach the same heights as the intent, perhaps a more worthy student will be able to glean one or two worthwhile ideas from the body of this work.
CHAPTER II

THE LAWS

As already noted, an impressive quantity of laws has been enacted by the states. Since many of these laws are similar, it is possible to indicate their nature by referring to representative statutes. Where, however, the laws of an individual state are in some respect unique, this will be noted separately. A more thorough analysis of the laws will be made in Chapter Four, while a digest of all the laws will be found in the Appendix.

Closed Shop.

At the present time thirteen states prohibit the closed shop while five others make it conditional upon enumerated requisites. The phraseology of some of the laws prohibit not only the prevailing concept of the closed shop, that is union membership as a condition of securing and maintaining employment and continuation of union membership with the alternative of discharge, but also prohibit the so called union shop which requires
that all who become employed must join the union within a specified time as a condition of continuation of employment.

Several states have resorted to amendments in the state constitutions to outlaw the closed shop. The technique resorted to in this instance is a so called "right to work" amendment. The Florida amendment states simply that "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization; provided that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."¹

The Arkansas amendment is somewhat more elaborate providing in addition to the above that no contracts may be made by employers and labor organizations or unions to exclude from employment persons who refuse to join a labor organization or resign from such organization. Also the payment of dues to a labor organization cannot

¹ Amendment to Section 12 of Florida State Constitution, Approved Nov. 7, 1944.
be made a prerequisite of employment.²

In the first half of 1947 when seven states outlawed the closed shop, the constitutional amendment was not used. Legislative enactments similar in scope and degree of restriction or at least in enumeration of the extent of restriction were employed in this period.

The North Dakota act is a paragon of brevity. Enacted in March 13, 1947 it provides that "the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization and all contracts in negation of abrogation of such rights are hereby declared to be invalid, void, and unenforceable." It will be noted that there is actually no difference between this law and the earlier constitutional amendments. Both contain a right-to-work clause and a declaration that all contracts to the contrary are invalid.

The Georgia law banning the closed shop which was approved March 27, 1947 provides that no individual as a condition of employment shall be required to join or remain a member of a labor organization; or to resign from or refrain from membership in a labor organization; no

² Amendment 35 to Arkansas State Constitution, Nov. 7, 1944. South Dakota, Nebraska, and Arizona, have enacted amendments similar to that of Arkansas. South Dakota, Arizona, and Arkansas later added enforcement statutes.
individual shall be required as a condition of employment
to pay any fees, dues, assessments to a labor organization;
contracts between labor organizations and employers to the
effect that an individual must be a member of a labor or-
ganization or pay fees or assessments to such organization
are contrary to public policy and such provisions are void;
an individual whose employment has been affected by vio-
lations of provisions of the act has access to the remedy
of injunction.

The Tennessee, North Carolina, Iowa, Texas, and
Virginia laws are similar to that of Georgia and although
worded differently contain substantially the same provi-
sions.

By making union membership as a condition of emplo-
ment illegal, the above states have made illegal contracts
not only for the closed shop but also the union shop and
maintenance of membership provisions. The Maine law en-
acted on May 13, 1947 is different in this respect. This
law declares that no person shall be denied the right to
obtain employment because of membership or non-membership
in a labor union. However the law explicitly states that
"Nothing in this act shall be construed to prohibit the
making or maintaining of union shop contracts so called."

Aside from the direct prohibition of the closed shop
embodied in the examples above, several states have made
union security agreements conditional upon enumerated requirements. Colorado makes it an unfair labor practice for an employer to enter into an all union agreement unless three-quarters or more of the employees shall have voted affirmatively by secret ballot in favor of such an agreement. In addition to this such an agreement may be terminated if it is found that the labor organization has unreasonably refused to receive as a member any employee of the employer. 3

Kansas makes it illegal to enter into an all union agreement unless the majority of the employees to be governed thereby have voted to authorize such an agreement. 4

In Wisconsin an employer is not prohibited from entering into an all union agreement where

At least three quarters of such employees voting (provided such three quarters constitute at least a majority of the employees in such collective bargaining unit) shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. Such authorization

3 Colorado Labor Peace Act, April 1, 1943, Section 6-c.
4 Kansas Union Regulation Act, Mar. 22, 1943, Section 8 (4).
of an all union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the board in writing to conduct a new referendum on the subject. Upon receipt of such request, the board shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward the all-union agreement since the prior referendum and upon so finding the board shall conduct a new referendum. If the continuance of the all-union agreement is supported on any such referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force and affect thereafter subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of the all-union agreement is not thus supported, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the board of the result of the referendum, whichever proves to be the earlier date. The board shall declare any such all union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employee of such employer.

Pennsylvania permits closed or union shop agreements if the labor organization involved does not deny membership to persons who are employees of the employer at the time the agreement was executed.

The New Hampshire closed shop limitation law of June 14, 1947 declares that no person, firm, or corporation shall make membership or non-membership or payment or non-payment of money to a labor organization a condition of the employment or continuing of employment of any person. However, the above section does not apply and such contracts are valid where two-thirds of the employees voting (provided these constitute a majority of the employees to be covered by the contract) vote affirmatively in favor of such a contract. Other conditions attached to the making of such an agreement are as follows:

1. A labor organization with such a contract before being permitted to renegotiate said contract must first satisfy the labor commissioner that its dues are not unduly burdensome. Initiation fees of over twenty-five dollars are considered to be unduly burdensome.

2. Such contract shall contain a clause providing that the labor organization shall impose no discriminatory qualification on membership in the organization based on race, color, religious creed, sex, age, national origin, ancestry, or numerical restriction on total membership unless based upon a bona fide occupational qualification.
3. The contract must contain a clause providing that no member shall be expelled or suspended except for just cause and only after the member has been offered a right of appeal through regular labor organization channels and further right of appeal to the labor commissioner.

The New Hampshire law also provides that any organization with a union security contract must file annually with the labor commissioner of the state a financial statement showing specifically required union information.

The Checkoff.

A number of states have enacted legislation limiting or prohibiting the compulsory checkoff, a contractual obligation on the part of the employer to deduct from the employee's wages and pay to the union certain agreed upon fees, dues, fines, assessments, or other charges.

The first limitations on the checkoff came in the form of unfair labor practices in several of the state labor relation laws. Wisconsin has made it an unfair labor practice for an employer "to deduct labor organization dues or assessments from an employee's earnings; unless the employer has been presented with an individual order therefor, and terminable at the end of any year of
its life by the employee giving at least 30 days notice of such termination."

The unfair labor practice section of the Colorado Labor Peace Act of 1943 contains substantially the same provision except that the individually authorized checkoff agreements may be canceled at any time by the employee giving 30 days notice of his desire for such termination.

The 1939 amendment to the Pennsylvania Labor Relations Act makes it an unfair labor practice for an employer to provide for a checkoff unless he is authorized to do so by a majority vote of all the employees in a collective bargaining unit and unless he thereafter receives the written authorization from each employee whose wages are affected.

In its 1947 anti-closed shop law, Georgia provided that no employer shall deduct from the wages or other earnings of any employee any fee, assessment, or other sum of money whatsoever to be held for or paid to a labor union except on the individual order or request of such employee revocable at the will of the employee.

Iowa also limited the checkoff in the anti-closed shop law. With two exceptions the provision here is similar to that in the Georgia statute. A thirty days
notice must be given before the written order authorizing the checkoff can be terminated, and such written order must be signed by the spouse of the employee if the employee is married.

Texas has enacted the only law which is concerned exclusively with the checkoff. It is against the public policy of that state to contract for the checkoff unless the individual employee has given his written consent.

The Delaware Union Regulation Act of 1947 provides that it is unlawful for any employer to withhold from the wages of an employee any sum to be paid to a person or organization representing labor unless directed to do so by a court of competent jurisdiction. It is unlawful for an employer and labor organization to contract for a checkoff. This absolute prohibition of the checkoff has been enacted only by Delaware.

**Work Permits.**

Labor unions have required that workers obtain work permits by paying a stipulated fee as an alternative to joining a union. This arrangement is generally used when the employment is of a temporary nature. In 1943, Alabama, Texas, and Massachusetts limited or prohibited the use of such permits by unions.
The Alabama law declares that it is

unlawful for any labor organization, any labor organizer, any officer, agent, representative, or member of any labor organization, or any other person, to collect, receive or demand, directly or indirectly from any person, any fee, assessment, or sum of money whatsoever, as a work permit or as a condition for the privilege to work; provided, however, this shall not prevent the collection of initiation fees or dues.

The Texas law is similar to the Alabama enactment while Massachusetts provides that no labor union shall require any person as a condition of procuring or continuing employment, to pay any fee or assessment other than such initiation fees, as are chargeable upon members of provisions of the by-laws and constitution of such union.

In 1947, Arkansas, Georgia, Iowa, North Carolina, Tennessee, and Virginia passed laws similar to those described. The wording of some of these latter laws might allow for an interpretation that would outlaw the checkoff as well as the imposition of charges for work permits. The Virginia provision which is part of the anti-closed shop law states, for instance, that no employer shall require any person as a condition of employment to pay any dues, fees, or other charges of any
kind to any labor union or labor organization. It is plausible to suppose that this might be interpreted to prevent the use of the compulsory checkoff.

**Strikes.**

Since the strike is probably the most important pressure technique of the labor union and inevitably seems to be the labor activity that is most highly publicized it is not surprising that the subject of the strike has evoked extensive state legislation in a period in which the conduct of labor organizations is becoming more and more circumscribed by legislative dicta.

State laws have made strike activity provisional upon the meeting of enumerated procedural requisites and have instituted a number of substantive limitations.

In the former category states have required that a notice of intention to strike be given before any strike may be lawfully undertaken. The Colorado Peace Act requires that employees of an employer engaged in agriculture or dairying must give thirty days notice of intention to strike to the Industrial Commission. Employees engaged in other occupations must give twenty days notice. Failure to give such notice is regarded as an unfair labor practice. The Georgia Mediation Law of March 27, 1941
provides that no labor organization may cause any strike, slowdown or stoppage of work until after thirty days written notice has been given to the employer stating its intention and giving the reasons therefor. Other states which have enacted similar provisions are Michigan, Minnesota, Wisconsin, Illinois, and Iowa.

Another condition that has been attached to the calling of a strike is that a fixed percentage of the employees must vote affirmatively by secret ballot in favor of it. The constitutional question involved here is evident and in one instance such a requirement has been declared unconstitutional. However such laws still stand as valid in a number of states although it is to be expected that the subject will be dealt with in future litigation. The Delaware Union Regulation Act of 1947 provides that no strike shall be lawful unless it is authorized by a majority vote of the employees in the bargaining unit involved, taken by a secret ballot at a special meeting called for such a purpose and for which all members have been notified. Any overt concomitant of a strike is an unfair labor practice unless the strike has been voted for in the manner stipulated. Similarly, a 1943

6 Alabama State Federation of Labor v. McAdory, Alabama Superior Court, 1944.
amendment to the Minnesota Labor Relations Act of 1939 provides that unless a strike is approved by the majority vote of the voting employees in the collective bargaining unit involved, it shall be an unfair labor practice for any person or labor organization to engage in, promote, cooperate in, or induce a strike. The apparent similarity in the degree of restriction involved in these two state provisions vanishes when it is realized that the Delaware Act makes a strike dependent upon the majority vote of all the employees in a collective bargaining unit while the Minnesota Act simply demands a majority vote of the voting employees.

The North Dakota Act in this respect is similar to the Minnesota Law except that the election machinery for the strike vote is included in the statute.\(^7\) If employees desire to strike, written notice must be given to an employer. The employer designates a representative and the employees do likewise. These two then select a third. The three conduct an election to determine whether a strike shall take place. No strike shall be called into effect unless 51 per cent of the employees who cast votes have voted in favor of such a strike.

\(^7\) North Dakota, Union Regulation Act, March 13, 1947.
Another type of procedural requirement prior to the calling of a strike has been resorted to in the Michigan Labor Mediation Act of 1939. Here compulsory mediation must be used before a strike is called. In the event of a dispute no strike or lockout may be called prior to serving notice to a mediation board. The board then takes steps to effect a voluntary adjustment and settlement by arranging for conferences with the disputants and assisting in drafting agreements.

In addition to these procedural limitations on the right to strike or institute a lockout, there have been a number of substantive limitations imposed by state legislatures.

The sit-down strike has been prohibited by several states. The Colorado Labor Peace Act makes it an unfair labor practice on the part of employees to engage in a sit-down strike on the premises or property of the employer. Other states with similar provisions include Colorado, Massachusetts, Maryland, Pennsylvania, Wisconsin, Florida, and Utah.

Several states have dealt with the question of jurisdictional disputes. The 1943 amendment to the Minnesota Labor Relations Act is elaborate in its attempt to deal with the problem of jurisdictional disputes. In case of a jurisdictional controversy, a
conciliator certifies the dispute to the governor who appoints a referee. If the unions involved have an agreement defining respective jurisdictions or if they are affiliated with the same labor organization which has by charter defined their respective jurisdictions, the labor referee shall resolve the controversy in accordance with the proper construction of the agreement or provisions of the charter. If there is no such agreement or charter the referee shall make a decision as will best promote industrial peace. If the labor organizations so desire they may submit the controversy to a tribunal of the organization which has granted their charters or to arbitration before a tribunal selected by themselves. After the appointment of a referee, it is unlawful for a person or a labor organization to call or conduct a strike or boycott against the employer or industry or to picket any place of business on account of such jurisdictional controversy.

In 1947, California, Iowa, Michigan, Missouri, and Pennsylvania enacted laws dealing with jurisdictional disputes.

The Minnesota Labor Relations Act makes it an unfair labor practice for employees to institute a strike if such strike is in violation of any valid collective
agreement between any employer and his employees or labor organization and the employer is in good faith complying with the terms of the agreement. The Louisiana Union Control Act of July 17, 1946 declares that it is against the public policy of the State for an employee or a labor organization to participate in a strike in violation of a collective bargaining agreement if the strike is not approved by the labor organization party to such agreement and having exclusive bargaining rights for such employees. The simultaneous stoppage of work or refusal to return to work by ten percent of the members of the bargaining unit shall be presumed to be a strike.

A group of states have made strikes by government employees illegal. The Virginia Strike Control Act of 1946 deals with this question. This law declares that any employee of the Commonwealth of Virginia or of any county, city, town, or other political subdivision thereof who in concert with two or more such employees for the purpose of obstructing, suspending, orimpeding any activity or operation of his employing agency or any other government agency strikes or willfully refuses to perform duties of his employment shall by such action be deemed to have terminated his employment and shall be ineligible for employment in any position or capacity during the next
twelve months by the Commonwealth or any political subdivision of the state. A similar law enacted in New York in 1947 provides that public employees who strike shall thereby terminate their employment except if reappointed as provided. A violator can only be reappointed on condition that his compensation shall not exceed that received before the strike; there shall be no increase in compensation until at least three years after reappointment, and the reappointed employees shall be on probation for five years during which no tenure shall be accumulated. A Texas Law banning strikes by public workers which was enacted in April, 1947 is similar to the above statutes except that no provision is made for the reemployment of striking workers. Ohio, Michigan, Missouri, Nebraska, and Pennsylvania are other states which have banned strikes by public employees.

An interesting law dealing with labor disputes was enacted by the Oregon legislature in 1947. This statute provides that an employer or any of his employees or a labor union may petition the state commissioner of labor to hold an election for the purpose of voting upon the continuation or termination of a dispute. If a majority of the employees in a collective bargaining unit vote to continue the labor dispute, the dispute shall be deemed
to continue in existence. If a majority vote against the continuation of the dispute or if having voted in favor of continuance and a collective bargaining agreement is entered into, the labor dispute shall be deemed to be terminated. A majority vote for the termination of a dispute shall be binding for the period of one year from the date of holding the election.

Picketing.

In the ten year period under consideration there have been numerous legislative enactments concerning the subject of picketing. Since the precedent has long been established and maintained that violent and unduly coercive picketing is illegal, the laws that have been passed prohibiting violent picketing simply become legislative statements of a condition that for all practical purposes has already been established as law. Consequently such laws will not be dealt with here. The subject of peaceful picketing, however, is a focal one in the question of industrial relations. For a long period of time this aspect of picketing has been the subject more of courtroom litigation than of definite legislative enactments. In recent years state legislatures have dealt more and more with various aspects of peaceful picketing. These state laws might be divided into two broad categories,
one dealing with the manner of carrying on peaceful picketing and the other relating to the conditions that must exist prior to the permissible existence of non-violent picketing.

In the first category some states have limited the number of pickets that might be permitted, prescribed the distance from any plant entrance or exit where such picketing may be permitted, prohibited mass picketing, secondary picketing, and the picketing of an employee's house as an incident to a labor dispute, and limited the picketing of public utilities.

The Minnesota Labor Relation Act enacted in 1939 makes it an unfair employee labor practice for more than one person to picket a single entrance to any place of employment where no strike is in progress. The Colorado Labor Peace Act of 1943 gives the Industrial Commission power

....in the event there's picketing which in the opinion of the Commission might tend to disturb or lead to riots, disturbances, or assaults.... to limit the number of pickets that may be permitted and to prescribe the distance from any plant entrance or exit where such picketing may be permitted and to otherwise prescribe limits to such picketing...

The Delaware Union Regulation Law enacted April 15, 1947 contains provisions that are similar to those of the
Colorado act except that in this case a Court of Chancery is the enforcing agency. The law provides that such court shall upon the filing of a bill of complaint by any party in interest or any organization or persons representing any public interests showing that there is picketing in any strike or labor dispute which might tend to disturb or lead to riots or assaults limit the number of pickets that may be permitted, prescribe the distance from any plant, exit, or entrance where such picketing may be permitted, and otherwise prescribe limits to such picketing.

The Wisconsin Employment Peace Act makes it an unfair labor practice for employees to hinder or prevent by mass picketing the pursuit of any lawful work or employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways or other ways of travel or conveyance. The Colorado Labor Peace Act contains identical provisions.

The South Dakota prohibition of mass picketing defines such picketing as that of a greater number than five per cent of the first one hundred striking or locked out employees of the picketed employer and one per cent of the employees in excess of this number on strike.  


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The Texas law regulating picketing declares that mass picketing is illegal and describes such picketing as any situation in which there are more than two pickets within fifty feet of the entrance to any premise being picketed or within fifty feet of any other picket. While Texas is the only state that explicitly bans secondary picketing by declaring such picketing to be illegal and defining this situation as the act of establishing a picket line at or near the premises of any employer where no labor dispute exists between such employer and his employees; several other states have accomplished a prohibition of secondary picketing by containing similar provisions in their laws.

The Wisconsin Employment Peace Act for example declares that it is unlawful for anyone to picket or to induce others to picket a business establishment when no labor dispute exists between such employer and his employees.

Texas has made it illegal to picket the plant or premises of a public utility with the intent of disrupting the service of such utility or to prevent its maintenance.

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Aside from the regulation of picketing described above, states have prohibited and regulated picketing by defining the situations that must exist before picketing becomes legal. These laws relate for the most part to the question of picketing where no labor dispute exists and picketing by persons who are not employees of the employer being picketed. Wisconsin as noted above prohibits picketing where no labor dispute exists between an employer and his employees. The 1947 amendment to the Utah Labor Relations Act makes it an unfair labor practice for an employee to cooperate in, induce, or promote picketing unless the majority in a collective bargaining unit of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike. The North Dakota Union Regulation Act of 1947 declares that if less than fifty-one per cent of the employees who participate in a vote for a strike cast ballots against such a strike then it is unlawful to picket such establishment and such picketing is subject to court restraint. The South Dakota Law of 1947 makes it illegal for any person to picket or induce others to picket where no labor dispute exists between
an employer and his employees or their representatives. The Virginia and Pennsylvania laws outlaw any picketing by a person who is not an employee of the place of employment being picketed. The Minnesota Labor Relations Act of 1939 prohibits picketing by a person who is not an employee of the place of employment where a strike is in progress unless the majority of persons engaged in picketing are employees of the place of employment.

Boycotts.

Most of the state laws dealing with boycotts concentrate on the question of secondary boycotts. However, since the courts, legislators, and students of the subject have been unable to agree as to exactly what constitutes a secondary boycott, it is necessary

It is evident that to make picketing dependent upon the existence of a labor dispute is to afford a means of limiting picketing by a more subtle manner than the frank enactment of an anti-picketing statute. A labor dispute can be defined in any number of ways and thus the legality of picketing often turns upon such definition. Wisconsin defines a labor dispute as a dispute between an employer and the majority of his employees in a collective bargaining unit. This opens the way to court, enjoinder of picketing since the state anti-injunction acts might no longer offer blanket protection when a narrow definition of a labor dispute is used.
to set forth in each case the definition of such boycott where such definition is included in the state statute.

Two provisions in the Wisconsin Employment Peace Act relate directly to the boycott. It is an unfair labor practice to engage in a boycott as an "overt concomitant" of a strike unless the majority of the employees of an employer against whom such an act is primarily directed have voted by secret ballot to call such a strike.12

Elsewhere, the Wisconsin Act makes it an unfair labor practice for an employee individually or in concert with others:

To engage in a secondary boycott; or to hinder or prevent by threats, intimidations, force, coercion, or sabotage, the obtaining, use, or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent, by any means equipment or services, provided however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

The Colorado Labor Peace Act of 1943 also treats the boycott by way of the unfair employee practice technique and the provision in this law is identical to that

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12 Wisconsin, Ch 465, L 1943. This unfair employee practice was added to the Wisconsin Labor Relations Act in the 1943 amendment.
of the Wisconsin Act except that here the provision relating to the sympathy strike is omitted. In the Colorado Act the secondary boycott is defined as causing or threatening to cause, combining or conspiring to cause or threaten to cause injury, to one who is not a party to the particular labor dispute, to aid which such boycott is initiated or continued whether by A) withholding patronage, labor, or other beneficial intercourse; B) picketing; C) refusing to handle, install, use, or work on particular materials, equipment, or supplies; D) or by any other unlawful means to bring him against his will into a concerted plan to coerce or inflict damage upon another.

A number of other states directly prohibit the secondary boycott as defined. Since a digest of these laws will be found in the Appendix only the laws of California, Minnesota and Texas will be presented here. These laws have defined the secondary boycott at great length.

The objects of the California "Hot Cargo" Law of 1941 are to forbid refusal by labor unions to handle "hot goods" and to outlaw secondary boycotts. Originally passed as a war measure the law was made permanent in 1947.
"Hot cargo" is defined as any combination or agreement resulting in a refusal by employees to handle goods or to perform any services for their employer because of a dispute between some other employer and his employees or a labor organization or any combination or agreement resulting in a refusal by employees to handle goods or perform any services for another employer because of an agreement between such other employer and his employees in a labor organization.

Secondary boycott is defined as any combination or agreement to cease performing or to cause any employer to cease performing any service for any employer, or to cause any loss or injury to such employer or his employees for the purpose of inducing or compelling such employer to refrain from doing business with or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization or any combination or agreement to cease performing or to cause any employer to cease performing any services for another employer or to his employees for the purpose of compelling such other employer to refrain from doing business with or handling the products of any other employer because an agreement between the latter and his employees and a labor organization.
The Minnesota Law enacted April 23, 1947 outlaws secondary boycotts. The public policy declaration states that the public good and general welfare of the state of Minnesota would best be served by prohibiting secondary boycotts. A secondary boycott is defined as any combination, agreement, or concerted action:

A. to refuse to handle goods or perform services for any employer because of a labor dispute, agreement, or failure of agreement between some other employer and his employees in a bona fide labor organization;

B. to cease performing or to cause any employees to cease performing any services for an employer or to cause loss or injury to such employer or his employees for the purpose of inducing or compelling such employer to refrain from doing business with or handling the products of any other employer because of a dispute, argument, or failure of agreement between the latter and his employees or a labor organization;

C. or to cease performing or to cause any employer to cease performing any services for another employer for the purpose of compelling or inducing such other employer to refrain from doing business with or
handling the products of any other employer because of a dispute, agreement, or failure of agreement between the latter and his employees and a labor organization.

It is an unlawful act and labor practice for a person or organization to combine with another to cause loss or injury to an employer, to refuse to handle particular goods or perform services for an employer, or to withhold patronage or to attempt to induce another to withhold patronage for the purpose of inducing or coercing such employer to discourage or encourage his employees to join or refrain from joining any labor organization.

The secondary boycott is declared to be an illegal combination in restraint of trade and in violation of the state of Minnesota.

A recent Texas Law \(^{13}\) prohibits secondary boycotts and defines such a boycott as any combination, plan, agreement, or compact entered into or any concerted action by two or more persons to cause damage or injury to a form or corporation for whom they are not employees by:

\(^{13}\) Texas, S.B. 167, L 1947.
A. withholding patronage, labor or other beneficial intercourse from such person, firm, or corporation;

B. picketing such person, firm, or corporation;

C. refusing to handle, install, use, or work on the equipment, or supplies of such person, firm, or corporation;

D. instigating or fomenting a strike against such person, firm, or corporation;

E. interfering with or attempting to prevent the free flow of commerce;

F. by any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict any damage or injury to an employer who is not party to such dispute.

The other states which have somewhat similar secondary boycott statutes on the books at the present time are Delaware, Idaho, Iowa, North Dakota, South Dakota, Kansas, Maine, Missouri, Oregon, and Utah.
Regulation of the Internal Affairs of Unions.

The internal affairs of unions, including election of officers, dues and discriminations among members have heretofore been the subject of little if any state legislation. However, recently a number of states have enacted statutes providing for comprehensive regulation of these matters.

The Delaware Union Regulation Law of April 5, 1947 contains the most sweeping regulation of this type. It provides that every labor organization engaged in collective bargaining in the state must file annually with the Secretary of State the following information:

1. Name of labor organization
2. Addresses of principal officers
3. Names and titles of its officers and all members of its governing bodies
4. The company that the organization deals with if it is a local body.
5. The industry it deals with if it is a national body.
6. Initiation fees, dues, and assessments levied in the past twelve months.
7. Limitations on membership.
8. The number of paid up members.
9. Date of the last election of officers.
10. The method of election.
11. The vote for and against each candidate.
12. The date of the last financial statement furnished each member.
13. A copy of the by-laws and constitution must also be filed.

Each labor organization must file in January and July.
with the Secretary of State full and intelligible reports of its financial condition showing salaries and other payments made.

All labor organizations must file copies of all working agreements with employers.

The constitutions must provide for a democratic form of government. Provisions to prescribe terms and conditions of work, wages, hours of employment and the use of labor saving devices are null and void.

Fees and dues cannot be increased except by majority vote of members, and no initiation fee shall be above $25.00.

The following conditions are attached to union procedures in respect to democratic practices:

1. Officers must be elected by majority vote.

2. Notice of an election must be sent to all members at least fifteen days before such election.

3. Elections shall be by secret ballot.

4. No election is valid if the results have been influenced by threats, coercion or intimidation.

5. The results of an election must be tabulated by an impartial judge who is not a member of the union.

6. Members must be given notice of where a strike vote is to be taken.
7. An employer affected by a strike vote must be given the privilege of attending and stating orally the proposals made by him to the union.

It is unlawful for any alien, communist, or any person convicted of a felony to serve as officers of a union.

Unions are not to conduct hiring halls to coerce employers to employ persons recommended or approved by such labor organizations or to otherwise interfere with the employers right to employ persons of his own choosing.

It is unlawful for any union to solicit funds or make any contributions to any political candidate or party.

All unions must keep book of accounts and records of all financial transactions which are to be open to inspection by union members and state officers.

It is unlawful for a labor union to suspend or expel any member except for good cause and upon a fair and public hearing.

The Delaware law is much more severe and comprehensive than the laws of the other states which have enacted legislation of this type. The North Dakota act, for
instance, provides simply that for a union to operate as such it must file annually with the Secretary of State, a statement setting forth the names and addresses of all officers, the name of the union, a statement of the aims and objects of the union, the scale of dues, and the salaries paid to officers. Reports must be submitted setting forth the amount of money collected, the names of employees, and the amount of the salaries paid to officers. Such statements must be kept on file and be open to public inspection.\textsuperscript{14}

The Minnesota act deals primarily with elections and provides among other things that officers shall be elected for terms not exceeding four years, that elections be by secret ballot, and that the result of an election is invalid unless a plurality of the eligible persons voting have cast their ballot in favor of such a result. If charges that a labor unit is not complying with such regulations are sustained, the organization is disqualified from acting as the representative of employees until the disqualification is removed by submitting proof of performance of duty for which the disqualification has been imposed.\textsuperscript{15}

Other states with laws similar to these include Kansas, Idaho, South Dakota, Colorado and Massachusetts.

\textsuperscript{14} North Dakota, Union Regulation Act, March 13, 1947
\textsuperscript{15} Minnesota, Labor Union Democracy Act, April 24, 1942.
The Alabama, Florida and Texas laws on this subject have been restricted somewhat by court interpretation.

New Hampshire in its closed shop law of June 14, 1947 provides that closed shop contracts are valid only if certain conditions are met. These conditions require reports of union financial and personnel information, prohibit burdensome dues, and stipulate that no disqualification of union membership shall be based upon sex, age, or national origin.

New York, Massachusetts, and Connecticut have enacted fair employment practice acts which outlaw discriminatory practices by unions. The Massachusetts act is typical. The provision relating to unions states that it is an unlawful practice for unions because of race, color, religious and national origins or ancestry of any individual to exclude from full membership such individual or to discriminate in any way against any of its members or against a bona fide occupational qualification. 16

State Regulation of Public Utility Disputes

Twelve states have enacted laws providing for the prevention of disputes in the public utilities and providing for the compulsory termination of such disputes should they arise. Although the laws are generally similar there are differences in the techniques employed.

16 Massachusetts, Fair Employment Act, May 23, 1946.
Should attempts to mediate or conciliate disputes fail, the states have resorted to two types of ultimate measures to prevent cessation of the operation of utilities.

New Jersey is the first state to have enacted such a statute. The policy declaration in this instance is similar to that of the other states. The declaration holds:

It is hereby declared to be the policy of the State that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under government franchise is a threat to the welfare and health of the people; that utilities operating under such franchise are clothed with public interest, and the State's regulation of the labor relations, affecting such public utilities is necessary in the public interest.

The law provides that utility employees have the right to organize and bargain collectively through representatives of their own choosing and may enter into union security agreements.

All contracts between utilities and employees continue for one year from the date of expiration unless a party to the agreement informs the other and notifies the State Mediation Board of the desire for the change. This notice must be filed at least sixty days before the termination date of the contract. If the utility management and the representatives of the employees have not reached an agreement at the time of the expiration of
the contract, then the two groups shall each designate a person as a public hearing panel member, and these two shall select a third. The panel holds hearings and submits a report to the governor together with its recommendations.

Should either the utility or its employees refuse to accept and abide by the recommendations of the panel and as a result the operation of the public utility is threatened or interrupted; or should either side engage in a strike or lockout which in the governor's opinion threatens the public health, interest, and welfare, the governor is authorized to take possession of the plant, equipment and facility for use and operation by the State of New Jersey in the public interest. The utility is to be returned to the owners as soon as practicable after the settlement of the labor dispute.

A 1947 amendment to the law provides that it is unlawful to strike after the governor has taken possession of a utility pursuant to the provision of the act.

The Missouri and Virginia laws are similar to that of New Jersey in that the state government will take over the operation of the utility as a final means of preventing a cessation in utility operation.

Pennsylvania and Indiana have enacted laws with policy declarations similar to that described above. 17

These states, however do not provide for government operation of utilities but resort rather to compulsory arbitration as a final settlement. In making a final determination of a dispute, the board of arbitration in Pennsylvania is empowered to consider all pertinent facts and to establish rates of pay and conditions of employment maintained for same or similar skills of workers working under the same or similar conditions for public utility employers in the same labor market, and if there is no such employer in the same labor market then in an adjoining labor market within the boundaries or adjoining labor market.

Nebraska has created a Court of Industrial Relations which may take jurisdiction over a utility dispute whether the utility is under private operation, or operated by the government as a proprietary function. Any employer, employee, or labor organization, or the attorney general on his own initiative or by order of the governor when any industrial dispute exists may file a petition with the Court of Industrial Relations invoking its jurisdiction. After conducting hearings and making an investigation the Court makes its findings and enters its orders in writing.

In addition to the states named above Florida, Massachusetts, Michigan, Texas and Wisconsin enacted
laws in 1947 providing for the peaceful settlement of labor disputes in the public utilities.

**State Labor Relations Acts.**

The changing developments in the state labor relations acts have been mentioned in a previous chapter and various provisions of such acts have been commented upon in earlier parts of this chapter. This section will deal for the most part with the evolution of a restrictive trend as manifested through these labor relations acts.

In their basic provisions the five original "Baby Wagner Acts" followed the national act closely.

The description following immediately will deal exclusively with the original acts and not to their subsequent amendments. As to their policy declarations, the Utah and Massachusetts acts follow the National Labor Relations Act almost verbatim. In Pennsylvania, New York, and Wisconsin, the acts do not stress as a major purpose the removal of the causes of disputes which tend to obstruct commerce, but instead emphasize the removal of the inequalities of bargaining power and poor working conditions. This inequality in bargaining power is specifically cited in the Pennsylvania and New York acts as the cause of sweatshops, depressed purchasing power, and

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18 See pp.2-118Chapter One.
business depressions resulting from the production-consumption disparity. The Wisconsin act referring to the inequality in bargaining power between the employer and employees says that it is necessary that "the individual workman have full freedom of association ... free from interference, restraint, or coercion of employees."

All five states refer to a labor dispute as a controversy concerning terms or conditions of employment, questions of representation, or rights granted in the act, "regardless of whether the disputants stand in the proximate relation of employer and employee." In this they are similar to the National Labor Relations Act.

The Utah, Massachusetts, and Pennsylvania Acts give the board power to decide in each case whether the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof. The New York statute differs in this respect and contains the so-called A.F.L. craft proviso. This provides that "... in any case where the majority of employees of a particular craft shall so decide, the board shall designate such craft as a unit appropriate for the purposes of collective bargaining."
The unfair labor practices listed in the Utah and Pennsylvania Acts are in the main identical to those in the Wagner Act. Massachusetts makes the sit down strike an unfair labor practice for employees and thus is the only state among those passing "Little Wagner Acts" which includes an unfair labor practice for employees as well as for employers. Both New York and Wisconsin added spying and blacklisting by employers to the list of unfair labor practices for employers.

In all these acts, it is left to the discretion of the board to decide when a question of representation has arisen; and it is optional with the board whether or not an election is held. The New York Law has a provision which permits employers to petition for a determination of collective bargaining representatives, although the board need not order an election solely "because of the request of an employer or of employees prompted thereto by their employer."

These five statutes created three member quasi-judicial boards which could make investigations, hold hearings, and issue cease and desist orders and could apply to the appropriate state courts for the enforcement of such orders.

In 1937, bills providing for state labor relations acts were defeated in fourteen state legislatures.
indicating a change in attitude towards labor unions. However, as late as 1941 Rhode Island was able to enact a law similar to those described above.

By the beginning of 1939 substantial political changes had taken place in a number of states. Both business and farm groups made determined efforts in various areas to revise existing labor legislation or to enact new restrictions. Pennsylvania amended its original act, Wisconsin repealed its statute and enacted one that is basically different, and Michigan and Minnesota passed new laws that are of a substantially different nature from the earlier acts. In these acts, the emphasis is less upon the establishment of equal bargaining power between employers and employees than upon the need to protect the public interest against the possible excesses by both sides in a labor controversy.

The Michigan statute is primarily a mediation act but it forbids unfair labor practices by employees as well as by employers. Employees are forbidden to engage

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19 Harris, Arthur, "State Labor Relations Acts," Bureau of Public Administration, University of California, Berkeley, 1939. (mimeographed)

in a sit down strike and are not to intimidate other employees for the purpose of inducing them to join a union or preventing them from working. No machinery is provided to prevent such unfair practices and there is no provision for determining the bargaining agent for employees or the appropriate unit for purposes of collective bargaining. A labor mediation board is set up to take steps to settle existing or threatened disputes. A strike or lock out is forbidden before notice is served on the board and for five days thereafter. In the case of a public utility thirty days notice must be given.

The Minnesota Law of 1939 does not specifically declare it to be an unfair labor practice for employers to dominate or interfere with the formation or administration of labor unions or to refuse to bargain collectively. Although the quantitative aspects of unfair labor practices relating to employers and employees are not necessarily significant in themselves, it is interesting to note nevertheless, that there are nine such practices for employees and only six for employers. Furthermore, the unfair labor practices for employers are of a limited nature and there is no administrative agency created to investigate or prevent such practices.
The Minnesota Act provides that employees shall have the right of self organization and the right to form, join, or assist labor organizations, and to bargain collectively through representatives of their own choosing; it also provides that employees have the right to refrain from any and all such activities. This latter provision has been clarified somewhat by an opinion of the attorney general issued August 24, 1939 which states that while conferring upon employees the right to refrain from union activity it does not preclude the consummation of a closed shop agreement by a union duly selected by a majority of the employees to act as their bargaining representative. The right to refrain from union activity may be exercised only collectively and not individually.

The act creates an officer of Labor Conciliation who conducts elections to determine the representative for collective bargaining. A craft unit must be recognized as the appropriate unit for those who are members of it, if a majority in such a unit so desire.

In 1939, Pennsylvania changed its labor relations act from the Wagner Act type to the "equalizing type." An employer could now enter into a closed shop agreement only if the labor organizations involved did not deny membership in its organization to any employees of the
employer at the time of the making of such an agreement. The checkoff is prohibited unless authorized by a majority vote of all the employees in the collective bargaining unit and by each individual affected. The amended act also declares certain employee practices to be unfair. These include participation in stay-in strikes, intimidation or coercion of any employee to compel him to join or to refrain from joining a labor organization, and intimidation or coercion of any employer to compel him to accede to demands.

Wisconsin repealed its original act in 1939 which guaranteed to employees the right to organize into unions of their own choosing without "interference, intimidation, or coercion from any source." In the new act of the same year the word "interference" is deleted, weakening the restrictions on unfair practices of employers. In addition, a list of ten unfair practices for employees is included. These relate to striking, picketing, boycotts, coercion of other employees in the enjoyment of their legal rights, and to giving notice of intention to strike. Most of these matters have already been dealt with in this chapter as has the limitation on closed shop agreements. This law makes it an unfair labor practice for both employers and employees to violate
the terms of a collective bargaining agreement thus making such agreements binding at law. Other features of the act include the granting of the privilege to petition for the determination of the bargaining representative to the employer, the necessity of approving a craft as the bargaining unit if the majority of the members of the craft so desire, the banning of the checkoff unless the individual authorizes such payments, and the possibility of company unions finding a place on the ballot for determination of the bargaining representative and bona fide unions being disqualified because of unfair practices previously committed.

These enactments have led Professors Millis and Montgomery to conclude that this is a measure "designed to protect the 'rights' of individual workers, farmers, creameries, employers, and the public from infringement quite as much as to protect the 'rights' of workers to organize if and when they wish for the purpose of collective bargaining."

In dealing with alleged unfair labor practices three different techniques had emerged by this time.

21 Millis and Montgomery, op cit., p. 549.
In Massachusetts and New York, an administrative board acting in the name of the state was assigned the exclusive power and duty to investigate and prevent alleged unfair labor practices. If after an investigation the board finds that there is a violation, an order is issued intended to remedy the injury done. In the preliminary hearing, however, an attempt is made to settle the issue. Finally, if compliance does not follow the board's order there is a review and enforcement by the state courts.

The present chairman of the National Labor Relations Board writing in 1942 has labeled this the administrative technique as differentiated from the quasi-judicial technique resorted to in the Pennsylvania and Wisconsin 1939 enactments. In these states the board's function is almost wholly to adjudicate. There is no attempt made to investigate or adjust a case before the hearing. The complaint is tried before the board by the counsel for the charging party. The merit and presentation of the case are the responsibilities of the private party which filed the charge and not the state.

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Finally there is the court technique used in Michigan and Minnesota. Certain acts are declared to be unfair labor practices but the Michigan Board and the Minnesota conciliator are not authorized to take any action to prevent them. Rather, they devote most of their time to mediation and perform neither administrative nor judicial functions insofar as unfair labor practices are concerned. These are dealt with by the state courts.

The new state labor relations acts which appeared continued this emphasis upon the restriction of union conduct and organization and the protection of the rights of all interested parties. The equalization of bargaining power at the same time was receiving less attention and emphasis.

The Kansas act of 1943 provides that employees have the right to engage in concerted activities for the purposes of collective bargaining, and have the rights of self organization and of bargaining collectively through representatives of their own choosing but such employees also have the right to refrain from any and all of these activities. Business agents must be licensed, and all unions in the state must be registered. Annual reports must be made by the unions giving required
information. A list of acts forbidden to employers and those forbidden to employees is contained in the act. The law makes it illegal for any person to engage in such activities as the prevention of an election of union officers, participation in a strike unless it has been authorized by a majority vote of the employees to be governed thereby, acting as a business agent for a union without having a license, soliciting membership from a labor organization without authority from the organization, and to engage in certain types of boycotts and picketing activity. The nature of these prohibited acts is ample evidence of the difference in purpose of the Kansas act from the original Wagner type act.

The Colorado Labor Peace Act of 1943 was the most restrictive of all the laws which had been enacted by that date. The severity of some of its provisions, however, have subsequently been tempered by court decisions. This act borrowed heavily from the Wisconsin Employment Peace Act but also added many new features. The first three sections of the policy declaration were taken from the Wisconsin act. This declaration emphasizes that there are three major interests involved, the public, the employer and the employee. The rights of any disputant in a controversy should not be permitted to intrude directly
or indirectly into the primary rights of a third party to earn a living, transact business, and engage in the ordinary affairs of life. The next section of the policy declaration provides for restrictions on union activities in its internal affairs. No person may be denied union membership because of race, color, religion, sex, or by unfair discrimination. Excessive initiation fees or dues shall not be required. Reports of financial transactions must be made to all the members and elections must be by secret ballot.

A labor dispute is defined as any controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or process or details of collective bargaining. It is not a labor dispute when the controversy is over an employer refusing to enter an all union agreement, when the controversy is a union jurisdictional dispute, and when the disputants do not stand in the proximate relation of employer to employee. This last provision is, of course, directly opposed to the concept of a labor dispute contained in the Morris-LaGuardia Anti-Injunction Act, the Wagner Act and the original "Baby Wagner Acts." The latest determination of the legality of such a definition of labor dispute was made by the Colorado Supreme Court which has upheld this provision in the Labor Peace
The Colorado Act provided for the incorporation of labor unions but this has been declared unconstitutional and when this section fell certain unfair labor practices for employees fell with it as the court felt that the two sections were so intertwined as to be inseparable.

The Colorado Industrial Commission is given the function of the determination and certification of representatives for the purposes of collective bargaining. An additional power granted to the commission relates to picketing. In cases where picketing tends to cause a disturbance the commission can limit the number of pickets, and prescribe the distance from the plant where such picketing may be allowed.

The act also provides for a cooling off period in case of a threatened strike. Thirty days notice of intention to strike must be given in a farm or dairy product industry and twenty days is required in other industries.

The Delaware Union Regulation Act of 1947 barely resembles the earlier acts. It is what its name suggests, an act to regulate unions; and nowhere is there

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a hint of an attempt to equalize bargaining power between the employer and the employee. The list of unfair employee practices is identical to that in the Colorado Labor Peace Act. The Delaware Act, however, omits any mention of unfair employer practices. Strikes are unlawful unless approved by a majority vote of the employees, the secondary boycott is made illegal and there is positive provision for the use of injunctions in labor disputes. Picketing is regulated according to a list of provisions. Unions must register with the Secretary of State giving detailed required information, meetings and elections must conform to listed regulations. Aliens, communists, and felons cannot be officers of unions. Unions are prohibited from making contributions to political campaigns and they must keep books which the state has a right to inspect. There is provision for the enforcement of union contracts and a regulation of union expulsion of members.

One student of the state labor relations acts writing in 1942 concluded his article with this statement: "One may well conclude with the observation that the principal interest groups involved in the situation, namely labor organizations and employers - both agricultural and industrial - have not yet reached an enduring
compromise with respect to labor relations legislation." One might well add that this conclusion has lost none of its validity in the past five years.  

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24 Doan, Mason, op. cit., p. 559.
CHAPTER III

CHRONOLOGY AND GEOGRAPHY

Chronological Appearance of the Laws.

The justification for any system of classification lies in its utility. While the laws with which this study is concerned might be classified according to the comparative verbosity of each, such an arrangement might not add too much of importance to the existing body of knowledge.

A chronological presentation of the appearance of state labor legislation during the past decade would have an historical value if no other. To make generalizations solely on the basis of a time sequence runs the danger of imputing significance to a lone variable at the expense of others. Nevertheless a classification on the basis of time does bring out certain points such as the trend in subject emphasis and allows for a reasonable degree of speculation as to causal factors.

The character of the 1937 state labor relations acts has already been dealt with. Wisconsin, Utah, Pennsylvania,
New York, and Massachusetts fashioned their acts largely upon the national model. A small indication of things to come could be found in the Massachusetts provision which outlawed sit-down strikes.

The year 1938 was one of comparative drouth in the growth of state laws affecting the organization and conduct of labor unions. There did appear, however, the first law in the period being analyzed which attempted to limit picketing and boycotting activity to the majority of the employees of an employer. This Oregon anti-picketing law was declared unconstitutional in 1940.²

Nineteen hundred and thirty nine might be marked as the starting point of the overall restrictive trend. In that year Wisconsin repealed its Labor Relations Act and enacted a new one. Pennsylvania amended its original act and Michigan and Minnesota enacted new ones significantly different from the earlier type. The general effect of the 1939 amendments and enactments was to change these labor relations acts from legislation concerned primarily with equalizing bargaining

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¹ See pp. 67-71, Supra.
² See A.F. of L. v. Bain, Infra
power between employer and employee to ones seeking to support the rights of the public as well as those of labor and management during labor disputes.

The conduct of unions was restricted by the modification of the use of the checkoff in the Wisconsin and Pennsylvania laws and the prohibition by Pennsylvania and Michigan of the use of sit down strike tactics. Other limitations of the use of the strike came as Wisconsin made it mandatory to give notice of intention to strike, Minnesota legalized strikes in violation of a collective bargaining agreement, and Michigan set up elaborate compulsory mediation machinery. Wisconsin made an unfair labor practice to engage in a secondary boycott. Michigan, Wisconsin, and Pennsylvania included a number of unfair labor practices for employees as well as for employers in their labor relations acts.

The organization of unions was affected as Wisconsin and Pennsylvania limited somewhat the use of the all-union contract.

All the 1939 changes came within the framework of labor relations acts modifying both the purpose and form of such laws. The full effect of the Wagner Act encouragement of unionization had not occurred until after the favorable court decisions of 1937. After that time union
numerical strength increased and with this strength, the power of the labor group in the American economy. The C.I.O.-A.F.L. split resulted in jurisdictional fights different in character and wider in effect than the older type of craft jurisdictional squabbles. The sit-down strikes in the automobile industry and elsewhere created some anti-union prejudice. These were undoubtedly important among the factors that led to a demand for some type of union restriction; and the early answer to this demand came for the most part in the Michigan, Minnesota, Wisconsin, and Pennsylvania enactments of 1939.

The three year period, 1940-41-42, saw little restrictive labor legislation enacted. Possibly the preoccupation of all groups in the nation with the conversion to a war economy was responsible for this. In 1941, Georgia passed a law requiring thirty days notice of intention to strike, Maryland enacted its anti-sit down strike statute, and California passed its "Hot Goods" act. The latter was a limitation of the use of a type of secondary boycott and was to be operative only during the duration of the war. The original purpose of this act was to remove certain obstructions to the war effort.

The Minnesota Labor Union Democracy Act of 1942
provides for regular well publicized union election of officers, and makes it mandatory for unions to issue regular financial statements.

The three year lull was abruptly ended in 1943 when a rather full measure of restrictive legislation was enacted. Five states provided for extensive regulation of the internal affairs of unions. The type of union regulation achieved in the Alabama Bradford Act, the Colorado Labor Peace Act, and the Florida, Kansas, and Texas Union Regulation Acts can be indicated by a list of the requirements and restrictions embodied in the statutes of these five states. Although a number of these provisions were subsequently invalidated by court decision, the character of the union regulation sought would be better revealed by including such provisions in the listing of the 1943 enactments.

1. Registration of labor unions. (Alabama, Kansas)
2. The filing of information such as names and salaries of officers, dates of elections of officers, and copies of constitutions and by-laws. (Alabama, Florida, Kansas, Texas)
3. Statement of number of paid members. (Alabama)
4. Issuance of financial statements or granting union members the right to inspect books. (Alabama, Colorado, Florida, Texas)
5. Statement of union property owned. (Alabama, Texas)

6. Prevention of the levy of excessive initiation fees or dues (Colorado, Florida, Texas)

7. Required secret ballot in election of officers (Colorado, Texas)

8. Incorporation of unions (Colorado)

9. No denial of union membership because of race, color, religion, or sex. (Colorado)

10. Licensing of business agents. (Florida, Kansas, Texas)

11. No expulsion of union member without fair hearing. (Texas)

12. No supervisor to be accepted for membership in union. (Alabama)

13. No political contributions by unions. (Alabama, Colorado, Texas)

14. No work permits to be issued as a condition for the privilege to work or initiation fees to be required for temporary workers. (Texas, Alabama, Colorado)

The Colorado Labor Peace Act and the Kansas Union Regulation Act contain enough of the characteristics of the earlier state labor relations acts to be classified among that group although it is the purpose of neither
act to equalize bargaining strength between labor and management. The Colorado act in addition to placing the described restrictions on the internal affairs of unions limited boycotting, picketing, and striking activity to the majority of the employees in the collective bargaining unit against who such acts were primarily directed. These provisions were ruled inoperative in A.F. of L. v. Reilly.\(^3\)

The prohibition of striking unless authorized by a majority vote of the employees to be governed thereby in the Kansas act was declared unconstituional in Stapleton v. Mitchell.\(^4\)

Arkansas, Kansas, Florida, and Alabama enacted 1943 laws dealing with various aspects of picketing. Colorado limited the use of the checkoff while Kansas in its Union Regulation Act outlawed the secondary boycott of the "hot cargo" type.

A partial limitation of the use of the closed shop contract resulted from Wisconsin, Colorado, and Kansas provisions which required the vote of a stipulated percentage of the employees before such agreements could be made.

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\(^3\) A.F. L. v. Reilly, see *Infra.* p. 139.
\(^4\) Stapleton v. Mitchell, see *Infra.* p. 119.
The dominant characteristics of the 1943 laws were the regulation of the internal affairs of unions, the continuance of the movement away from the original "Little Wagner Act" type of state law, the attempts in Colorado, Florida, and Kansas to limit the permissible use of union weapons to those in the immediate employer-employee relationship, and the start of the legislative limitation of the closed shop.

In 1944, there appeared the first attempt by the states to completely prohibit the closed shop arrangement. In that year Florida and Arkansas passed their so-called "right to work" amendments.

South Dakota enacted its prohibition of the closed shop the following year. New Jersey in 1945 passed the first of the crop of laws providing for the peaceful settlement of public utility disputes.

Nebraska and Arizona in 1946 outlawed closed shop contracts by constitutional amendments. Virginia illegalized picketing by those not employees of the business or industry being picketed. The same state also prohibited strikes by public employees and thus became the first of several states to outlaw such strikes. Louisiana made strikes in violation of a collective bargaining agreement illegal. §3
The current year, 1947, is the red letter year in the enactment of laws affecting the conduct and organization of unions. Tennessee, Maine, North Dakota, Georgia, Iowa, Texas, Virginia, and North Carolina legalized the closed shop contract.

Virginia, Arkansas, Tennessee, North Carolina, Georgia, Delaware, Iowa, Texas, and New Hampshire have passed laws relating to the checkoff or work permits.

Indiana, Missouri, Nebraska, Texas, Virginia, Pennsylvania, Florida, Massachusetts, Michigan, and Wisconsin have provided either for compulsory arbitration of public utility disputes or government operation of the utilities in the event that their effective operation is threatened by labor-management difficulties.

The anti-strike legislation of 1947 assumes a number of forms. Utah and Delaware provide that the majority of the employees in a collective bargaining unit must approve a strike before it can be called into effect. North Dakota requires a majority vote of employees before a strike is permissible. New York, Texas, Ohio, Michigan, Missouri, Nebraska, and Pennsylvania prohibit strikes by public employees. Texas has also made secondary strikes illegal while California, Iowa, Michigan, Missouri, and Pennsylvania have passed laws...
dealing with jurisdictional disputes.

North Dakota, Idaho, Delaware, Minnesota, Oregon, Iowa, Pennsylvania and Utah have illegalized the secondary boycott. Utah, South Dakota, North Dakota, Georgia, Delaware, Texas, and Pennsylvania have restricted picketing.

This chronological presentation reveals a further possibility for classification. First, there are those laws that are apparently a response to a current situation. In this category would come such statutes as the anti-sit-down strike legislation that appeared after the occurrence of the sit down strikes, the laws providing for compulsory settlement of utility disputes which appeared during and after the 1947 telephone workers strike, the anti closed shop laws which are possibly a legislative response to the pressing question of union security left unsolved by the maintenance of membership formula of the War Labor Board, and the 1943 laws regulating the internal affairs of unions which were enacted as union membership swelled under the impact of the expanding war economy.

On the other hand, there are the laws which reveal the current philosophy of the proper and improper boundaries of union conduct and organization. The several
state legislatures which have limited the use of boycott, picketing, and striking techniques to those in the proximate relation of employer to employee have a conception of union conduct that neglects the interdependence of interests of different groups of workers. Proper union conduct includes the exertion of non-tortious or criminal actions against an employer by his immediate employees. A further limitation of proper union conduct is found also in the attitude that has been embodied in a number of laws to the effect that in the labor-management struggle there are certain rights of the public that must be protected irrespective of the merit of the contentions of the disputants. The public utility dispute laws include among the public rights certain welfare aspects which would be curtailed in the event of a disruption of utility service.

The anti-closed and union shop laws reveal an individualistic philosophy in that the curtailment of the rights of the individual as a result of the union security contract is emphasized. Thus, where the rights of all groups in the economy are involved, some of the states have not been adverse to limiting the rights of the single labor group. But within the labor group, the anti-closed shop laws have the opposite effect of placing the
individual's rights above certain collective rights that would ensue from union security contracts. The conception of rights varies in the two cases in that heavy consideration is given to the social welfare of the public as a justification for the limitation of both labor and management prerogatives in the one case; while in the other the material welfare benefits that might accrue to labor as a result of the entrenchment of union security through union shop contracts is given subordinate consideration to the freedom of the individual to compete for a job.

All in all, one might conclude here that the rash of laws enacted in the past few years, some of them apparently in great haste and many in response to the "popular mandate to do something about labor" have resulted in a confusion in labor law that in its deeper implications is consistent only in that labor conduct and labor organizations have been restricted.

Some Geographical Aspects

Some exceptions could be found to practically any generalization that might be made about the geographical aspects of the restrictive state labor laws that have appeared in the past ten years. While many southern state
legislatures have passed liberal dosages of such laws, there are others that have enacted few statutes of the type under consideration. The same statement might be made of the western states, the farm states, or the heavily industrialized states. Nevertheless, brief comment might be made concerning certain aspects of the geographical concentration and lack of concentration of the laws.

The quantity of the legislation that has been passed by the southern states is impressive. Texas in this respect is a leader not only among the southern states but among all states. A very extensive regulation of union organization and conduct has been achieved by that state since 1943. The internal affairs of unions are made subject to a group of restrictions in the 1943 Union Regulation Act. Here it is declared to be the public policy of the state "in the exercise of its sovereign constitutional police powers to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives...." Other laws prohibit the closed shop, ban bargaining and strikes by public workers, ban picketing of public utilities, make unions sueable, regulate picketing, ban the compulsory checkoff, and prohibit secondary strikes, boycotts, and picketing.
last group of laws was enacted in 1947.

The Alabama Bradford Act, and the Florida Union Regulation Act are omnibus type laws seeking to achieve various types of union regulation. Of the thirteen states that have passed anti-closed shop laws, seven are southern states. While none of the other states in that section of the country match the quantity and severity of the overall regulation achieved in Texas, several others among them Virginia have not been lax in passing extensive restrictive measures. The latter state since 1946 has enacted an anti-picketing law, a strike control act forbidding strikes by government employees, a law prohibiting recognition of labor unions by any state government agency, an anti-closed shop law, and a law on utility disputes. On the other hand, Mississippi and Kentucky to date have passed practically no laws that affect labor unions.

The industrial growth of the southern states during the war and the current efforts of the C.I.O. and the A.F. of L. to penetrate that section are undoubtedly important among the factors that have led to the passage of so many restrictive laws there.

Aside from the concentration of the appearance of the laws in the South, the growth of the laws in the
rest of the states is characterized by a geographical spottiness which is difficult to explain in instances. It is not unusual that New York, Pennsylvania, and Massachusetts should have supplemented the Wagner Acts with their own labor acts for these states have large union populations and are giants in industry and commerce. It is more difficult to explain the Utah enactment of one of the first state labor relations acts of the liberal type in the country and the maintenance of such a law without amendment until 1947 when the act was changed to a "Wisconsin type" of law.

A list of the states which have passed the most restrictive union regulatory laws reveals little geographical pattern. The Colorado Labor Peace Act and the Delaware Union Regulation Act are probably the most union-limiting laws possessed by any of the states. The Wisconsin, Michigan, Minnesota, and Kansas labor relations acts are all restrictive but it is impossible to reach a conclusion concerning any geographical trends on this information alone.

Of the states which are usually regarded primarily as agricultural states and citadels of individualism and which contain small union populations Iowa, Nebraska, North Dakota, South Dakota, and Kansas have enacted a
number of regulatory measures. On the other hand, the more heavily industrialized states of Ohio, Illinois, and Indiana have passed comparatively little anti-union legislation.

At the present time only three states, all of them on the eastern seaboard, have labor relations acts of the Wagner type. These are New York, Rhode Island, and Connecticut. The Pennsylvania, Wisconsin, Kansas, Michigan, Minnesota, Utah and Colorado acts all differ significantly from the original national law.

It might be concluded that the laws are reflections both of the labor philosophy of the legislators in office and the political strength of the unions. This could partially explain the paradox of the plethora of laws enacted in some of the states with little industry and a comparatively small number of unions and the sparsity of restrictive laws in some of the industrial states where the heavy concentration of unionized workers in industrial centers is a political factor to be taken into account.
CHAPTER IV

THE JUDICIAL ATTITUDE AND

THE CURRENT SITUATION

It is probably easier to study an historical movement of the past than to stand in the middle of a current development and attempt to ascertain its characteristics. The new state labor laws that have been enacted have resulted in extensive litigation. While many of the laws have been tested in the courts, many more have not been. In this chapter, the important decisions already rendered will be presented. Following an examination of both the court treatment and the laws, an attempt will be made to grasp some of the fundamental characteristics of the present trends in labor law on the state level.

Closed Shop.

To integrate the relationship of common to legislative law in the case of the closed shop it is necessary perhaps to go back as far as 1806 when a Pennsylvania court in the famous Philadelphia Cordwainers case declared
that any combination of workingmen to raise wages is condemned by the rule of law. The conspiracy doctrine was applied to labor organizations and was only substantially modified thirty six years later in the case of Commonwealth v. Hunt.¹

This case involved the Boston Journeyman Bootmakers Society, who had struck against an employer for retaining a non-member journeyman.

The opinion of Chief Justice Shaw of the Massachusetts Supreme Court is important in that a precedent was established that held that an attempt to establish a closed shop was not wrongful.

To quote directly from the opinion:

The manifest intent of the association is to induce all those engaged in the same occupation to become members of it. Such a purpose is not unlawful. It would give them a power which might be exerted for useful and honorable purposes or for dangerous and pernicious ones.

Thus a court had held that a strike even for a closed shop was not unlawful and that it was the purpose of the closed shop that was the determining factor in its

¹
4 Met. (45 Mass.) 111, Supreme Judicial Court of Mass. 1842.
legality. Such purposes might not only be within the law but they might even be socially commendable.

At the turn of the century there occurred a number of important cases dealing with the question of the closed shop and these were primarily concerned with the legality of the strike for the closed shop. Two divergent court attitudes emerged, one exemplified by the conservative approach of the Massachusetts courts and the other by a more liberal attitude of the courts of New York.

The Massachusetts case of Plant v. Woods illustrates the position taken by the courts in that state.²

Following the split of a union of painters and decorators into two factions, the more highly skilled group threatened to strike against any employer who hired workers from the rival faction. The skilled workers by virtue of this threat were able to secure a substantial measure of compliance from employers.

The court thought this closed shop practice should be enjoined holding that the skilled workers had threatened to strike if their demands were not met and that the purpose of such a threatened strike - the closed shop -

was undesirable. Involved in this case was the common law maxim that intentional infliction of harm upon another is actionable unless justified. Such justification could be found in the advancement of one's own interest but was conditional upon the absence of tortious or criminal action and whether or not it fit into the prevailing judicial opinion of fair competition. In this case the court revealed that its conception of competition was a narrow one.

Competition was the conflict between merchants for the same customers or two groups of workers for the same jobs. The increased bargaining power to be gained from a closed shop was too remote a benefit to justify the infliction of harm in securing it. Competition, then, was a struggle between groups on a similar plane of endeavor and this concept excluded the struggle between the employer and the employed.

Professor E.E. Witte writing in 1932 found that while agreements for the closed shop voluntarily entered into and not monopolistic in character had been held to be lawful, in not a single case had the Massachusetts Supreme Court ever found a strike for the discharge of non-unionists to have been justified. 3

A more liberal attitude towards the closed shop appeared in the opinions of the courts of New York State, although even here there was some inconsistency in two leading opinions written within eight years of each other.

In Curran v. Galen, the court held that a worker who was discharged pursuant to a union shop agreement between the Brewery Workingman's Local of the Knights of Labor and the Ale Brewers Association of Rochester that no worker should work for more than four weeks without being a member, might recover damages from the union. 4

The court held, "It is proper and praiseworthy.... that men should unite to achieve that which each by himself cannot achieve.... But the social principle which justifies such organization is departed from, when they are so extended in their operation as either to intend, or to accomplish, injury to others."

The same court in 1902 upheld the right to strike for a closed shop. 5 The reasoning of the court in this instance is interesting:

4 Curran v. Galen, New York Court of Appeals, 152 N.Y. 33, 1897.

..... the propositions quoted recognize the right of one man to refuse to work for another on any ground that he may regard as sufficient and the employer has no right to demand a reason for it. But there is..... no legal objection to the employees giving a reason..... and the fact that the reason given is that he refuses to work with another who is not a member of his organization..... does not affect his right to stop work. Nor does it give a cause of action to the workman to whom he objects because the employer sees fit to discharge the man objected to..... The same rules apply to a body of men, who having organized for purposes deemed beneficial to themselves, refuse to work.

In the case of Jacobs v. Cohen, the court held enforceable a trade agreement providing for the exclusive employment of union members.6 Here a closed shop agreement had been voluntarily entered into. The court ruled that the employees' combination is lawful when it does not extend so far as to inflict injury upon others or to oppress them and crush them by excluding them from all employment.

In Curran v. Galen, the union shop agreement was between a union and an ale brewer's association. An enforcement of the agreement would have created a labor

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market monopoly, for if a worker chose not to join the union his employment possibilities became almost non-existent in the industry. In the Jacobs case, a worker who chose not to join a union might conceivably look elsewhere for a job in the same labor market and find such employment in a non-union establishment.

Professor Witte found that where the question had arisen in other states, the courts had inclined to either the New York or Massachusetts position.\(^7\)

Recently the courts have dealt with a number of questions arising from the existence of closed shops or the attempts to install closed shop conditions. The contradictory opinions reached indicate that the concept of the proper status of the closed shop is one that has varied from court to court and that the problems arising will probably never receive consistent judicial treatment in the absence of a legislative criterion.

While a decision in a California case has held that a closed shop contract entered into by an employer without consulting his employees is not applicable to those employees unwilling to join an outside union, the Colorado

\(^7\) Witte, op. cit., p. 25.
Supreme Court has ruled that a closed shop contract between an employer and a union is valid although the contract is executed without the consent of the employees. 8

The monopoly aspects of the closed shop have been the subject of court action and here too there has been little consistency in judicial attitude.

A New Jersey court has held that a closed shop agreement with a single employer is not unlawful or contrary to public policy. 9

Here the court ruled that an employer was not entitled to an injunction restraining members of a union from picketing for the purpose of inducing an employer to enter into a closed shop contract with the union: (1) where the union had no monopoly of labor in the industry in the locality, (2) where the contract would not greatly restrict the non-union workers opportunity for employment, (3) and where the union's motive in seeking a closed shop was for the protection of its members against discrimination.


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According to the decision

..... a distinction must be drawn between a closed shop in a single factory or group of factories, and a closed shop in substantially an entire industry throughout a considerable area. And in the latter case there is a further distinction between a closed shop sought by a union as a protective measure and one sought in order to create a monopoly of labor..... the last case is held to be contrary to public policy.

Thus, this recent position of the New Jersey court is substantially that of the New York Court of Appeals in Jacobs v. Cohen with a further stipulation that even a closed shop throughout an entire industry is justifiable if such an arrangement happens to be necessary to protect union workers against discrimination.

However in 1937, the same year which saw the above decision written, a New York court ruled that a closed shop proviso did not violate the constitutional rights of non-union workers who either had to join the union or lose their jobs.\(^\text{10}\) It will be recalled that the New York State Labor Relations Act had been enacted in that year and contained a provision to the effect that nothing was to preclude an employer from making a contract with a union requiring union membership as a

\(^{10}\) Williams v. Quill, 165 Misc. 99, 300 N.Y. 166, Nov. 10, 1937.
condition of employment. In light of this provision, the court thought that although a non-union worker would by a closed shop contract be coerced into joining a union against his will or face the alternative of unemployment, such a contract was still valid. The criticism for the situation in which the non-union workers found themselves, stated the decision, lay with the legislature and not the courts. So long as a closed shop contract was entered into pursuant to the closed shop proviso of the Labor Relations Act of New York State, the contract would be a valid one. If there happened to be an evil in the monopoly of labor, the matter would be one for the legislature to consider.

A different approach to this problem was considered by the California Supreme Court in 1945. The ruling in this case stated that a union which had obtained a monopoly of the labor supply through a closed shop occupied a quasi-public position. It had the obligation to permit all applicants to join and the union could be compelled to admit persons to membership although some applicants had interests inimical to it. A union might not maintain a closed shop or other form of labor monopoly

11 Marinship Corporation v. James, California Supreme Court, 1945.
simultaneously with a closed or partially closed membership. Unions with a closed shop must be democratic and admit to their membership all those reasonably qualified for their trade. Otherwise such persons would be deprived of their constitutional rights to earn a living. "Autocracy," the court claimed, "is no less inimical to our American ideals if practiced by the many rather than one."

In an earlier case however, a California court had held that a closed shop contract was valid even though the contracting union was a closed union, and refused to admit to membership employees employed by the employer at the time of the execution of the contract.\footnote{Stockwell v. Vinstrand Theatres, Inc., Calif. Super. Court, June 4, 1942.}

All this is background for the current state of affairs. If there is anything at all that has become clear in this historical analysis, it is that the problem of the closed shop has been a persistent one, and that a variety of solutions have been buffeted about by the prevailing judicial temperaments.

It is noteworthy that the recent court decisions have dealt with the monopoly aspects of the closed shop
and that here, typically, the basis of the approach of the different state courts could only result in a variety of positions. The California courts seem to have emerged with an attitude of "closed shop, open union," while in New York the court on the basis of the state Labor Relations Act and with apparent regret has ruled otherwise.

From this hodge podge of century long court room vacillation there has arisen something really new on the American legislative scene. This is, the direct legislative prohibition of the closed shop contract. It is the monopoly aspects of the closed shop that have seemingly concerned the legislators; for the states prohibiting closed shop contracts, whether by constitutional amendment or statutory enactment, have all emphasized the denial of the freedom of the individual worker implicit in the all-union contract.

Such laws do not automatically become superfluous because of the enactment of the Taft-Hartley Bill during the eightieth session of the National Congress. While the latter bill has prohibited the closed shop, the mechanism is provided for the institution of the union shop.  

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13 Section 8 (a) (3), Labor Management Relations Act, 1947, 80th Congress. Section 14 (B) of the same act provides that it does not authorize union security contracts in those states which have prohibited them.
The states with closed shop statutes, however, have gone one step further and have effectively prohibited even the union shop.\textsuperscript{14} With the exception of the Maine law, all specifically provide that no individual shall be denied employment in an enterprise because of membership or non-membership in a labor organization. An individual who secures employment in an enterprise where a union shop contract is in effect and who refuses to join the union after the specified period of grace can not be fired because of this refusal. To discharge this worker would be to deny him employment because of non-membership in a labor union.

The newness of the state closed shop laws accounts for the sparsity of litigation that has arisen. Three of these statutes, however, have been tested in the courts and in each case the law has been upheld.

The Florida law was tested in 1945.\textsuperscript{15} Three legal questions were considered by the court:

1. Is the Florida constitutional amendment in violation of any provisions of the federal constitution?

\textsuperscript{14} See pp. 23–27, \textit{Supra}.

\textsuperscript{15} \textit{AFL v. Watson, U.S. District Court, Tampa Division, Civil 881, June 11, 1945}. 
2. Is the constitutional amendment a valid exercise of the police power of the states?

3. Is the constitutional amendment in conflict with the provisions of any federal statutes which were enacted within the powers delegated to Congress?

On the first point, the court denied that the amendment violates the first amendment by abridging freedom of speech, of the press, of assembly, or the right to petition government for redress. The court contended that the law does not abridge these fundamental rights but seeks to preserve them to those who do not join a union as well as to those who do. There is no prohibition against a citizen joining a union, but the prohibition seemed to be against requiring membership in the union in order for a citizen to be eligible to work.

As to the second point the court stated that,

Labor and labor unions are affected with a public interest and are subject to the regulatory power of the states for any reasonable regulation which will not be inconsistent with the constitution of the United States and statutes enacted within the scope delegated by the constitution to the Congress. Collective bargaining, self organization... necessarily involve the rights of free speech, freedom of the press, freedom of assembly and freedom of petition which may not be denied by
state statutes or constitutions, but we must also recognize that the total of union activity is directed toward economic objectives which involve purely commercial activities and which may be regulated by the state upon any reasonable basis when not in conflict with superior law.

Finally, the court held that there was no conflict with the National Labor Relations Act. In the opinion of the judges no federal law has made union membership mandatory and since the Florida statute does not deny the right to organize and bargain collectively there is no conflict with the federal statute.

Commenting on the wisdom of the amendment, the court admitted that the amendment makes it possible for non-union workers to get a "free ride" and benefit from the gains secured by union activity without contributing a share to securing these gains. However this ground of objection, the judges felt, was one for the legislature rather than for the courts.

This case reached the Supreme Court, but the justices there refused to rule upon it until a state court had given an interpretation of the amendment.\[16\]

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\[16\] AFL v. Watson, U.S. Supreme Court, March 25, 1946.
In the Tennessee case, a chancery court ruled that
the closed shop law violates no provisions of the federal
or state constitution and that the case turned on whether
or not the National Labor Relations Act covers the whole
field of labor relations. 17

On the latter question the court ruled in the nega-
tive holding that

Chapter 36 of the Acts of 1947 does not
attempt to interfere with employees or
their right to self organization, to
form unions, to assist labor organiza-
tions or bargain collectively through
representatives of their own choosing,
or to engage in concerted activities
for the purpose of collective bargain-
ing or other mutual aid or protection.
The act it seems is designed to protect
non-union workers against loss of jobs
or employment on account of their fail-
ure to join a union. It's an effort to
guarantee to any person the right to
join or not to join a union without being
penalized by loss of job or chance for
employment.

A Nebraska Court has held that the anti-closed shop
amendment to the Nebraska Constitution is constitutional
as an exercise of the police powers of the state to pro-
tect the public welfare; and that it is not unconstitu-
tional on the theory that it conflicts with the Labor-

17 Federal Firefighters of Oak Ridge v. Roane Anderson
Company, Tennessee-Chancery Court, Anderson County,
No. 5805, April 5, 1947.
Management Relations Act, or that it's unreasonable, arbitrary, and capricious. 18

All three of these cases have turned on generally similar points. The questions involved were ones of constitutional rights, the propriety of invoking the police powers of the state to prohibit a closed shop, and the possible conflict with federal statutes.

Arguing from a strictly legal concept of civil rights, it is difficult to see how these courts would have declared such laws unconstitutional. The freedom of an individual is diminished when he is bound by the terms of a closed shop contract. Economically also, for the adamantly anti-union employee, there is an infringement upon freedom. As to the police powers of the state, it is probably a proper application of such powers should the elected representatives of the people so rule. It must also be kept in mind that where such laws have been submitted to popular referendum the direct voice of the people has upheld the enactment. 19

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The Nebraska and Arizona Amendments were approved by referendum vote.
The Taft-Hartley Bill settles the question of conflict with the federal statute. It is provided in this act that

Nothing.... shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any state or territory in which such execution or application is prohibited by State or Territorial law.20

To hold that these legal enactments settle once and for all the question of the closed shop is to minimize the magnitude of the problem.

Writing in 1942 before the enactment of these state laws, Reverend Jerome L. Toner made this comment:

It (the closed shop) is one of the few major issues which has persistently defied adjustment. Other social and industrial problems, large and small, have come and gone finding solution in legislative, judicial, or popular sanction. And although unionism and collective bargaining became fundamental rights as a result of the passage of the National Labor Relations Act in 1935, the closed shop has remained an unsolved problem.21

20 Section 14 (b) Labor Management Relations Act of 1947.
If there is a fault in the legislative attitude as exemplified by these closed shop statutes, it is in the narrowness of the approach and the revelation of a nineteenth century conception of rights. To define the right to work in a closed shop law on the basis of a right to compete freely and individually for a job is to attempt to erect a body of twentieth century law on a foundation of obsolete conceptions. There is obviously much more to be taken into consideration in arriving at a right to work concept that is workable in the present era. For instance, can one in an economic sense ignore the problems of cyclical unemployment and substandard wages? From a sociological standpoint, can the problem of technological unemployment be overlooked? This is a problem of the social sciences and the contention here is that it must turn eventually, like all such problems, on a moral issue. Justice is not achieved by invoking a postulate of classical economics based upon the premises of nineteenth century individualism. Full consideration must be given to every factor and this the anti-closed shop statutes have not done.

The arguments for and against a closed shop have been raised time and again and need not be repeated here in detail. Most of the arguments against such a form of
union organization deal with racketeering, extortionism and other abuses of the closed shop rather than the closed shop itself. Ruling these points aside there is the issue already dealt with, that of a worker being forced to join an organization under penalty of losing the opportunity to gain a livelihood. It should be made clear that no brief is held here for the most monopolistic form of union maintenance, that is, a closed shop with a closed union. The unionists who have sought to uphold such a position are not without some arguments to justify their stand, but the arrangement is generally an unwholesome one and can lead to the most socially undesirable type of monopolistic situations. In the long run, the general welfare of all groups in the community would best be served by avoiding the rigidities involved in such contracts.

The union shop whereby new employees in an enterprise must join a union within a specified time after securing employment, such union membership being open to all new employees on equal terms with the present membership, need not have monopolistic consequences. To make a blanket prohibition of the union shop contract, in instances, would disrupt harmonious relationships that have long resulted from existing contracts. The question of the right
of the individual worker can probably best be resolved by making the union security conditions dependent upon the voted approval of a majority of the voting employees to be governed thereby. Those workers opposed to a union shop would have a chance to express their disapproval. If a union shop is instituted, it is not incompatible with the workings of the democratic processes for the minority to be bound by the will of the majority.

Several states have already approached such a position. The Kansas Union Regulation Law of 1943 makes it illegal for an employer to enter into an all-union agreement unless the majority of the employees to be governed thereby have voted to authorize such an agreement.

The Colorado Labor Peace Act of 1943 makes it illegal for an employer to enter into an all-union agreement unless three quarters or more of the employees shall have voted affirmatively by secret ballot in favor of such an agreement.

Two comments might be made concerning the Kansas and Colorado provisions. First, the seventy-five percent employee approval of a union shop called for in the Colorado Act is difficult to justify. Why the arbitrary figure of seventy-five percent rather than
sixty or fifty? Under such an arrangement twenty-six per cent of the employees could thwart the will of the remaining seventy-four per cent.

Secondly, a required percentage approval of all the employees to be governed by the contract rather than the voting employees is demanded by these laws. There is little justice in weighting the chances against a union shop by giving consideration to those employees who are so indifferent as to ignore an election.

Just as candidates in political elections and employee representations cases in National Labor Relations Board elections are approved by a majority will of those voting, the only possible solution at the present time in the dilemma of the individual's freedom in the union security contract, seems to be to apply the same procedure to this area. So long as the anti-union employee shows no qualms at being willing to share the gains that have resulted from union activity, there can not be too substantial an imposition upon his rights by requiring him to accept the will expressed by the majority of his fellow employees. Furthermore, at future contract renewals he would be free to express his views and to attempt to bend the majority will to accord with his own.
Strikes

While the common law has for a long time held that strikes for increased wages and reduction in working hours are legal, the legality of strikes for other purposes has usually been dependent upon the judicial opinion of the lawfulness of the object in view.

Courts have generally condemned sympathetic strikes because the benefit to be gained by such strikes has been regarded as too remote to serve as a just cause for striking activity which would result in the injury of third parties. There is no very clear cut dividing line between sympathetic and non-sympathetic strikes and the views of various courts have differed. Between 1890 and the 1920's the courts generally held a narrow conception of the necessary proximity of interest. 23

The Duplex Case already mentioned in regard to boycotts is an example of the court attitude. The majority of the Supreme Court held that the privilege of concerted action belonged only to those who were proximately concerned. 24

22 While most of the new laws are concerned primarily with strikes rather than lockouts, a number of states have enacted laws applicable to both. This is especially true of the laws restricting disputes in the public utility industries.

23 Millis and Montgomery, op. cit., p. 557.

In another instance, a federal court ruled that an organization strike by the Amalgamated Clothing Workers was unlawful as the primary purpose of the strike was to protect the standards of the clothing workers in New York rather than to benefit the Philadelphia workers being organized. 25

The Norris-LaGuardia Act and the state anti-injunction acts led to a modification of this narrow approach as these acts limited the use of the injunction in labor disputes and defined such disputes in a manner so that it became unnecessary for the disputants to stand in the proximate relation of employer to employee.

In the case of non-sympathetic strikes, the court sanction has depended primarily upon the object in view and the lawfulness of the association of the workers. The courts usually applied the common law tests of malice in law and of whether rights more important than the right to strike were being violated. 26

The questions arising from the strike for the closed shop have already been developed in this chapter and it


26 Millis and Montgomery, op. cit., p. 560. For a discussion of these doctrines see Witte, op. cit., pp. 48-53.
will suffice to mention here that there has rarely been unanimity among the various courts as to the legality of such strikes.

Since the common law generally conceded the right to strike and only conditioned that right upon the legality of the object sought by the strikers, it is significant to note that the recent state laws relating to strikes are concerned very little with the objectives of the strikers. Rather there is a heavy emphasis upon the procedural aspects preliminary to the calling of a strike.

Section 5 of the Delaware Union Regulation Law of 1947 is representative of similar provisions that have appeared in the laws of a number of states. This section provides that "No strike shall be lawful unless it is authorized by a majority vote of the employees in the bargaining unit involved, taken by secret ballot at a special meeting called for such purpose." This law also makes it an unlawful labor practice to cooperate in, engage in, promote or induce any overt concomitant of a strike unless the strike has been approved by a vote as specified.

A 1943 amendment to the Wisconsin Employment Peace Act makes it an unfair employee practice to promote in any way the overt concomitants of a strike unless the
strike has been approved by a majority of the employees of the employer against whom such acts are primarily directed.

The Colorado Labor Peace Act of 1943 contained a similar provision although this section, being inseparably intertwined with the section providing for incorporation of labor unions, fell when the latter was declared to be unconstitutional.

The North Dakota Union Regulation Law of 1947 makes a rather elaborate provision for the taking of a strike vote. If fifty-one per cent of the voting employees vote in favor of a strike, such a strike may be called.

There have been several court tests of statutory provisions requiring a majority vote of the employees before a strike can be called into effect.

Section 13 of the Alabama Bradford Act of 1943 provided that no strike was to be allowed except when the strike was authorized by the vote of a majority of the regular employees expressed in secret ballot. The court ruled that this provision could not be sustained. Each individual, according to the decision, has a right

27 Alabama State Federation of Labor v. McAdory, Alabama Supreme Court, May 25, 1944.
to strike for a legally justifiable purpose; and such a right rests upon a minority as well as upon a majority. The section made no distinction between a lawful or unlawful strike and consequently had to be construed as applying to a perfectly lawful strike for a lawful purpose and conducted in a lawful manner. The court thought there was little reasonableness in a regulation making the right to strike dependent upon the will of others who might not in any manner be connected or interested in the welfare of the minority group.

The Alabama Supreme Court concluded its decision in the McAdory case with the observation that "... a prohibition to strike based on a minority group, unless sanctioned by secret ballot of others who are without interest in their welfare, is an unreasonable and arbitrary restraint and must be striken down."

The Kansas Union Regulation Act of 1943 made it unlawful for any person to participate in any strike or walkout unless the same had been authorized by a majority vote of the employees to be governed thereby. A United States district court in declaring this provision void held that the right to peaceably strike and to choose the terms and conditions under which one will work are fundamental human liberties which a state may not
condition or abridge in the absence of grave and immediate danger to the community. The court thought that the State of Kansas had not only conditioned these fundamental human rights but had also expressly prohibited them. 28

These court decisions indicate that the judiciary will thwart any attempt to limit the right to strike to a majority of the employees of an employer. It will be noted, though, that several of the newer laws including the Delaware provision quoted above prohibit strikes unless approved by a majority vote of the employees in a collective bargaining unit. A new question is injected here, one that involves more than the constitutional rights of minority groups of employees. If a bargaining unit has been certified to represent all the employees in a unit in employment matters the question becomes that of whether or not a minority faction within the bargaining unit, should have the right to strike if it feels that it has been unjustly dealt with in an employment contract or in other matters? The bargaining unit ostensibly is the one most appropriate to represent all of the employees. If it fulfills its obligation to represent all the employees within the unit, then there should be little difficulty for the weight of the overall unit is brought to

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bear upon all questions arising; this would include the complaints of the minority as well as the majority. In such a situation there might be little injustice in making a majority vote a prerequisite for a strike as the minority is being represented by a unit exercising greater strength than the minor faction could exert. Where the representative of all the workers neglects his obligation to the extent that only the workers in a majority faction are being represented fairly, doubts are created as to whether the unit certified is in truth the most appropriate one that might be devised.

A Wisconsin court dealt with this point in a 1940 case. The court ruled that the principle upon which authorized collective bargaining depends is that the rule of the majority within an appropriate collective bargaining unit shall bind the minority. Unless the majority could speak for the unit including the minority, the principle of collective bargaining could not be maintained. A bargain in behalf of a collective unit would amount to nothing if once made, some of the individuals comprising the unit were not affected thereby. The court

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29 Hotel and Restaurant Employees International Alliance v. Wisconsin Employment Relations Board, 236 Wisc. 329, Nov. 8, 1940.
could find no reason why the legislature could not vest in the majority of the unit the power to determine whether such conditions obtained in the employment as to warrant the calling of a strike in an effort to remedy them. Finally, the decision declared that a vote of a majority in the bargaining unit to strike is a determination that facts exist which justify such a strike.

Thus, the situation at the present time, according to the decisions rendered, is that the courts will invalidate those laws which simply limit the right to strike to a majority of the employees of an employer but will uphold such laws if the wording is such that the limitation is related to a majority of the employees of an employer organized in a collective bargaining unit. However, here as elsewhere if the right to strike is made conditional upon the voted approval of a majority of the employees in a unit rather than the majority of the voting employees, there is an unfair weighting of the election against the proponents of direct union action.

The limitations of strikes described above is procedural. A more substantive limitation is to be found in the laws enacted by seven states in 1947 prohibiting strikes by public employees. 30 These laws are all

30 Michigan, Missouri, Nebraska, New York, Ohio, Pennsylvania, Texas.
similar. Public employees who go out on strike, automatically have their employment contracts terminated. In most cases they are eligible for reappointment at a salary no higher than that earned before the strike and they are on probation for a period of two years. Some of the laws such as the Michigan statute include a provision creating a means for employees to have their grievances adjusted. Where the right to strike is absolutely prohibited, the creation of some sort of grievance machinery is a requisite, for otherwise the employee is completely helpless in attempting to better a working condition. It is true that the dissatisfied employee may seek work elsewhere but such a right in some phases of the business cycle becomes more theoretical than anything else.

Eleven states at the present time have laws relating to the settlement of disputes in public utility industries. These laws have been described and commented upon elsewhere in this paper. 31

Another labor problem which has evoked legislative action is the jurisdictional dispute. Three of the states which passed legislation concerning this question in 1947

31 See pp. 57-61 supra and 188-190 infra.
have handled the matter differently.

A California law enacted July 14, 1947 declares that jurisdictional disputes are against the public policy of the state and are unlawful. A jurisdictional strike is defined as a concerted refusal to perform work for an employer or any other concerted interference with an employer's operation of business arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to bargain with the employer, or arising out of a controversy between two or more labor organizations as to which of them has exclusive right to have its members perform work for an employer. This law contains no procedure for the adjustment of disputes arising from questions of jurisdiction and the method of enforcement is not described.

A Missouri law which became effective in September 1947 provides a procedure for the settlement of jurisdictional disputes. Whenever such a dispute arises, it becomes the duty of the parties involved to settle it without a work stoppage. If the settlement can be reached in no other way, the disputants must arrange for and submit the controversy to such final and binding arbitration as they may agree upon. If the parties do not so settle the
dispute, the Industrial Commission of the State Department of Labor and Industrial Relations upon application of either of the parties of the employer affected shall make an investigation and determine the issues. Such a determination shall be binding upon all parties to the controversy.

The Michigan law which became effective in October, 1947 provides that when a jurisdictional dispute arises in regard to representation it shall be the duty of each party to file a statement of its claim with the board. (The board created by the Mediation Act of 1939.) It is the duty of the board to settle the issue by mediation and if this fails to call an election of the employees in the unit involved to determine the issue.

Section 8 (13) of the Kansas Union Regulation Law of 1943 made it unlawful to cause any cessation of work or interference with the purposes of work by reason of any jurisdictional dispute or disagreement between or within labor organizations. In the already quoted decision of Stapleton v. Mitchell, the court declared that the state legislature not only conditioned fundamental human liberties but expressly prohibited them. Consequently Section 8 (13) imposed an unconstitutional restraint. This precedent is obviously applicable to the
California law which prohibits rather than conditions the right to strike. By providing techniques for the settlement of jurisdictional disputes it is possible that Missouri and Michigan have somehow circumvented this objection, although should the techniques fail, it will still rest upon the state courts to determine whether or not the prohibition of jurisdictional disputes is a proper exercise of the police powers of the states.

The strike legislation enacted by the states, then, has related not so much to the purposes of the strike as to the type of strike and to the procedural questions preliminary to the calling of a strike. Specifically the states have dealt with the questions of strikes fomented by a minority of the employees of an employer, strikes by public employees, strikes by public utility employees, and jurisdictional disputes. Ostensibly the legality of the purposes of strikes are still determined by the common law doctrines used by the various states, but the clarification of the overall situation at present depends upon further court action.
Picketing.

One student of the subject claims that there have been more court decisions upon the legality of picketing than upon any other subject in the law of labor combinations.\(^{32}\)

In the early years of this century there was little judicial agreement on the question of peaceful picketing. One federal court held "There can be no such thing as peaceful picketing any more than there can be chaste vulgarity or peaceful mobbing or lawful lynching. When men want to persuade they do not organize a picket line."\(^{33}\)

The supreme courts of the various states which had ruled upon this question before 1920 were about evenly divided, half upholding the ruling in Atchison v. Gee and the others espousing an opposite viewpoint.

In the American Steel Foundries case, the Supreme Court held that in the event of a strike it was lawful for former employees to have a single representative at each entrance and exit to the employer's plant to announce the strike and to peaceably persuade those working

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32 Witte, \textit{op. cit.}, p. 34.
33 Atchison Co. v. Gee, 139 Fed. 582, 1905.
to join them. Pickets would have "the right of observation, communication, and persuasion" but these might not be libelous, abusive, or threatening. In addition, pickets must approach individuals singly.34

The Steel Foundries case which soon became the leading case in the law of picketing was interpreted by other courts to mean that the designation of the number of pickets and the manner in which they should conduct themselves must vary with the circumstances in each case. While mass picketing or picketing that intimidated or was characterized by misrepresentation was illegal, picketing in accordance with the particular judicial concept of peaceful persuasion was within the law.

The validity of "stranger picketing," that is picketing by those persons who are not employees of the picketed establishment, was accorded a dichotomous treatment during this period with some courts declaring such conduct illegal and others regarding all peaceful picketing as lawful.35

Starting in 1937, a series of Supreme Court decisions

Suspected no page 128.
altered the status of picketing by legalizing all peaceful picketing as part of the guaranteed right of free speech under the constitution. Subsequently the courts retreated from this position by allowing limitations of such conduct in the public interest.

The Wisconsin Labor code in effect in 1937 declared that peaceful picketing was lawful, that publicity might be given to labor disputes, and that no injunctions might be granted against such conduct. In the case of Senn v. Tile Layers Protective Union, the Supreme Court held that this provision did not violate the due process of equal protection clauses of the Fourteenth Amendment to the Federal Constitution.36

This was a case of "stranger picketing," and the Supreme Court affirmed the right of a state to legalize such conduct. In his opinion Justice Brandeis wrote that "members of a union might without special authority by a state make known the facts of a labor dispute for freedom of speech is guaranteed by the Federal Constitution." Brandeis did not say that picketing is equivalent to speech and consequently protected by the constitution.

A subsequent case, however, definitely established peaceful picketing as a form of dissemination of information concerning the facts of a labor dispute which must be regarded as within the area of free speech guaranteed by the First Amendment to the Constitution. 37

The decision declared a state statute regulating the right to picket in the area of a labor dispute invalid upon its face.

A doctrine of "clear and present danger" in relation to picketing was established by the Thornhill decision.

The power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of individuals cannot be doubted. But no clear and present danger... can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labor dispute involving the latter...

Peaceful picketing, then, was to be regarded as a form of speech and could only be limited when a clear and present danger would result from such picketing.

The decision in American Federation of Labor v. Swing followed logically from the Thornhill doctrine and

necessitated a change in the common law approach of a number of states which had held "stranger picketing" illegal. 38

In this case, a beauticians union had sought to force a non-union beauty shop to employ union labor. An injunction was secured by the shop owner on the ground that picketing by persons not in the proximate relation to the employer was unlawful under the Illinois law. Justice Frankfurter observed that the case presented a claim of the right of free discussion which should be guarded with a jealous eye and that such ban of free communication was inconsistent with the guaranty of free speech.

Frankfurter said "A state cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interests of all engaged in the same industry has become a commonplace.... The right of free communication cannot therefore be mutilated by denying it to workers in a dispute with an employer even though they are not in his employ."

It might be asked why, if peaceful picketing could be regarded as a form of free speech, should it have been necessary to justify the decision by establishing the connection of economic interest by persons not standing in the proximate relation of employees to the employer involved.

In the Meadowmoor case, the Thornhill doctrine met its first strong test.\(^{39}\) The union involved claimed that an injunction by an Illinois court deprived its members of their constitutional right of free speech by preventing all picketing of an employer's business simply because acts of violence had occurred on the picket line. The court upheld the injunction, justifying its limitation of free speech by holding that utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force "... The picketing in this case was set in a background of violence..... it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful."

In Bakery and Pastry Drivers v. Wohl, the Supreme Court reversed the New York state court contention that

a labor dispute did not exist within the meaning of the New York Anti-Injunction Act and that the picketing involved was therefore an unlawful labor object. The existence or non-existence of a labor dispute was the only question that concerned the state court and having decided this in the negative there was an assumption that the legality of the injunction followed from this determination. The Supreme Court held that this did not follow, that one did not have to be in a labor dispute as defined by a state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive. However, for the first time since the Thornhill decision the court admitted that a state is not required to tolerate in all places and circumstances even peaceful picketing by an individual. There was no definition of these circumstances and a sharp minority dissenting opinion said that if the principles of the Thornhill case were to survive, the state must not be permitted to prescribe the limitations of the area of a labor dispute in the absence of clear and present danger to life and property.

The cleavage from the "clear and present danger" test became very evident in the Ritters Cafe case. The Supreme Court in this instance affirmed the opinion of a Texas court upholding a law that restricted picketing to the area of the industry within which a labor dispute exists.

Ritter was a cafe owner who employed union labor in his business. He also owned a plot of land about one and one-half miles from the cafe. He let a contract to construct a building upon this land to a contractor who employed non-union labor. The carpenter's union then picketed the cafe.

The court ruled that "...recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute."

The restaurant business, then, had no nexus with the labor dispute; and the Texas court could insulate an area which had no industrial connection with it.

This evolutionary development was ably summed up in

a decision in a Kansas case.

The limitations upon free speech sanctioned in the Ritter case are found in the doctrine relating to the permissible area of an industrial conflict, rather than upon the test of clear and present danger heretofore thought to be the only permissible limitation upon the right of free speech. In other words, freedom of speech practiced through the medium of picketing is characterized as a form of coercive technique which is entitled to constitutional protection but not without special limitations in the public interest. To that extent the 'clear and present danger' test as applied to peaceful picketing gave way to the 'reasonable basis' test in the Ritter case.

Before proceeding to a discussion of the new state laws relating to picketing and of several prominent court decisions which have been rendered on these laws, a few brief comments on this background of the law of picketing might be appropriate.

In a period of less than thirty years the prevailing judicial opinion changed from that of regarding all peaceful picketing as illegal to one of regarding nearly all peaceful picketing as legal. There is, of course, nothing hallowed about a legal precedent. Judges are mortal men and mortal men often err in their convictions. The fact,

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in itself, that the law has changed should occasion no qualms; a static law can cause injustice in a changing environment. But as Professor Gregory has pointed out at some length, the law of the land should be established by something more than a split Supreme Court decision.43

The situation is not the fault of the courts alone, for in the absence of clear cut legislation the problems arising from picketing could be settled in no other way. In this respect the state laws regulating picketing are interesting in that there has now arisen in a number of states a substantive policy concerning picketing. Whether these laws are wise or not, at least they have arisen by legislative action.

One other point might be mentioned. Picketing is a means of communication but it is also more than that. To say simply that picketing is free speech and that consequently all peaceful picketing is legal is to ignore the admixture of results flowing from picketing. Rarely can the merits of a labor dispute be determined solely by reading the placards of the pickets. Still a picket line can affect the actions of third parties not only by

43 Gregory, op. cit., Chap. 12.
the messages conveyed but also by the very fact of a picket line. Thus if picketing is in part free speech and in part something else can there be any quantitative determination of these parts to determine the infringement upon free speech which results from a prohibition of picketing? The answer probably lies in the approach used in the Ritter case, and here too a more ideal solution would seem to be a legislative determination of what constitutes a reasonable basis for picketing. While the conservative trend of the current state legislation might result in an end product less palatable to labor than the present judicial conception of proper picketing, there certainly should be enough faith in the democratic processes to warrant favoring legislative rather than common law in this respect. The function of the courts would still be to prevent any incursion into the constitutional rights of the parties concerned.

One of the first state statutes relating to picketing in the ten year period under consideration was an Oregon law which contained a rather drastic limitation of the right to picket. A labor dispute was defined as a bona fide controversy in which the disputants stood in the proximate relation of an employer and the majority of his employees. In the absence of a labor dispute as
defined, picketing and boycotting were prohibited.

The Oregon Supreme Court ruled that the act was unconstitutional and that it was not outside the rule of the Thornhill case simply because it did not prohibit all picketing but only picketing by a minority of the employees of a particular employer as incident to a labor dispute as defined by statute.44

The court asked on what theory the abridgement of the minority could be supported. There would be no inherent difference in the picketing itself either with respect to the manner in which it would be carried on or in the consequences to those who might be affected. On the contrary, whether engaged in by a few or by many, picketing could be peaceful or otherwise and for a lawful or unlawful purpose.

The Colorado Labor Peace Act contained a similar provision in that picketing and other overt concomitants of a strike were declared to be illegal unless the strike had been authorized by a majority of the employees in a collective bargaining unit. This provision fell when a Colorado court held that the incorporation provisions of

44 American Federation of Labor v. Bain, Oregon Supreme Court, 1940.
the act were unconstitutional and that the picketing proviso being inseparably intertwined with them must also fall.\textsuperscript{45} There was no ruling on the picketing clause itself.

At the present time, the statutes of several states which deal with picketing prohibit the type of minority picketing described above. The 1947 amendment to the Utah Labor Relations Act makes it an unfair labor practice for an employee to picket unless the majority in a collective bargaining unit of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike. The North Dakota Union Regulation Law of 1947 declares that picketing is subject to court restraint if less than fifty-one per cent of the employees who participate in a strike vote cast ballots against such a strike. Clearly this is an abridgement of minority rights as was pointed out in American Federation of Labor v. Bain, and the apparent concern with the rights of the individual has in this instance dissipated into a singular disconcern for the rights of a minority of forty-nine per cent of the employees.

\textsuperscript{45} American Federation of Labor v. Reilly, Colorado Supreme Court, No. 15446, 1944.
Another aspect of the state laws affecting picketing is the prohibition of picketing where no labor dispute exists between an employer and his employees. In a Colorado case, the court held that the definition of a labor dispute in the Colorado Labor Peace Act which limits such disputes to those where the disputants stand in the proximate relation of employer and employees was unconstitutionally strained and narrow. 46 Such a conception in a labor dispute could not be relied upon to prohibit a union's efforts through peaceful picketing to organize employees of a company not involved in a dispute with the company since peaceful picketing even by strangers was an exercise of free speech and should not be prohibited by enactment of the state legislature.

This case and four similar cases were appealed to the Colorado Supreme Court and here the Hennigh decision was reversed. 47 The court ruled that while the Labor Peace Act prohibits the issuance of an injunction restraining a number of activities growing out of labor disputes, the definition of a labor dispute in Section 2 (7)

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46 Hennigh v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Colorado District Court, Denver County, 1946.

describes such a dispute as a controversy between an employer and such of his employees as are organized in a collective bargaining unit concerning the rights or processes or details of collective bargaining. It is not a labor dispute when the disputants do not stand in the proximate relation of employer to employee. The principal question was the validity of this definition of a labor dispute. The court held that in the absence of any legislation there was no restriction on the courts in granting injunctions. Only in cases involving labor disputes was the jurisdiction of the courts to issue injunctions limited. The statute took no rights away from the defendants but granted them additional rights not previously possessed. The argument of the defendants was that the statute was unconstitutional because it was not more liberal. The defendants actually sought to have the definition of a labor dispute liberalized so as to include a larger field wherein no injunction might issue. Such arguments, the court thought, should be addressed to the general assembly rather than to the courts.

This decision means that even peaceful picketing can be enjoined where no labor dispute exists as defined by law. The Wisconsin Employment Peace Act contains substantially the same definition of a labor dispute.
A 1947 amendment to the Pennsylvania Labor Relations Act makes it an unfair labor practice to picket or cause to be picketed a place of employment by a person or persons who is not or are not an employee or employees of the place of employment. A Texas statute of 1947 bans secondary picketing which is defined as the act of establishing a picket line at or near the premises of an employer where no labor dispute exists between such employer and his employees. Virginia and South Dakota have enacted similar provisions. A 1939 Minnesota law is slightly more liberal as it provides that a stranger might picket a place where a strike is in progress if the majority of persons engaged in picketing are employees of the place of employment.

If the situation by this time seems to be slightly confused it is perhaps a good idea to withhold comment while such confusion is being further engendered by a description of several more laws and court decisions.

Laws have been enacted which outlaw mass picketing. A 1947 Texas law describes mass picketing as any situation in which there are more than two pickets within fifty feet of the entrance to any premise being picketed or within fifty feet of any other picket. A South Dakota law passed the same year defines mass picketing as that
of a greater number than five per cent of the first one hundred striking or locked out employees of the picketed employer and one per cent of the employees in excess of this number on strike.

There has been judicial substantiation of the limitation of mass picketing. A Massachusetts court held that an inference of intimidation would be drawn from the presence of unnecessarily large numbers of pickets.\(^{48}\)

Several court decisions have held that picketing, even though peaceful in character, may not be used to promote an unlawful object. In Fashioncraft v. Halpern, the court ruled that peaceful picketing of an employer's premise by employees striking for a closed shop could be enjoined.\(^{49}\) Although picketing may be affiliated with free speech, a state was not required to tolerate picketing of all types and was not without authority to decide that a strike for a closed shop was not for a lawful purpose.

A Michigan Court has held that picketing by a union to require a company to pay union dues for its employees

\(^{48}\) New England Novelty Co. v. Sandburg et al., Massachusetts Supreme Judicial Court, 1944.

\(^{49}\) Fashioncraft Inc. v. Halpern, Massachusetts Supreme Judicial Court, 1943.
who are unwilling to join a union is for an unlawful
purpose.

One might well ask at this time just what the
status of picketing is under the law. It should be re-
called that in A.F. of L. v. Swing, the court said that
a state cannot exclude workers from peacefully exercis-
ing the right of free communication by drawing the circle
of economic competition between employers and workers so
small as to contain only an employer and those directly
employed by him. In Bakery and Pastry Drivers v. Wohl,
the Supreme Court said that one did not have to be in
a labor dispute as defined by law to have a right under
the Fourteenth Amendment to express a grievance in a
labor matter. The retreat from the Thornhill doctrine
in the Ritters Cafe case was one made on the basis of an
economic nexus between the picketers and the picketed.
In this instance the court found no such connection be-
tween the cafe business and the building contracting
business. This was a modification but not a reversal
of the decision in the Swing case. However, it has been
pointed out that a number of the state laws have prohibited
picketing in the absence of a labor dispute and have

50 Silkworth v. Local 875 A.F.L., Michigan Supreme Court,
1944.
defined a labor dispute as one between an employer and the majority of his employees in a collective bargaining unit. The direct contradiction between this position and the ruling enunciated in Bakery and Pastry Drivers v. Wohl is readily apparent. Also the possibility of a clash with the Swing ruling is created, for these statutes do draw the circle of economic competition so close as to include only an employer and his employees. Furthermore the concern with the rights of minority employee groups expressed in the Oregon case of A.F. of L. v. Bain seems to have had little influence in preventing the passage of similar laws in other states.

On top of all of this, several state courts have ruled that whether picketing is a means of communication protected by the free speech amendment in the federal constitution or not, it may not be used to promote an unlawful object. Such unlawful objects, it seems, are whatever the various states consider unlawful; and as such a powerful wedge is driven into the exercise of peaceful picketing.

Despite the fact that the Supreme Court probably erred when it established its position as one of regarding all peaceful picketing simply a method of free speech, the tenor of the Thornhill and subsequent decisions
revealed an enlightened awareness of the economic facts of the time. There is in all these decisions a realization that the economic interests of workers are vitally affected by factors that extend beyond the immediate employer-employee relationship. Consequently the court was not disturbed by the fact that workers who were not employees of a particular employer might have a legitimate interest in picketing such an employer. The Ritter case established the outside limit of what the Supreme Court considered permissible picketing and in view of the earlier precedents, it is not an unreasonable doctrine.

"The mutuality of interests of all workers in the same economic area is disregarded by the state laws that have effectively prevented "stranger picketing." A number of these laws being of recent origin, it is to be suspected that the final litigation is yet to take place. However, it is important to note that these statutes cannot be regarded as a progressive development in labor law. Picketing is a manifestation of a breakdown of peaceful labor relations and it is to be hoped that labor-management relations will progress to a point where such breakdowns become increasingly rarer. But to create a body of picketing law that is
more appropriate to the handicraft stage of an economy rather than to this interdependent corporative industrialization of the twentieth century with many obvious and subtle nexuses between workers of different employers is adding little to the understanding that must precede peaceful industrial relations.

**Boycotts.**

As in the case of picketing, judicial attitude towards the boycott as used in its various forms by labor organizations has rarely been characterized by a complete unanimity of opinion among courts of different jurisdictions although a certain uniformity is apparent in the court treatment of some aspects of the boycott.

In 1913 a student of the subject of boycotts concluded that negative boycotts prosecuted primarily by means of the union label were legal. Of the positive forms, primary boycotts had met little court opposition but secondary boycotts had been generally condemned by
judicial decision and state law. 51

Laidler found in 1913 that while only five states—Alabama, Colorado, Illinois, Indiana, and Texas—prohibited the boycott by name, over two-thirds of the states had made one or more forms of the boycott illegal under statutes relating to conspiracy, coercion, intimidation, interference with employment, and enticing employees. 52


The problem of defining boycotts has not been the least troublesome of questions involved in dealing with the legality of the subject. Many students of the subject have advanced different methods of classifying boycott activity. Although this subject is outside the scope of this paper, it cannot be wholly ignored for some of the recent legislative prohibitions of the boycott show an awareness of this problem by minutely defining the type of boycotting activity prohibited. E.S. Oakes in his book *The Law of Organized Labor and Industrial Conflicts* (1927), pp. 602 ff. has made a comprehensive list of the various definitions of the boycott that have been used.

The Indiana, Colorado, and Alabama statutes prohibited the boycott even though only one person participated in such activity. In Indiana, any attempt to prevent a sale was considered illegal. Texas and Illinois prohibited a boycott only when a combination of workers was invoked.

The primary boycott which can be defined as an agreement of one or more persons to refrain from dealing with another without inducing third parties to influence the boycotted party by their activities generally received the sanction of the courts in the early cases that dealt with primary boycotts.

The prevailing court attitude was summarized by a government official who said, "The mere withholding of patronage or refusal to trade is not unlawful, and the announcement or publication of such a purpose is within the rights of the persons agreeing together even though it results in the injury of the person against whom such acts are directed." 53

In a Massachusetts case decided in 1870, it was held that it was no crime for any number of persons

53 Laidler, op. cit., p. 177.
without any unlawful object in view to associate themselves together and agree that they would not work for or deal with certain men or classes of men.\textsuperscript{54}

An Illinois court ruled, "The Law is that an individual may refrain from trading or dealing with any particular person and that two or more individuals may agree among themselves that they will not trade or deal with a certain person and they may give notice that they have made such agreement."\textsuperscript{55}

In Minnesota, a court decision stated that it is perfectly lawful for any man to refuse to work or deal with any man or class of men as he sees fit and that what one man might lawfully do, two or more might agree to do jointly.\textsuperscript{56}

The task of untangling the law as it has applied to the more complex forms of the boycott is far more difficult. However, some of the most famous court cases in the area of labor relations have dealt with this issue and are generally familiar.

\textsuperscript{54} Carew v. Rutherford, 106 Mass. 1, 14. 1870.
\textsuperscript{55} Hey v. Wilson, 83 N.E. 928, 831, Illinois, 1908.
\textsuperscript{56} Bohn v. Hollis, 55 N.W., 1119, 1121, Minn., 1893.
One student of the secondary boycott has found three general types of situations involving strikes against intermediate employers to compel unfair employers to deal with unions. In two of these types the courts have divided on the question of the legality of the behaviour involved. The other serves as an indication of the outside limit of inter-union conduct sanctioned by the courts in boycotting activity.\footnote{57}

First, there is the strike against the use of non-union produced materials in the same or related crafts. While some courts have refused to permit the union or workers in the same or related crafts to protect the standards of their organization by striking against the use of unfair materials, others have held such strikes legal. Several well known cases have declared such activity illegal under the Sherman Act.

In the case of Duplex v. Deering, the Duplex Printing Press Company sought an injunction against the International Association of Machinists to restrain a boycott against the complainants products.\footnote{58} None of


\footnote{58} Duplex Printing Press Co. v. Deering, 254 U.S. 443, 1921.
the defendants had ever been an employee of the complainant. The following were among the complaints listed against the union:

(1) warning customers not to purchase or install presses made by the Duplex Company;

(2) threatening customers with sympathy strikes in other trades;

(3) notifying a trucking company not to haul presses made by the complainant;

(4) threatening an exposition company with a strike if it permitted the presses of the Duplex Company to be exhibited.

Justice Pitney who wrote the opinion held that the Clayton Act could not be taken as authorizing an activity otherwise unlawful or enabling a normally lawful organization to become a cloak for an illegal combination in restraint of trade as defined by the anti-trust law. The activities of the International Association of Machinists, he thought, must be regarded as such an illegal combination.

The Supreme Court also held in the Bedford Cut Stone case that the action of the Journeyman Stone Cutters Association of North America was an undue and unreasonable
restraint of trade. The defendant had issued a notice directing its members to refrain from working on stone that had been cut by men working in opposition to the union. To bring pressure upon stone companies that were hiring scabs, building operations were interrupted by strikes in various parts of the country. Justice Brandeis in his dissent pointed out that the workers had only refused to set stone purchased from non-complying companies. There had been no trespass, breach of contract, violence, or intimidation. Despite the contention of the union that its purpose was to organize workers, the court still held that this accomplishment was sought by the illegal means of restricting interstate commerce.

Secondly there is the strike against intermediate employers because of the presence of non-union contractors on a job. A majority of courts have permitted such strikes. New York courts have been especially liberal in permitting cooperative union activity. In one case, the building trades union joined with the teamsters in refusing to work on materials transported to the job by non-union teamsters. The court sanctioned such a strike,

and found that loading in the supply yard and unloading at the place of construction was a necessary part of construction work.\textsuperscript{60} To rule otherwise in a situation such as this would be to discriminate against the craft form of union organization. Activity that would be sanctioned as a proper part of the functions of an industrially organized union certainly cannot be ruled out of the permissible cooperative conduct of different craft unions.

Another New York case might serve as an indication of the outside limit of permissible inter-union cooperation.\textsuperscript{61} Since the Auburn case is a definitive statement of illegal conduct and the decision is based upon a concept important in boycotting law - the nexus of the economic interest by all those whose direct aid is solicited against the boycotted - the decision will be dealt with at some length.

The plaintiff in this case was engaged in the general trucking business in Auburn, New York. The employees of the plaintiff, numbering between thirty and forty men, were for the most part non-union members; although the employer neither forbade nor encouraged his employees to join the union. The defendant was the Teamsters Union No. 679.

\textsuperscript{60} Williams and Adams Co. v. Pearce, 264 N.Y. 521, 191 N.E. 545, 1934.

\textsuperscript{61} Auburn Draying Company v. Wardell, 227 N.Y. 1, 124 N.E. 97, 1919.
The union stated that unless the plaintiff took the necessary means to get the employees to join the union it would be placed on the unfair list. The Central Labor Council of Auburn which was composed of delegates from individual unions endorsed the placing of the trucking company on the unfair list. The Labor Council used its influence to have the employers of its members withdraw their patronage from the plaintiff. Dealers, ice deliverers, builders, plumbers, and others discontinued their business with the trucking company because of fear of loss of business and labor troubles.

The court affirmed the judgment of a lower court that the combination of the defendants constituted an illegal conspiracy to injure the plaintiff's business and property. The court found that the action of the union was affirmative and aggressive. It was not simply that the members of the union refused to be employed by the trucking company or its patrons unless and until it employed members of the union. The unions and their members sought to induce and did induce the employers of labor or in the various trades and industries and the people generally in that community to discontinue employing and to abstain from business transactions with the plaintiff by directly and affirmatively causing loss
and injury to their business interests in case they did not so abstain and discontinue.

The court pointed out that there are rights by virtue of which the defendants could justify the interference and injury. These are (1) those of laborers to associate; (2) that of bringing within the labor organization as members all laborers; (3) that of securing for all laborers higher wages, shorter hours, better working conditions through coherent and solidified power and influence flowing from association and united efforts.

Though these rights exist they could not be effectuated by unlawful means. The individual cannot injure the property rights of another by the means of causing or controlling through duress, coercion, oppression, or fraud the acts of third persons which produce the injury. There is an important and perceptible distinction between the voluntary acts of an individual and the acts of others, undesired by them and performed by virtue of the deception, compulsion, or oppression on the part of that individual.

This case arose because the defendants constituting the entire union population of the city of Auburn inaugurated and carried on a comprehensive exclusion of the plaintiff from the business of the community in order to compel it to unionize its business.
The fault of the union in this case lay in the attempt to compel third parties who had no close economic connection with the disputants to injure the trucking company. The Central Labor Union Council was composed of delegates of all the unions in the city and there was no obvious nexus between the interests of some of these unions and the defendant. Hence to seek the aid of such unions was to pass beyond the permissible bounds of inter union cooperation according to the common law as it had developed.

Still another New York State decision might be referred to as an example of how some courts have recently handled the question of picketing an unfair employer's customers or suppliers. The courts of that state have declared legal the activity of a union in following a manufacturer's goods to the place of sale. At the retail outlet, the union's picketing of the product of the unfair manufacturer was allowable. 62

The court held that unless the union is able to follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it,

the union would be deprived of a fair and proper means of bringing its plea to the attention of the public.

In the same case, a court of appeals condemned another type of picketing conduct. For the pickets to ask customers not to buy any goods at all from the retailer who handled the products of the unfair employer was improper activity. Thus, a union might follow a product to its outlet and picket in an attempt to prevent the sale of a particular good, but the union may not extend the purpose of its picketing to the institution of a more general type of boycott of the retailers business.

In another type of boycotting conduct some courts have declared that unfair lists and the sending of circulars to retailer and distributors are illegal, while others have ruled that a serious interference with freedom of press and speech is a consequence of the curtailment of the distribution of these notices.63

While the common law has been unevenly applied to boycotting activity, the more liberal court activity has allowed such boycotting even though it advanced beyond the primary form where the court has been able to discern a proper economic connection between the boycotters and the third party whose aid has been sought. This is the only attitude compatible with the assumption that it is economically desirable for labor and management to be able to bargain collectively on fairly equal terms. Where workers are restricted in the techniques that may be employed to attempt to standardize wages and working conditions throughout a reasonable area of the economy, it is often impossible to reach a position of equal bargaining strength with the employer. Frequently this reasonable area must extend beyond the immediate employer-employee relationship. An ample criterion for non-permissible conduct can be found in the Wardell case, although the nuances of economic interdependence are such that the individual situations usually have complexities that should be taken into account.

Some of the states have recently undertaken to regulate boycotting in a number of ways. It is the secondary boycott in one form or another that has been restricted for the most part by these statutes.
The Colorado Labor Peace Act of 1943 defines a secondary boycott as an attempt to cause or threaten to cause, or combining to conspiring to threaten to cause, injury to one not a party to the particular labor dispute, to aid which such boycott is initiated whether by (1) withholding patronage, labor, or other beneficial intercourse; (2) picketing; (3) refusing to handle, install, use, or work on particular materials, equipment, or supplies; (4) or by any other unlawful means to bring him against his will into a concerted plan to coerce or inflict damages against another. The same act makes it an unfair labor practice of employees to engage in a secondary boycott. Since any dispute in which the disputants do not stand in the proximate relationship of employer to employee is not regarded as a labor dispute in Colorado, it would seem that practically any boycott beyond the primary type would be illegal. A Colorado District Court has ruled otherwise, however. 64

The court held that where a chain of retail grocery stores secured practically all its milk from a particular non-union dairy and a unity of interest existed between the chain store and the dairy, a union threat to picket the chain stores as part of its effort to unionize the dairy was lawful. A union could follow non-union products

64 Hennigh v. International Brotherhood of Teamsters, Chauffers, Warehousemen, and Helpers, Colorado District Court, 1946.
and seek by peaceful picketing to persuade the consuming public to refrain from purchasing the non-union products whether the picketing is at the plant of the producers or at the store of the retailers in unity with the producer. Under such circumstances, the union threat to picket the chain stores did not constitute a threat to establish a secondary boycott. The court quoted the Goldfinger v. Feintuch precedent to establish the non-existence of a secondary boycott. The implication is that a secondary boycott is illegal; but if the action involving third persons is not criminal or tortious and if there is a unity of interest between the persons involved, then the union activity described does not constitute a secondary boycott.

By the simple expedient, then, of ruling that a secondary boycott was not involved the court established the legality of the union conduct in this instance; clearly by the definition in the Labor Peace Act, the union had engaged in a secondary boycott. The disputants, for one thing, did not stand in the proximate relation of employer to employee. While the Colorado act is extremely restrictive and takes a narrow view of the proper bounds of union conduct, it is improbable that the understanding necessary for a proper and just code of labor law can be
evolved as a result of a legislative-judicial quibble over terminology. The court in this case showed a far better grasp of the economic facts of life than the legislature but to twist the retrogressive letter and spirit of the law into the prevailing court opinion of what is fair economic conduct is hardly the proper base for labor-management law.

Section twelve of the Alabama Bradford Act of 1943 made it unlawful for any employee to refuse to handle, install, use, or work on any material, equipment, or supplies because these had not been produced, processed, or delivered by members of a labor organization. In declaring this section unconstitutional, the Alabama Supreme Court resorted to a civil rights test, an approach that was not considered by the Colorado Court in the Hennigh case.65

The court claimed that this section violated the basic and fundamental civil rights as guaranteed under the Fourteenth Amendment to the Federal Constitution. An employee's refusal to perform a contract for personal services could not be made a crime. An employee has the

65 Alabama State Federation of Labor v. McAdory, Alabama Supreme Court, 1944.
right to refuse to work with non-union material since every man may engage to work for, or refuse to work for, any man or class of men without being held accountable, whatever his motive or the resulting injury. The court protested further that Section Twelve dealt solely with individual workmen, making a refusal to perform a contract for personal service a crime and that this infringed upon the Thirteenth Amendment prohibiting involuntary servitude.

A California court used both the civil rights and economic interest approaches to declare the provisions of the California Hot Cargo and Secondary Boycott Acts unconstitutional to the extent that they might be invoked to enjoin picketing in any form. 66

A common carrier having no labor dispute with its own employees was not entitled to injunctive relief against a union and its members who were picketing the various freight movements to the extent that these movements involved the shipment of the products of the employers with whom the picketing union and its members did have a labor dispute. The court said that picketing in furtherance of a secondary boycott, unattended by

66 Northwestern Pacific Railroad Co. v. Lumber and Sawmill Workers Union, California Superior Court, 1946.
violence, is protected by the Fourteenth Amendment to the Federal Constitution whenever there is an industrial connection between the picketing activities and the secondary boycott based on an economic relationship between the parties so affected.

The nature of the anti-boycotting laws of the states has already been indicated in a previous chapter. The secondary boycott is generally defined as the attempt to coerce third parties to bring pressure to bear upon the party with whom the labor organization has a dispute. There is no attempt made to allow for a situation in which there is a community of interest between the labor union and the third party. Together with Section 303 of the Taft-Hartley Act, these laws form a stout barrier against any boycotting activity other than a primary form. The current situation is one in which the legislatures have taken a limited view of the proper bounds of allowable boycotts, whereas the courts on the basis of the civil right and economic interest doctrines are striving to restrain the full impact of the legislative viewpoint. The ultimate fruition of this situation has not been reached, but at the present time it makes for a spottiness in labor law throughout the country. Like the legislative development in picketing law, the anti-boycott statutes
refuse to recognize the complexity of the current stage of our economic development and the fact that more often than not workers are affected by employment situations that extend far beyond the immediate employer-employee relationship. A fine logical case for this latter viewpoint has already been developed by the common law, but this the legislators have generally ignored.

Secondary boycotts are not desirable but neither are strikes, picketing activities, or any of the other concomitants of unsatisfactory labor-management relationships. But there are situations where workers have recourse to no more efficacious type of activity in protecting their own standards which have previously been secured. Until a situation is reached in which there is no need for workers to employ such a technique as a boycott to gain a justifiable position or to protect a gain already made, there is little justification in making such a technique illegal where a definite unity of interest can be established between the boycotters, the boycotted, and the third party involved.
Internal Affairs of Unions

The encouragement received by labor in the New Deal Era resulted in a change in the characteristics of the organized labor movement. No longer pugnacious back alley scrappers, labor unions had grown into full fledged heavyweights. The A.F. of L.-C.I.O. split engendered jurisdictional squabbles that resulted in labor disunity and incurred the displeasure of the press, management, and many sections of the general public. As a result the internal affairs of unions became subject to a closer public scrutiny. The legislative reaction to all of this has been a group of state enactments that make internal union matters subject to various types of state regulation.67

Since this form of regulation is a novel development in the field of labor relations, it is characterized by no extensive common law history such as that in the case of the closed shop, strike, boycott, and picketing law.

There have been several recent court decisions pertaining to this type of union regulation and most of these

67 See pp. 53-56, supra.
have turned on the question of the possible violation of civil rights. The pattern seems to be that of the state courts usually upholding the statutes, while the Supreme Court has generally ruled that they involve an unconstitutional invasion of guaranteed civil rights.

In October 1943, the Texas Supreme Court upheld a provision of a union control law requiring registration of paid union organizers and issuance of an organizer's identification card as a prerequisite to solicitation of union membership. 68

The Texas court ruled that the law was not unconstitutional as a curtailment of free speech or a deprivation of personal liberty as the statute made it mandatory to accept the registration and issue an organizer's card. The case was appealed to the Supreme Court where the ruling was reversed. 69

The Supreme Court ruling admitted that a state could regulate labor unions with a view to protecting the public interest but insisted that the exercise of such power is subject to the limitations that it does not violate

68 Ex Parte R.J. Thomas, Texas Supreme Court, No. 8160, 1943.
the rights guaranteed and protected by the Federal Constitution. To the extent that the Texas Law would prevent the delivery of a speech by a paid union organizer unless he had previously registered and received an identification card it did violate these rights. The court thought that the case involved a determination of the question of where individual freedom ends and the state's power begins. Any attempt to restrict the liberties secured by the First Amendment must be justified by clear public interest threatened not doubtfully or remotely but by a clear and present danger. Such a danger, the court thought, was not present in this instance. Admitting, then, that a state has the power to regulate labor unions, the Supreme Court declared that such regulation must not trespass upon the domain set apart for free speech and free assembly.

This was a five to four decision, and Justice Roberts wrote a strong dissent. He thought that the Texas court had excluded all questions as to the right of free speech and assembly as such when it said, "It applies only to those organizers who for pecuniary or financial consideration solicit such membership." The dissenters were unable to find any suggestion that the statute was intended to restrain or restrict freedom of
speech. No fee was to be charged; and an applicant in compliance needed only to furnish his name, union affiliation, and credentials. All the law actually required, the minority held, was that a paid organizer identify himself as such. If paid organizers for business or for charity could be required to identify themselves there could be no reason why labor organizers should not do so likewise.

In *Hill v. Watson*, the Florida Supreme Court upheld the judgement of a lower court that Sections Four and Six of the Florida Union Control Law were constitutional.\(^7^0\) These sections required unions to file annual reports and provided for the licensing of business agents. To be eligible for a license a person was required to be a citizen and resident of the United States for a period of ten years and a person of good moral standing who had never been convicted of a felony.

The court said that the guarantees of the First Amendment to the constitution are not absolute and that it would be a tortured construction of the Bill of Rights to hold that labor unions are free from any sphere of police regulation. "The sole test of police power is reasonableness and ... if the statute has some rational

\(^7^0\) *Hill v. Watson*, Florida Supreme Court, 1944.
relationship to the safety, health, morals, or general welfare, and the means employed may be reasonably said to accomplish the desired purpose, it is within the scope of the police power."

The Supreme Court disagreed with this interpretation and held that the provision to license business agents was invalid to the extent that its provisions could be invoked to enjoin paid business agents from acting in that capacity without complying to the statutory requirements. 71 This, the court thought, would be an infringement upon the guarantee of full freedom of choice in the collective bargaining process given to employees under the National Labor Relations Act since it would substitute the judgement of the state of Florida for that of the workers. The provision as it stood was an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in legislating in a field in which it had power to act.

The requirement that labor unions make annual reports fared no better; for the court felt that it would preclude a union from acting as a collective bargaining

71 Hill v. Florida ex rel Watson, U.S. Supreme Court, 1945.
agent, thereby bringing about a situation inconsistent with the federally protected process of collective bargaining under the Wagner Act.

By way of clarifying its position the court said that to encourage collective bargaining Congress had made it illegal for an employer to interfere with, restrain, or coerce employees in selecting their representatives. Their own best judgement, not that of someone else, was to be their guide. Full freedom to choose an agent would include freedom to pass upon that agent's qualifications. By setting up standards, Section Four would substitute Florida's standards for the workers' standards. For failure to comply with Section Six a union could be enjoined from functioning as a labor union. The sanction imposed and not the duty to report could bring about a situation inconsistent with the federally protected process of collective bargaining.

In Stapleton v. Mitchell, a United States District Court ruled that a Kansas law requiring business agents to obtain a license was constitutional when construed as applying only to the salaried representatives of a labor organization who engage in union activities as a livelihood or vocation.72 The reasoning of the court

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72 Stapleton v. Mitchell, United State District Court of Kansas, First Division, 1945.
can be summarized by quoting the decision directly:

... we must ... recognize that the sum and total of all union activities are directed toward economic objectives and necessarily involve purely commercial activities which may be regulated in the public interest on any reasonable basis. In short, when used as an economic weapon in the field of industrial relations or as a coercive technique, speech, press, and assembly are subject to reasonable regulation in the public interest and in that respect the state is the primary judge of the need, and is not required to wait until the danger to the community which it seeks to avoid is 'clear and present.'

The representation of this sequence of court decisions will be interrupted only briefly here to note the conflict of viewpoints expressed in Stapleton v. Mitchell and Thomas v. Collins.

An Idaho decision dealt at some length with the legal questions involved in a state provision requiring the executive official of every union in Idaho to file with the secretary of state a statement giving certain required information about the union.73

In attacking this section the plaintiff listed the following arguments:

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1. It was the equivalent of a licensing requirement imposed on the exercise of constitutional rights and violative of the Fourteenth Amendment to the Federal Constitution.

2. It was class legislation which would discriminate against labor associations as compared to unincorporated associations in general and to trade associations in particular.

3. It was violative of the rights of privacy against unlawful searches and seizures as provided by the Fourth Amendment to the Federal Constitution and Article One, Section Seventeen of the Idaho Constitution.

4. It constituted a direct burden upon interstate commerce as carried on by labor organizations and as such contravened the Federal Constitution.

5. It impinged in a field pre-empted by the National Labor Relations Act and as such was in conflict with the federal legislation.

The court considered these objections one by one:

1. The court felt that the filing requirement could not be regarded as a licensing requirement. The
statement was due February First. If a union should begin operations subsequent to that date, the statement in question would not be due until the following year, and consequently could not be regarded as a prerequisite to doing business.

2. It was not class legislation discriminating against organized labor as such. A classification is not bad because it is not comprehensive. If unions could be treated as separate classes for purposes of protection and encouragement, they might be treated as a special class for purposes of regulation.

3. The move by the state legislature could be regarded as a recognition of the growing importance of labor organizations. The existing requirements that employer organizations file such statements have never militated against corporations.

4. The court found no merit in the contention that interstate commerce would be burdened. Such a contention, it felt, would stretch the meaning of interstate commerce out of all reasonable bounds.
5. Finally, the court stated simply that the State of Idaho by the act in question was not attempting to interfere with any federal power or federal controls.

In Borden v. Sparks, the court decision held that Section Seven of the Alabama Bradford Act which requires every labor union functioning in the state to file a copy of the constitution and by-laws and to file annual reports and statements constitutes a reasonable exercise of state police powers and does not contravene any provision of the Federal Constitution.\(^7\) It neither abridges the right of speech guaranteed by the First Amendment to the Federal Constitution, nor denies equal protection of the laws guaranteed by the Fourteenth Amendment since the guaranty of equal protection does not prevent reasonable classification for the purposes of regulatory legislation.

It should be emphasized that these diverse court opinions dealt with laws very similar in nature. The Kansas Union Regulation Act of 1943 requires that business agents obtain licenses by filing applications with

\(^7\) Borden v. Sparks, United States District Court, Middle District of Alabama, Civil No. 280-M, 1944.
the secretary of state and paying one dollar fees. To be eligible for such a license, the applicant must be a citizen of the United States and must state his name, address, and length of residence in Kansas in his application. This requirement is a reasonable regulation and the legal basis for such a requirement is to be found in the police powers of the state according to the decision of the United States District Court in Stapleton v. Mitchell.

The provisions of the Florida Union Regulation Act of 1943 pertaining to business agents provided that to be eligible for a license a person must be a citizen of the United States and a resident in this country for ten years and that the applicant must be a person of good moral standing who had never been convicted of a felony. Since this would interfere with the full freedom of choice in the collective bargaining process, the Supreme Court in Hill v. Watson found this provision repugnant to the rights of employees guaranteed by the National Labor Relations Act. In Thomas v. Collins, the Supreme Court found the registration requirements for business agents in the Texas law to be a denial of constitutionally guaranteed civil liberties.
Thus, contradictory opinions have featured the judicial treatment of the legislative attempt to regulate the internal affairs of unions. The Supreme Court has found that such laws are violations of civil liberties and consequently are invalid in the absence of a clear and present danger to the community. The United States District Courts and the state courts have as a rule upheld such laws as a proper exercise of the police power of the states.

This inconsistency has resulted in the curious spectacle of a United States District Court sanctioning the licensing of business agents in Kansas, while the Supreme Court has prohibited such licensing in Florida and Texas. A United States District Court has approved the Alabama legislative requirement that unions file copies of their constitutions and annual reports and statements, while the Supreme Court has prohibited such a requirement in Florida. In Thomas v. Collins, the Supreme Court said that such legislation must be justified by public interest threatened by clear and present danger. In Stapleton v. Mitchell, a district court ruled that a state is not required to wait until the danger to the community which it seeks to avoid is clear and present.
About the only conclusion that can be reached is that in the absence of common law precedent, the courts of various jurisdictions are as disunited in their conceptions of proper and improper labor law as are the other observers of the situation.

The Present Situation in State Labor Law

A propitious point has been reached in this analysis to gather up the loose strings and see whatever there is to be seen. The laws observed have generally, although not in all instances, exhibited certain characteristics. The estimate of wisdom of these depends in large part upon the economic philosophy of the observer. All in all, the purposes of these laws have little in common with the intent of the statutes enacted in the earlier part of the Roosevelt Era.

There has been little or no emphasis of late upon the necessity of equalizing bargaining power between management and labor. Positive evidence for this contention can be found in the modifications of the state labor relations acts which have stressed certain civil and economic rights of employees, employers, and third parties affected by the relationships of these two groups. Indeed there is a tacit assumption that both
labor and management are giants and that it is not the
equality of bargaining power that is of prime importance
but rather the behaviour of both groups as they contend
with each other and as the ramifications of this conten-
tion affect the economy as a whole. Less positive evi-
dence can be found by implication in the quantitative
aspects of the new laws restricting organized labor
both in its internal organization and its external ac-
tivities. The assumption here seems to be that labor
has not only achieved an equality in its bargaining po-
sition but has arrived at a superior bargaining position
and that the power inherent in labor unions must be re-
trained according to the legislative conception of the
public interest.

Various hypotheses might be advanced to explain
this switch in legislative opinion that occurred in a
short ten year period, but at the present time it seems
impossible to be too affirmative about the speculations
that might be made. First, the Wagner Act was the pro-
duct of a depression period. The underconsumption theory
of the business cycle which saw recurrent periods of bus-
iness inactivity resulting from the unequal distribution
of the purchasing power created enjoyed some popular ac-
ceptance. The lower income groups had insufficient wealth
tö buy the goods produced, and the wealthier classes wouldn't buy the goods. Investment prospects consequently were uninviting and so a market glut became inevitable. The Wagner Act and the early state labor relations acts sought to alleviate this condition by equalizing bargaining power between management and labor. If income and consumption of the lower income groups could be increased, then business depressions would be ameliorated if not prevented. Thus, the original labor relations acts were based upon a premise that was partly Keynesian, partly Hobsonian, indeed partly Marxist.

The full employment condition of the war and the early post-war periods and an economic situation characterized by bright investment opportunities relegate the underconsumption texts to the dust gathering stage - for the time being. The spectacle of labor unions demanding and receiving substantial wage increases and other benefits and in instances practically tying up the national economy when the bargaining process stalled has settled the question of the equality of bargaining power in the minds of many legislators.

There is also the very great probability that the Wagner Act philosophy does not have deep roots implanted
in a number of significantly powerful groups in the American scene. In 1937, fourteen states rejected proposals to enact state labor relations acts similar to the national act. By 1939, the restrictive trend in these acts had started. The government labor policy during the war was in essence a labor management truce. The maintenance of membership doctrine sought to remove the question of unionization as a source of friction. The end of the war and the removal of wartime controls has seen an extension of the restriction that had started to grow in the period immediately prior to the war.

Finally, the considerable growth of organized labor following the passage of the Wagner Act, the C.I.O.-A. F. of L. split, and the irresponsibility of some unions has resulted in the demand for a responsibility of unions equivalent to their power.

There has been a considerable change in the size and character of the labor movement in the United States since the passage of the Wagner Act. The question of equal bargaining power, once considered of prime importance, in a new situation has been regarded as a problem less pressing than a number of other labor-management difficulties. Whatever the cause of this attitude, it is not a simple matter to refute the proposition that this is so.
A second important characteristic of the laws in the period being considered is the tendency to limit the permissible boundary of overt conflict between labor and management to an area that encompasses no more than an employer and his immediate employees. In several instances the term labor dispute has been redefined to include only those in the proximate relationship of employer and employee. The 1947 amendment to the Utah Labor Relations Act, for instance, describes a labor dispute as meaning any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the rights or processes or details of collective bargaining or the designation of representatives. In the original act, a labor dispute meant any controversy concerning the terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating conditions of employment, regardless of whether the disputants stood in the proximate relation of employer and employee.

Many of the laws pertaining to picketing, striking, and boycotting seek to limit the use of these techniques to the employees of an employer and make them illegal when used by strangers. This was the common law position held by some courts prior to the New Deal Period. It is
an odd situation when the legislative branch of state government seeks to maintain conceptions which many of the courts have already considered obsolete.

It would be hard to develop a factual case establishing the non-existence of interests among workers not employees of the same employer. Clearly, the standards achieved by unionized workers are threatened if the boys at the non-unionized shop on the next block are receiving lower wages. Where the differences in wage costs are reflected in the lower selling price of the finished product, the union employer is faced with the alternative of continuing operations at a competitive disadvantage or of attempting to lower his wage bill either through bargaining or union busting tactics. This is a simple example of the interdependence of economic interests of different groups of workers. The nexuses between workers separated geographically and occupationally are often far subtler.

These new state laws have refused to accept this proposition. It is possible that the framers of these laws have not taken the above factors into consideration but have arrived at their conclusions by way of a different avenue of logic. Unionization of unorganized workers has proceeded at a fairly rapid pace since 1935. In
several economic areas, bargaining is on an industry-wide basis. The C.I.O. espousing a philosophy of aggressive industrial unionism contains almost half the organized workers in the country. Consequently the concomitants of industrial strike have farther reaching effects than they had during the twenties when, comparatively speaking, organized labor was an infant in swaddling clothes. Ignoring deliberately or otherwise the interdependence of interest among employees of different employers, the legislators have sought to legislate the labor-management quarrel into a narrow area simply because it would be a nice thing if they were so confined. It might well be supposed that this narrow approach has caused considerable rancor among labor groups. For one thing, it is a serious deterrent to increasing unionization; for if outside unions are limited in their attempts to get at non-union industries and firms, the probabilities of unionization are accordingly lessened.

As already mentioned, the courts and in particular the Supreme Court of the United States have shown a reluctance to accept the legislative position of the narrow bounds of the labor-management struggle. The decisions examined here have reiterated the point that the circle of economic competition cannot be drawn so closely
as to include only the employer and his immediate employees. However, many of the laws have done this, and to date most of them are in active operation. From the standpoint of economic logic, this is definitely a retrogression from the hey day of the Wagner Act with its greater degree of acceptance of the extensive interdependence of economic interest among different groups of employees.

A third characteristic is the comparative disconcern with the maintenance and extension of union security. By making the closed and union shops illegal, by limiting the use of the checkoff, by placing less emphasis upon the unfair practices of employers and more upon those of employees, these laws have forced unions to improvise various devices within the letter of the law to secure their positions. The positive encouragement of union security in the Wagner Act type of labor relations act has to a considerable degree been dissipated.

A fourth characteristic is a somewhat archaic conception of the rights of an individual in our economic society. This point has already been dealt with at some length in the analysis of the state anti-closed shop statutes.\(^{75}\) The rights of individual workers are stressed

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\(^{75}\) See pp. 109-113 supra.
at the expense of the collectivized unit. This too is a contradiction of the Wagner Act position that justice in labor relations can ensue only from an equality of bargaining strength between employers and their employees.

Another characteristic is the extensive regulation of the internal affairs of unions that a number of states legislatures have seen fit to impose upon unions. For this regulation, a number of labor groups themselves are at least partly to blame. Some labor leaders have taken undue advantage of their power and the autonomous character of the national unions has prevented the parent A.F. of L. and C.I.O. bodies from doing very much about this situation. Labor unions are large enough and strong enough to be regulated in the public interest when they abuse their positions. There should be some check upon labor leadership. A more ideal situation would result from a democratic accounting of leadership activity within the ranks of labor itself; but in the absence of this it is not an improper application of the police power for the state to demand such regulation. Labor unions have grown up but the character of some of the union leadership is of pre-Wagner Act vintage. The philosophy of the autocratic leader who
espouses a pure and simple business unionism and will show a singular disconcern for the democratic rights of the union membership and for the general economic effects of his actions will inevitably invite public rancor and as a result public regulation. With the passage of the Wagner Act organized labor had new power bestowed upon it. Such power must be accompanied by certain responsibility and it is not a retrogression in labor law to insist upon this responsibility in such ways as accounting of union funds, democratic elections of officers, and provision for the fair trial of those expelled from union membership.

This type of regulation can have some adverse affect upon union security. If the financial position of the union is made public, the anti-union employer has a weapon at his disposal. By estimating the strength of the union, he is aware of the most effective moment for an anti-union campaign. All in all, however, this regulation is a modification of the Wagner Act position rather than a reversal. It is when such requirements are coupled with the entire host of new restrictions that the general situation can be regarded as a reaction in labor law. To insist upon an honest and democratic unionism as a requisite to the legally guaranteed rights
of organization and bargaining is commendable, but to couple this insistence with a sequence of laws that weaken labor's ability to organize and bargain is quite obviously an impairment of the group position of organized labor in our economic society.

One more point might be made about the new laws. In the public interest, the legislators have found it necessary in some states to limit drastically the free use of pressure techniques by both labor and management in certain types of disputes. In public utilities especially, a number of states have found that strikes and lockouts would have adverse effects upon the public health and welfare and consequently must be prevented. This is an admission of the need for government controls and planning by persons who are generally vociferous in their denial of the need for such government interference. Liberty is diminished when employees are prohibited from striking and employers are denied the use of the lockout. However, the welfare of the community is advanced as a result of the dimunition of freedom. This is the essence of the argument for a greater degree of government control by the advocates of collective welfare, and it is ironic that the extension of such controls should come from the hands of the most conservative
group of men who have inhabited the legislative chambers since the 1932 elections.

Another point should be considered here and it is a disturbing one. The theoretical justification for the limitation of the free use of traditional labor union and employer weapons by those in the direct relationship of employer to employee is that these economic effects of interrupted utility services are so drastic that they must be prevented at all costs. But do these effects harm the general health and welfare any more than disruptions due to labor disturbances in the basic industries? Is the economic community hurt more by a strike in transportation, heat, or electricity than by a strike in coal or steel? The logical extension of the legal prohibition of strikes and lockouts in the utility would be the outlawing of these in the basic industries. The question here is one of the many that arises from the conflict between our old concepts of freedom and the quest for security. This is a serious problem and the answer lies in some sort of compromise that will attain the desired degree of security at a minimum sacrifice of freedom. The choices involved here are of such import that they deserve a far more studious and dispassionate treatment than they have heretofore received. They
should be made not on the basis of emotional prejudice but rather after serious and objective consideration of all alternatives involved.

To recapitulate briefly, the state laws being considered here have placed little emphasis upon the achievement of equality between employers and employees and have showed not too much concern with employer coercion of unions in the latter's attempts to organize and bargain collectively. There is a narrow conception of a labor dispute and throughout these laws, generally, there is a tendency to confine the labor management struggle to those in the proximate relationship of employer to employee. Labor unions have become subject to extensive regulation in matters of internal organization as well as to external activities. Finally on the basis of the demands of public health and welfare, the concomitants of labor-management difficulty in utility industries have been greatly restricted.

The position of the courts generally has been to attempt to avert the narrow conception of the permissible bounds of labor-management conflict by insisting upon the existence of an interdependence of interest by those workers who are often not in the employ of the same employer. However, on all matters the courts of different jurisdictions have continued a traditional lack of unanimity of
opinion as to what constitutes proper and improper conduct in collective labor activity.
CHAPTER V

CONCLUSION

Most of the laws which have been examined have as stated purposes neither the encouragement nor discouragement of labor union growth. What is explicitly sought is the regulation of the growth that occurs and the activities of unions already in existence. The forms of this regulation result in diminution of the power of organized labor. At the beginning of the Wagner Act period there were approximately three and one half million persons organized into labor unions. At the present time there are about fifteen million. It is not surprising therefore that the rules governing union activity have undergone change. Regulations covering the organization and conduct of a relatively few number of workers and practically none of these in the basic industries could quite conceivably be inadequate for a union movement of the size and strength of the present bodies.

Extensive criticism has already been made of some of the features of the recently enacted legislation. However, the primary purpose of the preceding chapters
has been to indicate the nature and characteristics of rules which the various states have seen fit to impose. A final judgement of the laws must be made on the basis of a set of values that is applicable not to one specific group in the economy but to the general welfare of all groups. Laws are the rules that govern the activities of individuals and groups in society. There are fifteen million organized workers, thousands of employers, and millions of other persons in the United States who are affected by labor-management law. Statistically these figures are impressive but they become even more so if thought of in terms of so many millions of individual personalities, lives, problems, and group relationships. It is beyond the realm of imagination to suppose that any rules could be devised to satisfy the conditions necessary to guarantee the fullest possible measure of justice to each individual. In the matter of competing groups where interests conflict or at least are thought to do so, it is evident that one or both of the groups must relinquish some rights which had previously been possessed.

In this context, justice must be defined not in terms of pin point Socratic logic but as a loose ideal. It is realized when individuals and groups are best able
to strive for ends condoned by the ethical standards of the community. While labor and management will disagree in many areas as to what is desirable, in other areas there can be little disagreement. Prosperity, high levels of productivity, and higher levels of living achieved with as little diminution of liberty as possible are goals that cannot be rationally opposed. The common law which grew up in a period of generally accepted laissez-faire philosophy assumed that a maximum condition in all of these would be achieved with a minimum of state interference. Today this doctrine has been subjected to increased questioning. The early fruition of this questioning in the field of labor relations resulted in the Wagner Act and the original state labor relations acts. While the expressed purpose of equalizing bargaining strength has not been challenged, there has been little emphasis upon such equalization in the newer laws. They have concentrated rather on the imposition of legal restrictions upon unions and to a
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A fundamental assumption of the Wagner Act was that the welfare of the nation as a whole would be advanced if workers and employers would be able to bargain on equal terms over such items as wages and working conditions. Nowhere has any attack upon unions and unionization challenged this premise. Exact equality in bargaining strength would be that situation where in the event of a dispute both sides would exhaust their resources and be compelled to come to terms at approximately the same time. Obviously such an equality would be impossible

1 Little has been said in this paper about the development in national labor law. A criterion for the evaluation of labor law must be applicable to the law at all levels of government. While the National Labor Relations Act of 1935 served as a model for the early state attempts in labor relation law, a contrary situation has appeared as a result of the passage of the Labor-Management Relations Act of 1947. Many of the provisions in this act are similar to state statutes already enacted. The situation is one of the federal government leading the way in the liberal development and following the states in the conservative reaction. Although one of the purposes of the Labor-Management Relations Act of 1947 is to equalize bargaining strength, the modifications of the original National Labor Relations Act of 1935 place the newer law in the same category as those restrictive state acts which have emphasized the regulation of the conduct and organization of unions. In short, most criticisms of state labor law are equally valid when applied to the present labor policy of the federal government.
to obtain, and it is doubtful if the framers of the Wagner Act or of the earlier state acts had this in mind. What was sought, rather, was a situation where neither labor nor management could arbitrarily impose its will upon the other side because of an overwhelmingly superior economic position. To effectuate this policy workers were guaranteed the right to organize and bargain collectively through representatives of their own choosing. Although many critics of the Wagner Act apparently believe so, the policy of equalizing bargaining strength was not intended to be a nostrum that would automatically cure all labor-management ailments. The assumption was, simply, that when equality of bargaining power was achieved workers would probably be able to secure a greater measure of economic justice than they had been able to get through a process of individual bargaining and that disputes arising from attempts by unions to secure recognition would be diminished.

It is not illogical to insist that among the desiderata for labor law, the equality of bargaining power must continue to rank highly. When management is privileged to organize into a corporate form, it would be less than fair to discourage labor's concomitant efforts to organize into unions and bargain through them with the
purpose among others of securing a fair share of the total national product. This, then, becomes a first criterion in judging labor law. Is there a diminution or substantiation of the equality of bargaining power between labor and management?

It might be asked here in what way does the economy as a whole benefit from the legal encouragement of equal bargaining power between workers and employers, for it is the avowed objective of this section to evaluate labor law on the basis of the welfare of all rather than individual groups. The answer to this is twofold. First, there is an encouragement of the efforts of a very large group in the economy to better its level of living. If workers are able to secure and enjoy better housing, health, and education, they will be better able to perform their roles as citizens in a democratic environment; and certain social costs flowing from lower levels of living will be minimized. Secondly if there is any truth to the logic of a considerable number of economic theorists, the effects of the business cycle will be lessened if the lower income groups are able to secure a larger proportion of the national income. The propensity to save being lower among workers, market gluts will be forestalled and the probability of government entry into
the economic sphere solely to bolster lagging private investment is lessened. The present condition of the world economy promises adequate outlet for a considerable amount of savings; but given a number of years of peace, the economies of European and Asiatic nations will eventually improve to a point where the needs for American goods will be fewer. In not too many more years the underconsumption or overinvestment theorists might again find adequate employment for their arguments.

Assuming that agreement can be reached on the desirability of equalizing bargaining strength between labor and management, it is more difficult to agree upon the type of labor law needed to encourage this equality. Here, unfortunately, the individual attitude is likely to be colored by preconceived notions of unionism. Certainly the rights of organizing and bargaining collectively are minimum requirements in this respect. The effects of regulations on union conduct and organization such as the prohibition of certain types of union security contracts and limitations of union power techniques are not quantitatively measurable. Such regulations diminish union bargaining strength but do not indicate by themselves whether a proper balance of bargaining power has been created, continued, or overthrown.
The ultimate test of the relative bargaining power of management and labor is the results of the employment bargains as manifested in the labor market. Unfortunately there is no commonly accepted criterion to serve as a measuring rod. In the realm of social problems it is both wise and practicable to avoid the rigid measurement of the laboratory scientist who balances his delicate scales under minutely controlled conditions. When employment levels are high and wages adequate to afford to workers and their families a reasonable amount of comfort, when strikes and other manifestations of labor difficulties are at a minimum, when high morale among labor and management is reflected in increasing productivity the gains of which are fairly distributed, then there is ample justification for the assumption that labor and management have been able to reach satisfactory employment contracts.

A second basic question involved in the evaluation of labor law is whether or not the existing body of law is consistent with the economic institutions of the present. With the benefit of historical hindsight, it should not be too difficult to draw up a code of law that would be admirably suited to render justice say in the middle of the nineteenth century. While mentally stimulating
such activity would have little relevance to the conditions of today. The point has already been belabored that those of the present laws which seek to confine all aspects of the labor-management quarrel to those groups which stand in the immediate employer-employee relationship neglect some basic aspects of the existing economic arrangement of society.

It is contended here that the law to be realistic at all must recognize the interdependence of many workers who are not employees of the same employer. To do otherwise would be to impute an atomistic character to an economy characterized by large powerful units. The corporate form of business organization and the labor union are both sanctioned by law. Developments including those in transportation, industrial technology, and finance result in a situation where cause and ultimate effect can be separated in a geographical sense. If labor law does not take all of this into consideration, there will be an inconsistency in the nation's labor policy. To encourage collective bargaining in one instance and in another to make it difficult for labor to exert any pressure to protect the standards achieved through the bargaining process results in a body of law that is working at cross purposes. If the end purpose of labor law is
to confine the relationship between organized labor and management to a narrow circle of economic competition that embraces no more than an employer and his immediate employees, then the national Labor-Relations Act of 1947 and the state acts should be so reworded. In such a background, the laws restricting picketing, boycotting, and striking to the employees of an employer would fit into the context. While this type of law would be extremely restrictive and backward looking, at least it would be consistent.

The character of our economic institutions makes it impossible for an individual to bargain on equal terms with his employer. In encouraging the organization of workers, the law is a recognition of apparent economic fact. For the law to assume that the standards of one worker are unaffected by those of other workers is to ignore economic facts equally apparent. By our second criterion then many of the new state laws fare badly. This does not mean that organized labor should enjoy complete freedom as to the pressures that might be exerted. The courts have always insisted that when secondary pressures are applied there must be a proper economic nexus between the parties involved. Recent court decisions indicate that the judiciary will continue to apply this test.
Once again it might be asked how all of society will benefit by a legal recognition of this second criterion. The answer lies in the overall benefit to a community that flows from a system of law that is consistent with and properly applicable to the situations arising from the existing institutions of that community. Where the law is archaic there is an invitation to judicial sophistry, legislative patchwork, and increasing distrust among the social groups and individuals affected by the law. A progressive growth of society is not nurtured by this type of soil.

While the law should be consistent with the economic institutions of the present, it should not at the same time neglect the political ideals which are fundamental to a democratic society. There is a diminution of freedom inherent in all the laws which have been discussed. The rationale for this diminution is that the restriction of rights has been followed by the enlargement of other rights. To put it another way, some aspects of the development in labor law are microcosmic representations of the larger world wide struggle between old and new conceptions of freedom. Whereas formerly freedom was defined largely in terms of political rights, there is an increasing tendency to insist that freedom must be
interpreted in terms of economic opportunity and welfare. It is difficult to understand why there are so many proponents of one extreme or the other and so little insistence upon the very practical proposition that freedom in the twentieth century consists of a proper adjustment of political rights and economic security. The final criterion for the evaluation of labor law, accordingly, involves the balance between the old and new concepts of rights. While aimed at a necessary substantiation of economic welfare, do these new laws accomplish this with as little diminution of freedom as possible?

Having brought the argument to this climax, the denouement will be disappointing for no attempt will be made to answer this last question. It is impossible for an individual to give anything more than an opinion. The answer resides in the aggregate opinion of all society. The only contention made here is that any diminution of any rights must be made only after a careful weighing of the alternatives involved and the probable impact of the change on all groups and individuals in society. The solution to the dilemma involved calls for statesmanship by our leaders and an alert recognition by all of the people of the magnitude of the issues.
Thus, the suggested criterion for labor law is threefold in character. First, there is the question of the equalization of bargaining power which is a measure of the justice of the law. Next, our concern is with the consistency of the law and the existing economic institutions which is a measure of the wisdom of the law, and finally there remains the problem of economic and political rights or the ideal of the law. While some judgement of state labor law has been rendered on each of these points, it is not only conceivable but quite probable that the application of this criterion by others can result in opinions other than those maintained in this paper. However, a statement of a problem is the first step in its solution and this is the extent of the ambition of this section.

As this analysis has on the whole been more critical than otherwise, it is perhaps not amiss to close on a note of optimism. Although the existence of organized labor groups in the United States is not a new phenomenon, the attempts by state legislatures to deal with the problems arising from the presence of such groups have until recently been sporadic and few in number. The regulation of the conduct and organization of unions achieved had resulted for the most part from judicial application
of common law precedents applied now more and now less favorably to trade unions. The growth of unionism and the impact of unsatisfactory labor management relations on outside parties have forced a legislative interest in the problem. It can be pointed out by pro-union groups that such interest by most of the states was not manifested until the national government encouragement of organized labor in the New Deal period placed unions in a bargaining position far superior than that previously attained and that the interest has been largely concentrated on a reaction against these gains. On the other hand, the fact that labor law has become more legislative in origin should afford a measure of satisfaction to all who are interested in a fair adjustment of the problems involved. The faith exhibited in the probability of an impartial and just solution is a measure of the faith that exists in the democratic processes of government. At the present time it is almost impossible for any office seeker to avoid committing himself on the question of labor law. With the alternatives placed before us we shall have only ourselves to blame if future developments fall short of being just and equitable to all groups in the nation.
There is as yet no irrefutable argument for assuming that the ingenuity of mankind will be less efficacious when applied wholeheartedly and unselfishly to the problems arising from the relationship of man to man than it has been when applied to the problems arising from man's physical environment. We await only such an application.
APPENDIX A
APPENDIX A

DIGEST OF THE LAWS

Closed Shop (complete prohibition)

Arizona
November 5, 1946. Constitutional amendment approved by referendum vote.

No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor union. No corporation or any individual or association of any kind shall enter into a contract or agreement which excludes any person from employment or continuation of employment because of non-membership in a labor organization.


The amendment is repeated in this statute. Striking or picketing to force an employer to violate the act shall be for an illegal purpose. It is unlawful to compel a person to join a labor union or to strike against his will or to leave his employment by threatened or actual interference with his person, property, or family. A conspiracy to violate the act is illegal. Labor unions bound by the
acts of its duly authorized agents may be sued in their common name for violations of this act. Injunctive relief is provided for anyone injured or threatened with injury by any act declared illegal by this statute.

Arkansas
November 7, 1944. Amendment No. 35 to the State Constitution.

No person shall be denied employment because of membership with or resignation from a labor union or because of refusal to join or affiliate with a labor union. No contracts may be entered into which exclude from employment members of a labor organization or persons who refuse to join a labor organization or persons who resign from a labor organization. The payment of dues to a labor organization cannot be made a prerequisite to employment.


No person shall be denied employment either because of membership in a labor organization or refusal to join a labor organization. The checkoff is outlawed unless authorized by the individual in writing. Contracts which violate the above are invalid.
Florida
November 7, 1944. Amendment 12 to State Constitution.

The right of persons to work shall not be denied or
abridged on account of membership or non-membership in
any labor union or labor organization. This clause shall
not be construed to deny or abridge the right of employ-
eses to bargain collectively with their employer by and
through a labor organization.

Georgia
March 27, 1947. Anti-Closed Shop Law.

No individual as a condition of employment shall be
required to join or remain a member of a labor organiza-
tion or to resign from or refrain from membership in any
labor organization. Contractual provision that violates
the above stipulation is contrary to the policy of the
state and such provisions are void. An individual whose
employment is affected by a violation of the provisions
of the act has access to the remedy of injunction.

Iowa

It is the policy of the state that no person within
its boundaries shall be deprived of the right to work
for any employer because of membership in, affiliation
with, withdrawal from, or refusal to join any labor or-
ganization. Any contract contravening this policy is
illegal.
Maine

No person shall be denied the opportunity to obtain employment because of membership or non-membership in a labor organization. No written agreements may be entered into which violate the above provision. Nothing in the act is to be construed as prohibiting the making or maintaining of union shop contracts.

Nebraska
November 5, 1946. Constitutional amendment approved by referendum vote.

No person is to be denied employment because of membership in or refusal to join a labor organization. No contracts may be entered into to exclude persons from employment because of membership or non-membership in a labor organization.

North Carolina

It is the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in a labor organization. An agreement contrary to the above provision is declared to be an illegal conspiracy in restraint of trade. An employer cannot require a person to become a member of a labor organization or to abstain from such membership as a condition of employment.
North Dakota  

The right of persons to work shall not be denied or abridged on account of membership or non-membership in a labor organization. All contracts in negation or abrogation of such rights are invalid, void, and unenforceable.

South Dakota  

The right of persons to work shall not be denied or abridged on account of membership or non-membership in a labor organization. Any oral or written agreement which in any manner curtails the free exercise of the right to work is a violation of the act. Any request, demand, or threat to attempt to make an employer or an employee enter into an agreement violative of the provisions of above is a violation of the act. Any threat of injury to an employee, his family, or his property that accompanies a request to join a union is a violation of this act.
Tennessee

It is unlawful to deny employment to persons
because of membership or non-membership in a labor
organization. It is unlawful to enter into contracts
providing for the exclusion from employment of any
person because of membership in, affiliation with, re-
ignation from, or refusal to join or affiliate with any
union.

Texas
April 8, 1947. Anti-Closed Shop Law.

The inherent rights of a person to work and bargain
freely with his employer, individually or collectively
for terms and conditions of employment shall not be
denied or infringed by law, or by any organization of
whatever nature. No person shall be denied employment
because of membership or non-membership in a labor union.
Any contract that makes union membership or non-union
membership a condition of employment is void and contrary
to public policy.
Closed Shop Limitation

Colorado
April 1, 1943. Labor Peace Act.

Colorado makes it an unfair labor practice for the employer to enter into an all-union agreement unless three-quarters or more of the employees in a collective bargaining unit shall have voted affirmatively by secret ballot in favor of such an agreement. The Industrial Commission shall declare such an agreement terminated if it finds that the labor organization has unreasonably refused to accept as a member any employee of the employer. It is not an unfair labor practice for an employer to refuse to grant a closed shop or an all-union agreement.

Delaware
April 15, 1947. Union Regulation Law.

A union security contract is not banned by this law, but it is not an unfair labor practice for an employer to refuse to grant a closed shop or an all union agreement or to accede to any proposal therefor.

Kansas
March 22, 1943. Union Regulation Law.

It is unlawful for any person to enter into an all union agreement as a representative of the employees in a collective bargaining unit unless the employees to be governed thereby have by a majority vote authorized such agreement.
Pennsylvania  
Labor Relations Act, Laws, 1937 as amended.

Pennsylvania permits closed or union shop agreements if the labor organization involved does not deny membership to persons who are employees of the employer at the time the agreement was executed, provided such employee was not employed in violation of any previously existing agreement with the labor organization.

Wisconsin  

An employer is not prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit where

... at least three-quarters of such employees voting (provided such three-quarters of the employees also constitute at least a majority of the employees in such collective bargaining unit) shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the board. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to the all-union agreement to request the board in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the board shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward the all-union agreement since prior referendum and upon so finding shall conduct a new referendum. If the continuance of the all-union agreement is
supported on any referendum by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force and effect thereafter subject to the right to request a further vote ... If the continuance of the all-union agreement is not thus supported on any such referendum, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the announcement by the board of the result of the referendum, whichever proves to be the earlier date. The Board shall declare such all-union agreement terminated whenever it finds that the labor organization involved has unreasonably refused to receive as a member any employee of such employer.
Checkoff*

**Colorado**
April 1, 1943. Labor Peace Act.

It is an unfair labor practice for an employer to deduct labor organization dues or assessments from an employee's earnings unless the employer has been presented with an individual order therefor, signed by the employee personally and terminable at any time by the employee giving at least thirty days notice of such termination.

**Delaware**
April 5, 1947. Union Regulation Law.

It is unlawful for any employer to withhold from the wages or salary of any employees any sum to be paid to a person or organization representing labor except when directed to do so by a court of competent jurisdiction. It is unlawful for an employer and a labor organization to contract for the checkoff.

*The wording of some of these laws and those in the following section pertaining to work permits are vague to the extent that they might prohibit both the checkoff and the imposition of work permit charges or either of these.*
Georgia
March 27, 1947. Part of Anti-Closed Shop Law.

No employer shall deduct from the wages or other earnings of any employee any fee, assessment or other sum of money whatsoever to be held for or paid over to a union except on the individual order or request of such employee revocable at the will of the employee.

Iowa
April 28, 1947. Part of Anti-Closed Shop Law.

It is unlawful for persons, firms, or organizations to deduct labor organization dues, fees, or assessments from employee's earnings without the individual employee's consent in writing to the employer and signed by his spouse if married. Such order can be terminated on thirty days notice.

Pennsylvania
June 9, 1939. Amendment to Labor Relations Act.

It is an unfair labor practice for an employer to deduct, collect, or assist in the collecting from the wages of employees any dues, fees, assessments, or other contributions payable to a labor organization unless he is authorized to do so by a majority vote of all the employees in a collective bargaining unit taken by a secret ballot and unless he thereafter receives the
written authorization from each employee whose wages are affected.

**Texas**

Any contract which permits, requires, prescribes, or provides for the retention of any part of the compensation of an employee for the purpose of paying dues or assessments on his part to any labor union without the written consent of the employee delivered to the employer authorizing the retention of withholding of such sum, shall be null and void and against public policy.

**Wisconsin**

It is an unfair labor practice for an employer to deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, and terminable at the end of any year of its life by the employee giving at least thirty days written notice of such termination.
Work Permits

Alabama

It is unlawful for any labor organization, any labor organizer, any officer, agent, representative, or member of any labor organization or any other person, to collect, receive or demand directly or indirectly from any person, any fee, assessment, or sum of money whatsoever, as a work permit or a condition for the privilege to work; provided however, that this shall not prevent the collection of initiation fees or dues.

Arkansas
November 7, 1944. Anti-Closed Shop Amendment.

No person shall be compelled against his will to pay dues to any labor organization as a prerequisite or condition of employment.

Massachusetts
1943 Laws.

No labor union shall require any person as a condition of procuring or continuing employment to pay any fee or assessment other than such initiation fees as are chargeable upon members by reason of provisions of the by-laws and constitution of such union.
New Hampshire

No person, firm, or corporation shall make payment or non-payment of money to a labor organization a condition of the employment or the continuance of employment of any person.

North Carolina

No employer shall require any person as a condition of employment to pay any dues, fees, or other charges of any kind to any labor organization or labor union.

Tennessee

It shall be unlawful for any person, firm or corporation or association of any kind to exclude from employment any person by reason of such person's payment or failure to pay dues, fees, assessments, or any charges to any labor union or employee organization of any kind.

Texas
1943. Union Regulation Law.

It is unlawful for a labor union to collect any money as a permit to work or for the privilege to work. Reasonable initiation fees are allowable.
Virginia

No employer shall require any person as a condition of employment to pay any dues, fees, or other charges of any kind to any labor union or labor organization.
**Strikes**

**Arizona**


Any strike to force any employer to make an agreement in violation of the anti-closed shop law shall be for an illegal purpose.

**California**


A jurisdictional strike is declared to be against the public policy of the state of California and is declared to be unlawful. Jurisdictional strike means a concerted refusal to perform work for an employer or any other concerted interference with an employer's operation of business arising out of a controversy between two or more labor organizations as to which of them has or should have the exclusive right to bargain collectively with an employer on behalf of his employees, or arising out of any controversy between two or more labor organizations as to which of them has or should have the exclusive right to have its members perform work for an employer.
Colorado
April 1, 1943. Labor Peace Act.

Employees of an employer engaged in agriculture or dairying must give thirty days notice of intention to strike. All other employees must give twenty days notice. Any strike instituted before this time shall constitute an unfair labor practice.

It is an unfair labor practice for employees to engage in a sit-down strike on the premises or property of the employer.

Delaware
April 5, 1947. Union Regulation Act.

No strike shall be lawful unless it is authorized by a majority vote of the employees in the bargaining unit involved, taken by secret ballot at a special meeting called for that purpose and for which all members have been notified.

Any overt concomitant of a strike is an unfair employee practice unless the strike has been voted for in the manner stipulated above.

It is also an unfair employee practice for an employee to engage in a sit-down or slow-down strike on the premises of the employer.
Florida
June 10, 1943. Union Regulation Law.

It is unlawful to participate in a strike without its being authorized by a majority vote of the employees to be governed thereby.

It is unlawful to seize or occupy property unlawfully during the existence of a labor dispute.

Georgia
March 27, 1941. Mediation Law.

Section three of this law provides that no labor organization shall call or cause any strike, slow-down or work stoppage in the state until after thirty days written notice is given to the employer stating the intention to call the strike and giving the reasons therefor. The act does not apply to seasonal industries or to employees covered by the National Railway Labor Act.

Iowa

It is unlawful under this act for labor groups or members thereof to cause a work stoppage or slowdown because of a dispute between labor organizations or members with respect to jurisdiction over the right to do the work or part of the work of any employer.
Louisiana

It is declared to be against the public policy of the state of Louisiana for an employee or a labor organization to participate in a strike in violation of a collective bargaining agreement if the strike is not approved by the labor organization party to such agreement and having exclusive bargaining rights for such employees. The simultaneous stoppage of work or refusal to return to work by ten per cent of the members of the bargaining unit shall be presumed to be a strike.

Maryland
June 1, 1941. Anti-Sit-Down Strike Law.

It is unlawful for any employee or former employee to remain upon the land, premises, property, or in a building under the legal control of the employer after a notice of leave shall have been given by said employer when the purpose of the effect of such refusal to leave is to deprive the employer of the substantial possession, control, or use of such land, premises, property or building.
Massachusetts

Section 4 A of this act makes it an unfair labor practice for a person or labor organization to seize or occupy unlawfully private property as a means of forcing a settlement in a labor dispute.

Michigan
October 11, 1947. Law for Strike Control and Arbitration.

This act ostensibly supersedes the strike provisions of the 1939 Labor Mediation Act. In the event of a dispute, parties shall serve notice to the board (board created by the 1939 act), together with a statement of the issues involved. It is the duty of the board to settle the dispute by mediation. If this fails, the board is to conduct and supervise an election. In order to authorize a strike under the provisions of this act, a majority of all employees in a bargaining unit must vote in favor of such action. The election must be by secret ballot.

Whenever a jurisdictional dispute arises in regard to the representation of employees in any bargaining unit, it is the duty of the board to settle the issue by mediation. If this fails, an election by the employees in the issue will be called to determine such issue.

No person holding a position by political appointment or employment in the government of the state of Michigan shall strike.

No person holding a position of authority over any public employee shall have the power to approve or authorize such a strike.

A violator of the above provisions may be reemployed only on the following conditions:

a) His compensation shall in no event exceed that received by him prior to the time of violation;

b) No increase in compensation shall be granted until after the expiration of one year from the time of re-employment.

c) Such person shall be on probation for two years following re-employment.

Section 7 of this act provides machinery by which a public employee can petition for mediation of grievances.

Minnesota
April 22, 1939. State Labor Relations Act.

This law makes it an unfair labor practice to institute a strike if such strike is in violation of any valid collective bargaining agreement between any employer and his
employees or a labor organization and the employer is at the time complying with the provisions of the agreement.

A 1943 amendment to the act provides that unless a strike is approved by a majority vote of the voting employees in a collective bargaining unit, it shall be an unfair labor practice for any person or labor organization to cooperate in engaging in, practicing, or inducing a strike. Another 1943 amendment provides for the settlement of jurisdictional disputes by an impartial referee. After the appointment of a referee by the governor of the state it is unlawful for the labor organization to call or conduct a strike.

Missouri

Whenever a jurisdictional conflict shall arise, whether over representation or the right to perform certain types of work for an employer, it shall be the duty of the parties to the controversy to settle such dispute peaceably and without work stoppage. If settlement cannot be reached in any other way, the parties involved must arrange for and submit the controversy to such binding arbitration as they may agree upon. If the parties do not so settle the dispute, the Industrial Commission
of the State Department of Labor and Industrial Relations upon application of any such parties or of any employer affected by the controversy shall make an investigation and shall determine the issue of the controversy. Such determination shall be binding upon all parties to the controversy.

Section seven of this law provides that any employee of the United States or of this state or any political subdivision thereof, who shall call, support, encourage, or participate in any strike against his employer shall be considered engaged in an act of grave and immediate danger to the community and shall be deemed guilty of a misdemeanor.

New York
March 27, 1947. Ban on Strikes by Public Workers.

No person holding a position by appointment or employment in the government of the state of New York or any of the political subdivisions thereof shall strike.

No person exercising any authority, supervision, or direction over any public employee shall have the power to authorize, approve, or consent to such strike.

A public employee who violates the provisions of this act shall thereby abandon and terminate his appointment or employment.

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A violator can be reappointed only upon the following conditions:

1. his compensation shall not exceed that received before the strike;
2. he shall receive no increase in compensation until at least three years after reappointment;
3. he shall be reappointed on probation for five years and no tenure will accumulate during that period.

North Dakota

If employees desire to strike, written notice must be given to the employer. The employer then designates a representative and the employees do likewise. These two then choose a third. The three conduct an election to determine whether or not a strike shall take place. The board makes a certificate of the results and no strike goes into effect until thirty days after the date of such certificate. No strike shall be called into effect unless fifty per cent of the employees who cast votes have voted in favor of the strike.

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Ohio
June 20, 1947. Law Banning Strikes by Public Employees.

With slight exceptions the Ohio Law is similar to that of New York described above. In Ohio, the reappointed striker may receive a pay increase after one year; and the probationary period is for two years.

Oregon

An employer or any of his employees may petition the state commissioner of labor to hold an election for the purpose of voting upon the continuation or termination of a labor dispute. If a majority of the employees in a collective bargaining unit vote to continue the labor dispute, the dispute shall be deemed to continue in existence. If a majority vote against the continuation of the dispute or if having voted in favor and a collective bargaining agreement is entered into, the labor dispute shall be deemed to be terminated. A majority vote for the termination of the labor dispute shall be binding for a period of one year from the date of the election.
Pennsylvania
May 27, 1943. Amendment to State Labor Relations Act

It is an unfair labor practice for a labor organization or its officers or agents or for an employee or employees acting in concert to join or become a part of a sit-down strike with the intent of compelling the employer to accede to demands, conditions, and terms of employment including the demand for collective bargaining.

July 1, 1947. Ban on Strikes by Public Employees.

This law is similar to the Ohio and New York Laws described above. However, it contains a section not included in the other laws providing machinery to allow for an expression of grievances by public employees. At the request of the public employees a panel is set up composed of one member selected by the employees and another selected by the government agency. These two select a third. The panel tries to settle the grievance through negotiation and informal conferences between the parties concerned. If this fails the panel holds a full hearing and sends copies of its recommendations to the Governor and the general assembly. The Governor may take administrative measures to remedy the complaint or may refer the matter to the legislature for correction.
Texas
April 29, 1947. Ban on Strikes by Public Workers.

It is declared to be against the public policy of the State of Texas for public employees to engage in strikes or organized work stoppages against the State or any political subdivision thereof. Such striking employee forfeits civil service rights, reemployment rights, and any other rights, benefits, or privileges which he enjoys as a result of his employment. The right of an individual to cease work is not abridged as long as he is not in concert with others in an organized work stoppage.


It is unlawful for a person, persons, labor unions, or members thereof to aid or abet a secondary strike. A secondary strike is defined as a temporary work stoppage by two or more employees where no labor dispute exists between the employer and such employees and where such temporary stoppages result from a labor dispute to which such employees are not parties. A labor dispute is limited to and means any controversy between an employer and the majority of his employees concerning wages, hours, or conditions of employment; provided that if any of the employees are members of a labor union, a controversy
between such employer and the majority of the employees belonging to the union and concerning wages, hours, or conditions of employment shall be deemed as to employee members only of such union, a labor dispute within the meaning of the act.

Utah
March 6, 1947. Amendment to Labor Relations Act.

It is an unfair labor practice for an employee to cooperate in engaging in, promoting, inducing picketing, boycotting, or any overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

It is an unfair labor practice for an employee to take unauthorized possession of the property of the employer.

Virginia
March 27, 1946. Strike Control Act.

This Act relates to strikes by government employees in Virginia. Any employee of the Commonwealth of Virginia or of any political subdivision thereof, who in concert with two or more such employees, for the purpose of obstructing, suspending, or impeding any activity or operation of his employing agency or any other government
agency strikes or willfully refuses to perform duties of his employment shall by such action be deemed to have terminated his employment and shall thereafter be ineligible for employment in any position or capacity during the next twelve months by the Commonwealth or any political subdivision of the state.

**Wisconsin**

Employees must give ten days notice of intention to strike where the exercise of the right to strike would tend to cause the destruction or deterioration of any farm or dairy product. Failure to give such notice is an unfair labor practice. It is also an unfair labor practice to take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

A 1943 amendment to the Act makes it an unfair labor practice to cooperate in engaging in, promoting, inducing any overt concomitant of a strike (not constituting an exercise of constitutionally guaranteed free speech) unless a majority of the employees of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike.
Picketing

Alabama

It is unlawful for any person by use of force or violence or threats of use of force or violence to prevent or attempt to prevent any person from engaging in any lawful vocation in the state. It is unlawful for an individual or a group to promote, or encourage, or aid in unlawful assemblage to do the above.

Arizona

Picketing to force an employer to make an agreement in violation of the ant-closed shop law is illegal.

Arkansas

It is unlawful for any person by force or violence, or threats thereof to prevent or attempt to prevent any person from engaging in any lawful vocation within the state. It is unlawful to assemble at a labor dispute to prevent any persons from engaging in any lawful vocation; and it is unlawful to promote, encourage, or aid such assemblage.
Connecticut

No person shall engage in picketing before or about the home or residence of any individual unless such home or residence is adjacent to or in the same building or on the same premises in which such person was employed and which employment is involved in a labor dispute.

Delaware
April 5, 1947. Union Regulation Law.

It is an unfair labor practice for an individual employee or in concert with others to cooperate in engaging in, promoting, or inducing picketing or any other overt concomitant of a strike unless a majority in a collective bargaining unit of an employer against whom such acts are directed have at a special meeting called for that purpose voted to strike by a secret ballot.

It is also an unfair labor practice to:

a) hinder or prevent by mass picketing, threats, intimidation, force, coercion, the pursuit of lawful work or employment;

b) obstruct or interfere with entrance into or egress from any place of employment;
c) picket, obstruct, or interfere with entrance into or egress from the home of any employer or employee or any officer, agent, or representative of the employer.

A court of chancery shall upon the filing of a bill of complaint by any party in interest or any organization or persons representing any public interests showing that there is picketing which might tend to disturb or lead to riots, disturbances, or assaults, or disturb public peace, or injure the property or persons of individuals

1. limit the number of pickets that may be permitted;

2. prescribe the distance from any plant entrance, or exit where such picketing may be permitted;

3. otherwise prescribe limits to such picketing including manner and methods of picketing or to prevent the use of weapons of any kind or threats or intimidation.

Florida
June 16, 1943. Union Regulation Law.

It is unlawful to picket other than in a reasonable manner and to prevent ingress and egress to and from any premises.
Georgia
March 27, 1947. Anti-Picketing Law.

It is unlawful by the use of force or violence or threats thereof to prevent or attempt to prevent any individual from quitting or continuing in the employment of any employer or accepting or refusing employment by any employer or from entering or leaving any place of employment.

It is unlawful for two or more persons to assemble at a labor dispute to prevent or attempt to prevent any person from engaging in any lawful vocation or for any person to promote, aid, or abet such assemblage.

It is unlawful to mass picket at a place of employment or to obstruct free and uninterrupted use of public roads, streets, or highways.

It is unlawful to compel or attempt to compel any person to join a labor organization or strike against his will by threats or actual interference with his person, family or property.

Kansas
March 22, 1943. Union Regulation Law.

It is unlawful for any person to picket beyond the area in which a labor dispute exists. It is unlawful to engage in picketing by force or violence or to picket in such a way as to prevent ingress and egress to and from any premises or to picket other than in a peaceable manner.
Michigan
Approved July 1, 1947., effective October 11, 1947.
Law for Strike Control and Arbitration.

It is unlawful to hinder or prevent by mass picketing, threats, intimidation, or coercion of any kind the pursuit of any lawful work or employment or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, airports, or other ways of travel or conveyance. It shall be unlawful for any person acting either individually or as one of a group to engage in picketing a private residence by any means or method whatsoever. Provided that, picketing to the full extent that the same is authorized under constitutional provisions shall in no manner be prohibited.

Missouri
Law Limiting Strikes and Boycotts.

If any person shall picket or induce others to picket the establishment, employees, supply or delivery vehicles, or customers of anyone engaged in business, or interfere with his business, or interfere with any person desiring to transact business with him, when no labor dispute exists between such employer and his employees, he shall be deemed guilty of a misdemeanor.

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Mississippi

It is unlawful for a person by force or violence or threats thereof, to prevent any person from engaging in any lawful vocation in the state. It is unlawful for two or more persons to conspire to do the above.

Minnesota

It is an unfair labor practice for a picket who is not an employee of the place of employment where strike is in progress to picket unless the majority of persons engaged in picketing are employees of the place of employment. It is also an unfair practice for more than one person to picket a single entrance to any place of employment where no strike is in progress at the time.

North Dakota

If less than 51 per cent of the employees who participate in a vote for a strike cast ballots against such a strike, it is unlawful to picket such establishment and picketing thusly is against the peace and dignity of the state and subject to restraint by the district court.
Pennsylvania  

It is an unfair labor practice to picket or cause to be picketed a place of employment by a person or persons who is not or are not an employee or employees of the place of employment.

South Dakota  
March 11, 1947. SB 226.

It is unlawful to picket or to induce others to picket when no labor dispute exists between an employer and his employees or their representatives.

It is unlawful to interfere with the lawful right of others to work by the use of force, violence, intimidation, or threats.

It is unlawful to picket in such a manner as to interfere with free egress and ingress to and from any premises or to obstruct or interfere with the free use of public streets or other public ways.

It is unlawful to engage in violence or unlawful destruction of property as a means of forcing a settlement in a labor dispute or for the purpose of compelling persons to become members of a labor union.

It is unlawful to engage in or abet mass picketing which is defined as the picketing of a greater number than five per cent of the first hundred striking employees and one per cent of the employees in excess of this
number on strike, and it shall be unlawful for persons not employees of the picketed employer to picket.

**Texas**

April 1, 1941. Anti-Picketing Law.

It is unlawful for any person by the use of force or violence or threats thereof to prevent or attempt to prevent any person from engaging in any lawful vocation within the state. It is unlawful for persons acting in concert to assemble at or near a labor dispute to attempt to prevent the above.


It is unlawful to picket the plant or premises of a public utility with the intent to disrupt the service thereof. It is unlawful to intimidate, threat or harass any employee of a public utility if these have the effect of disrupting the service of such utility or preventing the maintenance thereof.


It is unlawful to engage in mass picketing. This is any situation in which there are more than two pickets within fifty feet of entrance to the premises picketed or within fifty feet of any other picket or pickets.
It is unlawful by the use of threatening, insulting, or obscene language to interfere, hinder, or obstruct any person in the exercise of his lawful right to work.

It is unlawful to engage in picketing accompanied by slander, libel, or the display or publication of oral or written misrepresentations.

It is unlawful to picket to secure the disregard of a valid existing labor agreement.

It is unlawful to declare, publicize, or advertise the continued existence of picketing after a court of competent jurisdiction has enjoined the continuance of such picketing.


It is unlawful for a person, persons, or labor unions to engage in secondary picketing. This is defined as the act of establishing a picket line at or near the premises of any employer where no labor dispute exists between such employer and his employees.

Utah
March 6, 1947. Amendment to Labor Relations Act.

It is an unfair labor practice for an employee to cooperate in promoting or inducing picketing or any other overt concomitant of a strike unless the majority
in a collective bargaining unit of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

It is an unfair labor practice to prevent by mass picketing the pursuit of any lawful work or to interfere with entrance to or egress from any place of employment.

\textit{Virginia}

\textit{March 25, 1946. Chap. 229, SB 158.}

It is unlawful for any person singly or in concert with others to interfere or attempt to interfere with another in the exercise of his right to work by the use of force, threats, violence or intimidation, or by the use of insulting or obscene language directed toward such person to induce him to quit his employment or refrain from seeking employment.

It is unlawful to engage in picketing in such manner as to obstruct free ingress or egress to or from any premises or to interfere with free use of public streets, or other public ways.

It is unlawful for a person not an employee of the business or industry being picketed to participate in any picketing with respect to such strike or to such business or industry.
Wisconsin 1939 and 1943 Amendment. Employment Peace Act.

It is an unfair labor practice for an individual singly or in concert with others to cooperate in engaging, or promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech) or any overt concomitant of a strike unless a majority in the collective bargaining unit of the employees of the employer against whom such acts are primarily directed have voted by secret ballot to call a strike.

It is also an unfair labor practice to hinder or prevent by mass picketing, threats, intimidation, force, or coercion the pursuit of any lawful employment; or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with the free and uninterrupted use of public roads or other ways of travel or conveyance.

It is unlawful to picket or to induce others to picket the establishment, employees, supply or delivery vehicles, or customers of anyone engaged in business, or interfere with anyone desiring to transact business with him when no labor dispute exists between such employer and his employees or their representatives.
Boycotts

California

For a statement of this law see pages 48 and 49.

Colorado
April 1, 1943. Labor Peace Act.

Secondary boycott is described as causing or
threatening, combining, or conspiring to cause injury
to one who is not a party to a particular labor dispute.
This may be done by a) withholding patronage, labor, or
other beneficial business intercourse; b) picketing;
c) refusing to handle, install, use, or work on partic-
ular materials, equipment, or supplies; d) or by any
other unlawful means to bring him against his will into
a concerted plan to coerce or inflict damage upon anoth-
er.

It is an unfair employee practice to engage in a
secondary boycott. Since this law defines a labor dis-
pute as a controversy between an employer and his imme-
diate employees, all secondary pressures would be unfair
employee practices according to the wording of this law.

Delaware
April 5, 1947. Union Regulation Law.

Section 6 of this Act makes it unlawful in pursuance
of any secondary boycott for a person or persons to loiter
about, beset, or patrol the place of business of any person, firm, or corporation engaged in lawful business for the purpose of influencing others not to trade, buy, sell, work for, or have business dealings with it; so that thereby its business is injured and they are forced to do something or not to do something he, they, or it may legally refrain from doing or not doing.

Idaho

It is unlawful to cause or threaten to cause or to combine, or conspire to cause or threaten to cause injury to one not a party to the particular labor dispute to aid which a secondary boycott is initiated whether by a) withholding labor, patronage or other beneficial intercourse, b) picketing, c) refusing to handle, install, use, or work on particular materials, equipment, or supplies, d) by any other means in order to bring him against his will into a concerted plan, to coerce or inflict damage upon another or to compel the party with whom such labor dispute exists to comply with any particular demands.
Iowa


Iowa's law makes it unlawful for any labor union or the members thereof to enter into any contract, agreement, arrangement, combination, or conspiracy for the following purposes:

a) to force or require any person, firm, or corporation to cease using, selling, handling, transporting, or dealing in the goods or products of any other firms or corporations;

b) or to cease selling, transporting, or delivering goods or products to any other person, firm, or corporation;

c) or to force any employer other than their own to recognize, deal with, comply with demands of, or to employ members of any labor organization;

d) or to force an employer to break existing collective bargaining agreements with any labor organization.

Minnesota


In this law the policy declaration states that the public good and general welfare of the state would best be promoted by prohibiting secondary boycotts.

A secondary boycott is defined as any combination,

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agreement, or concerted action:

a) to refuse to handle goods or perform services for an employer because of a labor dispute, agreement, or failure of agreement between some other employer and his employees in a bona fide labor organization;

b) to cease performing or to cause any employees to cease performing any services for an employer, or to cause loss or injury to such employer or his employees for the purpose of inducing or compelling such employer to refrain from doing business with or handling the products of any other employer because of a dispute between the latter and his employees or a labor organization;

c) or to cease performing or to cause any employer to cease performing any services for another employer for the purpose of compelling or inducing such other employer to refrain from doing business with or handling the products of any other employer because of an agreement, dispute, or failure of agreement between the latter and his employees or a labor organization.

It is an unlawful act for a person or organization to combine with another to cause loss or injury to an
employer, to refuse to handle particular goods, or
to withhold patronage or to encourage another to withhold
patronage for the purpose of influencing the employer
to encourage or discourage his employees from joining
any labor organization or for the purpose of influenc-
ing such employer's employees from joining or not join-
ing any labor organization.

The secondary boycott is declared to be an illegal
combination of restraint of trade and in violation of
the public policy of the state.

Missouri

If any employee or representative of the employees
shall participate in any combination or agreement of em-
ployees to cease performing any services for an employer,
or to refuse to handle, install, or work on particular
equipment, materials, or supplies, or to cause any loss
or injury to such employer or to his employees, for the
purpose of inducing or compelling such employer to re-
frain from doing business with any other employer; or
if any person shall picket or induce others to picket
the establishment or interfere in any way with the
business or with persons desiring to transact business
with the establishment when no labor dispute exists be-
tween the employer and his employees, he shall be guilty
of a misdemeanor.
North Dakota

Boycotting, secondary boycotting, and sympathy strikes are against the public policy of the state and shall be subject to restraint by the district courts of the state. The provisions of the North Dakota Act do not apply to those employees and employers in interstate commerce.

Oregon
April 4, 1947. Law Banning "Hot Cargo" and Secondary Boycotts.

"Hot cargo" and second boycott are declared illegal. "Hot cargo" is that situation which results from a combination or agreement resulting in a refusal by employees to perform services for their employer because of a dispute between some other employer and his employees or a labor organization or because of an agreement between such other employer and his employees or a labor organization.

The definition of the secondary boycott is similar to that of "hot cargo" except that in this instance the combination of the employees is made with the purpose of compelling the employer to exert pressure on another employer because of a dispute or an agreement between the latter and his employees or a labor organization.

A secondary boycott is any combination, plan, agreement, or compact entered into or any concerted action by two or more persons to cause damages or injury to any firm or corporation for whom they are not employees by:

a) withholding patronage, labor, or other beneficial business intercourse from such person, firm, or corporation;

b) picketing such person, firm, or corporation;

c) refusing to handle, install, use, or work on the equipment or supplies of such person, firm, or corporation;

d) instigating or fomenting a strike against such person, firm, or corporation;

e) interfering with or attempting to prevent the free flow of commerce;

f) by any other means causing or attempting to cause an employer with whom they have a labor dispute to inflict damage upon an employer not party to such a dispute.

It is unlawful for a person, persons, or a labor union to establish, call, participate in, aid, or abet a boycott as defined.
Utah
March 6, 1947. Amendment to the 1937 Labor Relations Act.

It is an unfair employee practice to engage in a secondary boycott; or to hinder or prevent the obtaining, use, or disposition of materials, equipment, or supplies, or to combine or conspire to do this. This shall not prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.

Wisconsin

Wisconsin makes it an unfair labor practice for an employee individually or in concert with others: "to engage in a secondary boycott; or to hinder or prevent by threats, intimidations, force, coercion, or sabotage the obtaining, use, disposition of materials, equipment, or services; or to combine or to conspire to hinder or prevent by any means whatsoever the obtaining, use, or disposition of materials, equipment, or services."
Regulations of Internal Affairs of Unions

Alabama

Every labor organization functioning in the State of Alabama is required to file a copy of its constitution and by-laws. Labor organizations are also required to file annual reports showing the name of the organization, the location of the principal office in the state, the names and salaries of the officers, the date of the regular elections of officers, and the number of paid up members. The report must also include a financial statement showing the receipts and disbursements of monies, and a statement of all property owned by the union.

No officer or agent of any labor organization shall collect or accept payment of any fees, dues, or assessments, or any other monies from any member while there is a default as to filing the annual report.

Colorado
April 1, 1943. Labor Peace Act.

Paragraph four of the policy declaration places restrictions upon unions' internal activities.

No person shall be denied union membership because of race, color, religion, sex, or by unfair or unjust discrimination.
Arbitrary, excessive initiation fees and dues shall not be required; nor shall excessive, unwarranted, arbitrary, or oppressive fines, penalties, or forfeitures be imposed.

Members are entitled to reports of all financial transactions.

Members shall have the right to elect officers by secret ballot and to determine and vote upon questions of policy affecting the entire membership.

**Connecticut**

It shall be an unfair employment practice for a labor organization because of race, color, religious creed, national origin or ancestry of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless such action is based upon a bona-fide occupational qualification.

**Delaware**
April 5, 1947. Union Regulation Law.

For a description of this law see pages 53 to 55.
Kansas
March 22, 1943. Union Regulation Act.

Section 3. Licensing of business agents.

Business agents must obtain a license by filing an application with the Secretary of State. No license will be issued unless the applicant is a citizen of the United States, his name, address, and length of residence in Kansas is included in his application, and the application is signed by the president and secretary of the labor organization for which he will act as agent.

Section 4. A labor organization desiring to operate in Kansas must file a copy of its by-laws with the Secretary of State.

Section 5. Unions with more than twenty-five members must file reports showing:

1. Name of the organization.
2. Location of its office.
3. Names of officers, their addresses and salaries.
4. The date of the regular election of officers.
5. Rate of fees, dues, assessments, and charges.

Massachusetts
November 5, 1946. Union Registration Law.

No union shall operate as such until there is filed with the Commissioner of Labor and Industries a statement signed by the president and secretary of the union giving the names and addresses of officers, the aims and objects
of the union, the scale of dues, initiation fees and fines to be charged members, and salaries to be paid officers.

The secretary and president must make an annual report showing the amount of money collected and itemized accounts of expenditures. The Commissioner is to keep these records and they are to be open to public inspection.


It is an unlawful employment practice for unions because of race, color, religions, and national origins or ancestry of any individual to exclude from full membership rights such individual, or to discriminate in any way against any of its members or against any employer or individual employed by an employer, unless the discrimination is based upon a bona fide occupational qualification.

Minnesota
April 24, 1942. Labor Union Democracy Act.

Officers of every labor union shall be elected for such terms not exceeding four years as the constitution or by-laws provide. Elections shall be by secret ballot. Reasonable notice of elections must be given to those eligible to vote. No election shall be valid unless a
plurality of the eligible persons voting shall have cast their votes in favor of the result.

The officer in charge of the money and property of the union must furnish to members in good standing a statement of the receipts and expenditures and assets and liabilities.

If charges that a labor union is not complying with the above are sustained, such labor organization is disqualified from acting as the representative of the employees until the disqualification is removed by submitting proof of performance of duty for which the disqualification had been imposed.

New Hampshire

The New Hampshire law prohibiting closed shop contracts stipulates that such contracts may be entered into if certain conditions are met. Among such conditions are the stipulations that dues must not be unduly burdensome. The labor organization shall impose no discriminatory qualifications on membership based upon sex, age, or national origin. The contract must contain a clause providing that no member of the organization shall be suspended or expelled except for just cause and only after the member has been offered a right of appeal with
a final right of appeal to the labor commissioner who is empowered to order reinstatement.

Furthermore, such labor organization must file annually a statement showing the name of the labor organization, location of the office, information about the officers including their salaries, initiation fees and dues, and a statement of expenditures. A copy of the by-laws and constitution must also be filed with the labor commissioner.

New York
February 14, 1947. Law on Discrimination by Unions.

No labor organization shall by ritualistic practice, constitutional provision, by tacit agreement among its members, or otherwise deny a person or persons membership in its organization by reason of his race, creed, or color or by regulations, practice, or otherwise deny to any of its members by reason of race, color, or creed equal treatment with all other persons in any designation of members to any employer for employment, promotion, or dismissal by such employer.


It is an unlawful employment practice for a labor organization because of the race, color, or creed, or national origin of any individual to exclude or to expel from its membership such individual or to
discriminate in any way against any of its members or against any employer or any individual employed by an employer.

North Dakota

"To operate as such, a union must file with the Secretary of State a statement setting forth names and addresses of all officers, the name of the union, a statement of the aims and objectives of the union, the scale of fees, dues, fines, assessments and salaries paid to officers.

Annual reports must be submitted setting forth the amount of money collected and the amounts paid in salaries to officers. Such statements must be kept on file and be open to public inspection.

Texas
1943. Union Regulation Law.

Labor unions must file annual reports with the Secretary of State containing the names and addresses of local officers, the name of the state or national organization affiliated with, a financial statement of money income and an itemized statement of expenditures, a statement of property owned. Such reports are available only to the Secretary of State, the Commissioner of Labor.
Statistics, the Attorney General, grand juries, and judicial and quasi judicial inquiries.

Officers of unions must be elected by at least a majority vote of those voting. Such elections must be held annually and be by secret ballot. (Under certain circumstances unions are exempt from the annual election condition.)

It is unlawful for aliens or felons to serve as officers of unions.

It is unlawful for unions to make contributions to political parties or individuals running for office.

Unions may not impose charges upon members which will create a fund in excess of the reasonable requirements of such union in carrying out its purposes. It is also unlawful to collect money as a work permit.

Unions must keep accurate books of accounts itemizing receipts and expenditures. Any member of the union is entitled to inspect such books.

It is unlawful for a union to expel a member except for good cause and only after a fair and public hearing. The Courts can order the reinstatement of a worker expelled without good cause.
Regulation of Public Utility Disputes

Indiana

It is the public policy of the state to facilitate settlement of labor disputes between public utility employers and employees. To that end, agreement through collective bargaining is to be encouraged, and when this process reaches an impasse settlement procedures are provided if an interruption of a service is threatened which would inflict hardship on a substantial number of persons.

If a bargaining impasse is reached, either party to the dispute may petition the governor to appoint a conciliator. The conciliator attempts to affect a settlement within thirty days during which time there is to be no strike or lockout. If the conciliator fails, a board of arbitration appointed by the governor holds hearings. The board is to reach a decision on each point of contention. When there is no contract to be interpreted, the board shall establish rates of pay and working conditions comparable to those prevalent among similar utility employees in the same labor market. The orders of the board shall be binding, although each party may petition the circuit court of the proper county for a review on certain specified grounds.
Michigan
October 11, 1947. Law for Strike Control and Arbitration.

In the event of a public utility dispute, the Labor Mediation Board certifies to the governor the existence of a dispute. The parties to the dispute may within ten days voluntarily agree to submit the dispute to an arbitration board of their own choosing. If they fail to do this, an arbitration board shall be established of which a circuit judge shall be chairman. The employees and the employer each select one member of the arbitration board. This board holds hearings and is to make a determination of the issues within thirty days.

Missouri

All collective bargaining agreements between management of utilities and employees shall continue for not less than one year from the date of expiration of previous agreement. Such agreements shall continue from year to year unless a party informs the other of specified changes desired. In the event that no agreement is reached before the expiration of the contract or agreement, each side designates a public hearing panel member; and these two choose a third. This panel is to submit a report to the governor containing recommendations. If
either side refuses to abide by these recommendations and utility service is threatened with interruption, the governor is authorized to take possession of the plant for the use and operation by the state in the public interest. It is unlawful to strike after the plant has been taken over by the state.

Nebraska

This law creates a commission to be known as the Court of Industrial Relations. It is composed of three judges who are appointed by the governor.

All industrial disputes involving governmental service in a proprietary capacity or service of a public utility shall be settled by invoking the jurisdiction of the Court of Industrial Relations. Any employer, employee, labor organization, or the attorney general may invoke the jurisdiction of the court when such a dispute exists.

The Court has the authority to make temporary findings and to issue orders to preserve and protect the status quo pending final determination. After hearings and investigations, the Court makes its findings and enters its orders. The findings and orders may establish or alter the scale of wages, hours of employment,
or conditions of employment. The Court shall establish rates and conditions comparable to those prevalent for similar skills in the same labor market area. The orders shall be binding on all parties involved, and failure to obey such orders shall constitute contempt.

New Jersey
March 26, 1946. Law on Utility Disputes.

The policy declaration states that the State's regulation of labor relations in public utilities is necessary in the public interest.

Employees in such work have the right to organize and bargain collectively, and no public utility shall deprive them of these rights. All contracts between public utilities and their employees shall continue for one year from the date of expiration of the previous contract and such agreements shall continue from year to year unless a party to it informs the other of the desire for a change and files a copy of its demands with the State Mediation Board at least sixty days before the termination date of the contract. If at the time of the expiration of the contract, no agreement has been reached, management and the representatives of the employees shall each designate a person as a public hearing panel member and these two select a
third member. This panel will hold hearings on the issues and submit a report to the governor setting forth a statement of the controversy and its recommendations. If either the utility management or its employees refuse to abide by the recommendations of the panel and as a result the operation of the utility be threatened, the governor is authorized to take possession of the utility. Such utility is to be returned to the owner after the settlement of the dispute.

Several amendments to this law were enacted in 1947. One made it unlawful to strike until sixty days after written notice of intention to strike had been served upon the mediation board. It was also made unlawful to strike after the governor had taken possession of the plant. Provision was also made for the creation of an arbitration board with final and binding authority. The orders of such a board are to remain in effect for one year.

Pennsylvania

In case of an impasse in bargaining between a public utility employer and the employees, either party may appeal to the governor to appoint a mediator. After the appointment of a mediator, no strikes or lockouts are to
be instituted until all procedures provided for in the act have been exhausted. If the mediator thinks that the dispute cannot be settled in thirty days, he secures an offer from either side. An election is conducted among employees on the question "Shall the employer's offer be accepted"? In default of a majority vote for acceptance, the vote shall constitute a vote in favor of arbitration. The governor then appoints a three member arbitration board.

It is the duty of the arbitration board to hold hearings and to make written findings of fact and to render a decision upon the issues presented. When a valid contract is in effect, the arbitration board only has the power to determine the proper interpretation and application of the contract. When there is no contract, the board shall consider all pertinent factors and shall establish rates of pay and conditions of employment maintained for same and similar skills of workers working under same or similar conditions in the same labor market.

**Virginia**


It is unlawful for either party to a labor dispute to engage in a strike or lockout in connection with the operation of a public utility unless a number of provisions are complied with. If the representatives of
either management or the employees desire to make any change in employment matters, the party desiring the change shall notify the other and a conference will be arranged. If no agreement is reached, the governor is notified. The governor requests the parties to submit to arbitration. If they refuse and decide to strike or institute a lockout and the governor feels that this offers a serious menace to the public welfare, he issues a proclamation stating that at the time of the strike or lockout he will take possession of the facility for the use and operation of the State of Virginia.
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