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A COMPARATIVE STUDY OF STATE RESTRICTIVE LABOR LEGISLATION ENACTED IN 1947

STRIFE of an intensified nature in the form of strikes and labor disputes has, since the termination of World War II, disturbed the American industrial scene and has focused public attention upon the subject of labor relations. Heated discussions and debates have been staged on the national forum, and a variety of views have been expressed in law review articles¹ on the labor problem. With the public mind aroused and demanding action, great activity in the national capitol and in the state legislatures has ensued.² The new Labor Management Relations Act of 1947,³ popularly known as the Taft-Hartley law, which amended the National Labor Relations Act of 1935, is the product of congressional action. Some thirty-one states have enacted laws pertaining to labor relations, the great majority of which are restrictive in nature. The statutes enacted by the states are as important as federal legislation because most suits involving labor controversies are instituted in the state courts. Labor and management are thus called upon to conduct their activities within a pattern prescribed by both state and federal regulation. Upon the wisdom of these rules and their intelligent administration will depend, in a large part, industrial harmony.

¹ See Comment, 44 MICH. L. REV. 1089 (1946); Summers, *The Right to Join a Union*, 47 COL. L. REV. 33 (1947); Note, 56 YALE L. J. 731 (1947); Editorial Note, 15 GEO. WASH. L. REV. 327 (1947); 14 UNIV. CHI. L. REV. 332-454 (1947); Symposium, *Labor Dispute Settlement*, 12 LAW & CONTEMP. PROB., 209-389 (1947); Morgan, *Improvement of the Process of Collective Bargaining*, 12 MO. L. REV. 10 (1947); Smith & LeLancey, *The State Legislatures and Unionism*, 38 MICH. L. REV. 987 (1940); Comment, 42 ILL. L. REV. 444 (1947); and Larson, *May Peaceful Picketing Be Enjoined?*, 22 TEX. L. REV. 392 (1944).

² Recognizing the importance of keeping abreast of current labor legislation, the American Bar Association organized a new section on labor relations law in 1946 (See 33 A. B. A. J. 116). The first work of that section recently appeared in the form of a compilation of state labor legislation enacted in 1947. The State Bar of Texas has created a similar section. (See 10 TEX. BAR JOUR. No. 10, 1947).

³ 61 STAT. 136 (1947), 29 U. S. C. A. § 141-197 (Supp. 1947).

The state legislation of 1947 manifests an intent to achieve industrial peace by placing curbs on union activities and purposes. Some of these laws were enacted before the Taft-Hartley Law and others subsequent thereto. Many of the laws are more drastic in their effect than the Taft-Hartley Law. Up to the present date there has been little interpretation of these new laws by the courts. Whether they will be a remedy for labor ills remains to be seen.

Generally, the new state statutes are drawn to accomplish varying objectives: they invalidate or restrict union security contracts; they prohibit or restrict certain types of strikes and picketing; and they regulate unions directly by requiring the filing of financial statements and other data. Miscellaneous statutes have been enacted, including legislation making collective bargaining agreements enforceable against either the employer or the labor organization. A collection and comparison of these statutes should be of value to indicate possible approaches to certain critical labor problems.

UNION SECURITY CONTRACTS

The term "union security contract" embraces both "closed shop" and "union shop" contracts. The "closed shop" requires membership in a union as a condition of hiring and continued employment. The "union shop" does not make union membership a condition of hiring but makes it a condition of continued employment upon the expiration of a certain length of time after hiring.⁴ Labor unions consider union security contracts essential because they make the position of a union secure and strengthen the organization in its contest for better wages, working conditions and hours. Management, on the other hand, resists these contracts for reasons centering around fear of monopoly of the supply of labor and excessive economic power vested in unions.⁵

The recent legislative trend favors the position of management,

⁴ GREGORY, *LABOR AND THE LAW*, 115 (1946).

⁵ See HAMMOND, *The Closed Shop Issue in World War II*, 21 N. C. L. REV. 127, 129, 130 (1943).

for fourteen states have passed laws or constitutional amendments which prohibit or restrict union security contracts. In this group are Arizona, Arkansas, Georgia, Iowa, Maine, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, South Dakota, Tennessee, Texas and Virginia.⁶ Four of these states⁷ had enacted statutes previously to deal with this subject, and the 1947 laws are "enforcement statutes" to carry into effect the provisions of the earlier acts.⁸ The enforcement statute of Arizona prohibits the making of union security contracts by declaring them illegal and void,⁹ whereas the statutes in Arkansas, Nebraska and South Dakota declare the entry into such a contract to be a misdemeanor.¹⁰

Amendments to an already existing statute in New Hampshire and to the Arizona enforcement statute also contain a provision that a person injured by the acts declared illegal is entitled to injunctive relief. The other three states enacting enforcement statutes do not expressly grant such a remedy.

In general, the statutes of the fourteen states provide that no person shall be denied employment because of membership in or refusal to join a labor organization. Maine is possessed of a distinctive statute in that express wording provides for non-applicability to the making or maintaining of union shop contracts.¹¹ With the exception of the Maine statute, a literal reading of the remain-

⁶ ARIZ. CONST. AMEND. adopted Nov. 5, 1946 and Ariz. Laws, 1947, c. 81 (this law is inoperative until approved by the electors; it is to be submitted to vote on Nov. 2, 1948); ARK. CONST. AMEND. No. 34, adopted Dec. 7, 1944 and Ark. Laws, 1947, c. 101; Ga. Laws, 1947, Act No. 140; Iowa Laws, 1947, S. B. 109; ME. REV. STAT., c. 25, § 41-A (1944), as amended by Me. Laws, 1947, c. 395; NEB. CONST. AMEND. adopted Nov. 5, 1946 and Neb. Laws, 1947, L. B. 347; N. H. REV. LAWS, c. 212 § 21 (1942), as amended by N. H. Laws, 1947, c. 194; N. M. CONST. AMEND. adopted Feb. 24, 1947; N. C. Laws, 1947, H. B. 229; N. D. Laws, 1947, H. B. 151 (this law is inoperative until approved by the electors; it is to be submitted to vote on June 29, 1948); S. D. CONST. AMEND., Art. VI, § 2, adopted Nov. 5, 1946 and S. D. Laws, 1947, S. B. 224; Tenn. Laws, 1947, S. B. 367; Tex. Laws, 1947, c. 74; and Va. Laws, 1947, c. 2.

⁷ Arizona, Arkansas, Nebraska and South Dakota.

⁸ See, e.g., Neb. Laws, 1947, L. B. 347.

⁹ Ariz. Laws, 1947, c. 81.

¹⁰ Ark. Laws, 1947, c. 101, § 4; Neb. Laws, 1947, L. B. 344, § 3; and S. D. Laws, 1947, S. B. 224, § 5.

¹¹ ME. REV. STAT., c. 25 § 41-A, as amended by Me. Laws, 1947, c. 395.

ing statutes seems to preclude both the union shop and the closed shop contract. To condition employment in any form, whether before or subsequent to hiring, would therefore be a violation of the laws.

Another provision contained generally in the new laws forbids the making of contracts excluding persons from employment because of membership or non-membership in a labor organization. However, the provisions vary in their effect upon a security contract entered into between an employer and an employee or an employer and a labor organization. Each of the states¹² enacting new laws pertaining to security contracts have provisions which make such contracts void and unenforceable. The statutes in Georgia, Iowa, Maine and Tennessee declare that violations are misdemeanors,¹³ and in Georgia and Iowa injunctive relief may be obtained to prevent a person, firm or organization from doing any of the acts prohibited.¹⁴ In North Carolina and Virginia union security contracts have been declared to be contracts in restraint of trade and commerce, and an employee may recover the damages he has sustained because of deprivation of employment.¹⁵

New Hampshire is exceptional in that it permits a contract which excludes persons from employment by reason of membership or non-membership in a labor organization if it is approved by a vote of two-thirds of the employees.¹⁶ The two-thirds vote

¹² Georgia, Iowa, Maine, New Mexico, North Carolina, North Dakota, Tennessee, Texas and Virginia.

¹³ Ga. Laws, 1947, Act No. 140, § 9; Iowa Laws, 1947, S. B. 109, § 6; ME. REV. STAT., c. 25, § 41-A, as amended by Me. Laws, 1947, c. 395; and Tenn. Laws, 1947, S. B. 367, § 5.

¹⁴ Ga. Laws, 1947, Act. No. 140, § 8 and Iowa Laws, 1947, S. B. 109, § 7.

¹⁵ N. C. Laws, 1947, H. B. 229, §2 and Va. Laws, 1947, c. 2, § 2.

¹⁶ N. H. REV. LAWS, 1942, c. 212, § 21 (a), 21 (b), 21 (c), and 21 (d), as amended by N. H. Laws, 1947, c. 194. Other conditions that must be satisfied are: (1) secret ballot (2) where renewal is sought the union shall satisfy the labor commissioner that their fees are not unduly burdensome (3) there shall be no discrimination provisions in the contract (4) the contract shall have a clause stipulating for no expulsion without just cause (5) a union that becomes a party to such a contract must file annually a financial statement showing the location of their office, the address and salary of each officer, dues and fees charged, annual receipts from all fees, total money paid as salaries to officers, and other expenditures including contributions or gifts over one hundred dollars with name of each recipient.

must constitute at least a majority of the employees to be covered by the contract.

Related to the provisions against union security contracts are those which forbid the requirement of the payment of dues to a labor organization as a condition of employment. Eight of the fourteen states dealing with union security contracts have prohibited such a requirement.¹⁷ Five of the states¹⁸ also forbid an employer to make a contract providing for the retention of any part of the compensation of an employee for the purpose of paying dues or any money to a labor organization without the written consent of the employee. Thus, what has been termed "compulsory check-off" agreements are prohibited. Moreover, where written consent is obtained, it is usually revocable at the will of the employee.

The effect of the new laws on existing contracts has been provided for in Arkansas, North Carolina, Virginia and Texas.¹⁹ These states have declared that existing contracts are unaffected but that renewals and new contracts are subject to the new legislation. Provisions of this nature preserve existent contractual rights and avoid ambiguity in the application of the legislation.

The statutes of Arizona, Arkansas, Nebraska and Tennessee concerning union security contracts have already been interpreted by the courts or by the Attorney General. Without exception they have been upheld as valid and constitutional.²⁰

STRIKES AND PICKETING

Labor organizations have relied heavily on the use of strikes and the picket line to enforce their objectives. These activities

¹⁷ Arkansas, Georgia, Iowa, New Hampshire, New Mexico, North Carolina, Tennessee and Virginia.

¹⁸ Arkansas, Delaware, Georgia, Iowa and Texas.

¹⁹ Ark. Laws, 1947, c. 101, § 5; N. C. Laws, 1947, H. B. 229, § 7; Va. Laws, 1947, c. 2, § 7; and Tex. Laws, 1947, S. B. 367, § 4.

²⁰ See *A. F. of L. v. American Sash & Door Co.*, 189 P. (2d) 912 (Ariz. 1948); *Lincoln Federal Labor Union v. Northwestern Iron & Metal Co.*, 3 C. C. H. LAB. LAW SERV. ¶ 63,919 (1947); *Mascari v. Intl. Brotherhood of Teamsters*, 3 C. C. H. LAB. LAW SERV. ¶ 64,349 (1948); *Federal Fire Fighters of Oak Ridge v. Roane-Anderson Co.*,

are very effective, and it is significant that regulations concerning strikes and picketing are the principal type of legislation enacted in 1947. Twenty-two states²¹ have put into effect statutes which prohibit or restrict one or more of the following activities: strikes and primary picketing, strikes against public utilities, mass picketing, libelous picketing, jurisdictional strikes, picketing of homes, secondary boycotts, and secondary picketing.

Primary Strikes and Picketing

Unless authorized by a majority vote of the employees in the bargaining unit, strikes are forbidden in Delaware, Michigan, Missouri, North Dakota and Oregon.²² These statutes provide that the vote shall be taken by secret ballot at an election called by the labor organization.²³ In Michigan a ten-day notice of a strike or lockout must be given to the State Labor Mediation Board.²⁴ The Mediation Board then attempts a settlement of the dispute, and if the parties cannot agree, the Board conducts a strike election. During this procedure both the employees and the employer are to maintain the *status quo*.

The right to picket has been severely restricted by a recent Pennsylvania statute which limits the right to the employees of the business being picketed.²⁵ Picketing by others is an unfair labor practice under the state labor relations act and is subject to administrative procedures and court process.

206 S. W. (2d) 369 (Tenn. 1947). (Appeal to the State Supreme Court dismissed.) ARK. OP. ATT'Y GEN., Aug. 28, 1947; NEB. OP. ATT'Y GEN., May 10, 1947.

²¹ California, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia and Wisconsin.

²² Del. Laws, 1947, H. B. 212, § 5; MICH. LAWS, 1940 Supp., Pub. Act No. 176, § 9a, as amended by Mich. Laws, 1947, Pub. Act No. 318; Mo. Laws, 1947, S. B. 79, § 3; N. D. Laws, 1947, H. B. 160, § 11 (this law is inoperative until approved by the electors; it is to be submitted to vote on June 29, 1948); and Ore. Laws, 1947, c. 355.

²³ E.g., see Mo. Laws, 1947, S. B. 79, § 3.

²⁴ MICH. LAWS, 1940 Supp., Pub. Act No. 176, § 9, as amended by Mich. Laws, 1947, Pub. Act No. 318.

²⁵ Penn. Laws, 1947, Act No. 294, P. L. 1198, as amended by Penn. Laws, 1947, Act No. 484, § 6 (2) (d). But see Legis., 21 TEM. L. QUAR. 168 (1947). The author of this article is of the opinion that the statute is unconstitutional on the basis of recent United States Supreme Court decisions.

Three states have forbidden strikes by public employees, and participants in such a strike lose all employment rights.²⁶ New York alleviates this strict penalty by permitting reemployment under certain conditions; the striking public employee who is reemployed receives no higher salary than he received immediately prior to the strike, his compensation cannot be increased until three years after his reappointment, and he is placed on a five-year probation.²⁷

In Delaware employees engaging in slow-down or sit-down strikes are guilty of unfair labor practices under the State Labor Relations Act.²⁸ These activities are declared to be misdemeanors, and violators are subject to fines and imprisonment. The declaration prohibiting sit-down strikes is not an innovation, for they have been considered unlawful seizures of property since their initial occurrence in 1936 and 1937.

Four states have prohibited the coercion of or interference with an employee in the enjoyment of his legal rights.²⁹ These legal rights include the right to engage in the peaceable pursuit of one's chosen occupation.

Strikes Against Public Utilities

Strike against public utilities have been declared unlawful in Florida, Indiana, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, Pennsylvania and Virginia, provision being made for compulsory arbitration.³⁰ Recent legislation in Wisconsin of this type has been declared unconstitutional by a trial court of the state.³¹ The court held that compulsory arbitration and pro-

²⁶ New York, Pennsylvania and Texas.

²⁷ N. Y. Laws, 1947, c. 391.

²⁸ Del. Laws, 1947, H. B. 212, § 2 (i).

²⁹ Georgia, Michigan, South Dakota and Utah.

³⁰ Fla. Laws, 1947, c. 23911, § 1-19; Ind. Laws, 1947, c. 341, § 1-18; Mass. Laws, 1947, c. 596; Mich. Laws, 1947, Pub. Act No. 318; Mo. Laws, 1947, H. B. 180, § 1-22; Neb. Laws, 1947, L. B. 534; N. J. CUM. SUPP. REV. STAT. (1937) c. 13 B, tit. 34; Pa. Acts, 1947, Act No. 485; and Va. Laws, 1947, H. B. 6-x, § 1-18 (see also Note, *Virginia's Approach to Strikes Against the Public Interest*, 33 VA. L. REV. 100 (1947)).

³¹ See State of Wisconsin, *ex rel*, Dairyland Power Cooperative v. Werb, 3 C. C. H. LAB. LAW SERV. ¶ 64,385 (1948).

hibition of strikes resulted in involuntary servitude, deprived utility employees of liberty without due process, and was a denial of equal protection of the laws. The court recognized that the decision might be condemned by public opinion. Manifestly, a different result might be reached on a weighing of public and individual interests by another court.

In the states providing for a mandatory resort to arbitration, a public utility is usually defined as an organization furnishing water, gas, heat, light and power, as well as transportation and communication services. It is to be noted that in Indiana, Michigan and Nebraska the definition specifically includes any organization engaged in furnishing telephone service. These three states apparently are attempting to preclude the extended strikes and disruption of telephone service which occurred early last year.

The arbitration procedures in the ten states are similar. The legislative policy is directed at effective settlement of all labor disputes between utility employers and employees before serious harm results to the community served. The parties to the labor dispute must attempt to settle their differences, and if their efforts result in an impasse, the governor may appoint either an arbitrator or a board of arbitration, if in his opinion the interruption of service will cause hardship to a substantial number of people. The board or arbitrator then renders a decision which is final unless appealed and set aside by a court of competent jurisdiction. In case of violation of the decision or order of the arbitration officials, penalties of fine and imprisonment may be imposed.

In Massachusetts, Missouri and New Jersey³² the governor is empowered to seize a public utility and operate it in the name of the state, if he is convinced that an interruption of service caused or threatened by strike or lockout will result in severe hardship on a substantial number of people. After seizure, work stoppages and strikes are prohibited. However, individual em-

³² Mass. Laws, 1947, c. 596, § 4 (b) (1); Mo. Laws, 1947, H. B. 180, § 1-22 and N. J. REV. STAT., Supp., c. 38 as amended by N. J. Laws, 1947, c. 47 and 75, § 34:13B-13.

ployees may terminate their employment. A statute in Virginia also authorizes the governor to seize a utility wherein a labor dispute exists, and thereafter strikes are illegal. This act does not provide for arbitration and merely attempts to preserve the *status quo*.³³ Apparently the parties are expected to resolve their dispute by collective bargaining while the seizure is in effect.

The Nebraska statute is less particular than the other statutes in setting forth prerequisites for calling into play the arbitration machinery. Nothing is said about findings of hardship on the public and attempts at conciliation. Instead, the attorney general may, on his own initiative or by order of the governor, petition an established court of industrial relations for findings and an order concerning the dispute.

Texas has a unique statute declaring that picketing of any public utility with intent to disrupt its services may be enjoined.³⁴ Also, it is a felony to tamper with property of the utility or impair its usefulness with intent to disrupt services.³⁵ Another section of the act states that an agreement having for its purpose the damaging or sabotaging of a utility is a felony, and the offense is complete even though no overt act has been committed.

Mass Picketing and Libelous Picketing

Mass picketing and picketing tending to obstruct or interfere with ingress to or egress from a place of employment or use of roads, highways, railways or airports have been declared unlawful by six states.³⁶ The penalty for these activities is fine and imprisonment. South Dakota defines mass picketing as picketing by more than five per-cent of the first one hundred striking employees,³⁷ while Texas defines it to occur where more than two pickets station themselves at any time within fifty feet of an

³³ Va. Laws, 1947, c. 9, § 1-18.

³⁴ Tex. Laws, 1947, c. 84, §§ 3 and 4.

³⁵ Tex. Laws, 1947, c. 84, § 5. Michigan also has a similar statute. MICH. LAWS, 1941, Pub. Acts No. 190, § 383a, as amended by Mich. Laws, 1947, Pub. Acts No. 61.

³⁶ Delaware, Georgia, South Dakota, Texas, Utah and Michigan.

³⁷ S. D. Laws, 1947, S. B. 226, §§ 1-6.

entrance to the picketed premises or within fifty feet of another picket.³⁸

Mississippi, when recently gripped by a widespread bus strike, called a special session of the legislature and passed a law making it a felony to impede the operation of a vehicle used in transportation.³⁹ Acts of violence and destruction in connection with picketing resulted in the enactment of this statute.⁴⁰

The Texas statute declaring libelous picketing unlawful is the only one of its kind enacted in 1947.⁴¹ Picketing accompanied by any form of libel or slander is forbidden and subjects violators to fine and imprisonment. The act attempts to restrict strike advertisements to truthful statements and would seem to be consistent with United States Supreme Court doctrine.⁴²

Jurisdictional Strikes

Jurisdictional strikes occur where there is a dispute concerning representation of employees in any collective bargaining unit. Such strikes are to be resolved through an election to determine the majority representative of the employees in Michigan, Missouri and Massachusetts.⁴³ A provision for issuance of injunction is included in the Massachusetts statute where the jurisdictional dispute has been submitted to voluntary arbitration and one of the parties refuses to abide by the award.⁴⁴

In California a statute makes jurisdictional disputes enjoined

³⁸ Tex. Laws, 1947, c. 138.

³⁹ Miss. Laws, 1947, S. B. 2xx.

⁴⁰ Also enacted at the special session was a law prohibiting the use of explosives to obstruct transportation facilities and the shooting of firearms or the hurling of missiles at trains, buses or other transportation facilities; and a law permitting the governor to employ investigators with authority to arrest persons committing acts of violence or terror.

⁴¹ Tex. Laws, 1947, c. 138.

⁴² Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies, 312 U. S. 287 (1941) and Cafeteria Employees Union Local 302 v. Angelos, 320 U. S. 293 (1943). The placard must be truly libelous, however.

⁴³ MICH. LAWS, 1939, Pub. Act No. 176, as amended by Mich. Laws, 1947, Pub. Act No. 318, § 9c; Mo. Laws, 1947, S. B. 79, § 2 and MASS. GEN. LAWS, c. 214, § 9B (1932), as amended by Mass. Laws, 1947, c. 571.

⁴⁴ MASS. GEN. LAWS, c. 214, § 9B (1932), as amended by Mass. Laws, 1947, c. 571.

able,⁴⁵ while amendments to the Pennsylvania and Wisconsin Labor Relations Acts have designated such disputes as unfair labor practices on the part of unions.⁴⁶ None of these statutes provide for any arbitration procedure. Fundamentally all these laws seek to avoid strikes and picketing that may result from a dispute as to which union shall be the exclusive bargaining representative of a group of employees.

Picketing of Homes

The picketing of homes or domiciles has been declared a misdemeanor in two states⁴⁷ and has been made an unfair labor practice in two others.⁴⁸ Where picketing of a home is an unfair labor practice, a person aggrieved may seek relief through the state labor relations board.

Secondary Boycotts and Secondary Picketing

Twelve states have enacted statutes which prohibit secondary boycott activities.⁴⁹ The term "secondary boycott" has been variously defined, but the California definition can be taken as typical. A secondary boycott is:

"... any ... agreement to cease performing, or to cause any employee to cease performing ... services 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 ... agreement [which causes an employer to engage in any of the above activities.]"⁵⁰

⁴⁵ Calif. Laws, 1947, c. 1388.

⁴⁶ PA. PUB. LAWS, Act No. 294, P. L. 1168, § 6 (d) (1937), as amended by Pa. Laws, 1947, P. L. 558 and WIS. STATS., c. 111, sub. c. 1 (1939), as amended by Wis. Laws, 1947, c. 350, § 111.06 (j) (1).

⁴⁷ Michigan and Connecticut.

⁴⁸ Delaware and Utah.

⁴⁹ California, Delaware, Georgia, Idaho, Iowa, Minnesota, Missouri, North Dakota, Oregon, Pennsylvania, Texas and Utah. The Georgia statute is phrased somewhat differently from the other statutes in that it declares that it shall be unlawful to use force or violence to prevent an employer from conducting a lawful business, or to prevent a carrier from delivering supplies to any such employer.

⁵⁰ As originally enacted the provisions of the California "Hot Cargo" and "Secondary Boycott" law were to be effective until May 1, 1943, and thereafter during the contin-

Where a union declares certain goods to be "unfair" or "hot cargo" and refuses to handle them, a secondary boycott occurs.⁵¹

The relief available to one injured by a secondary boycott varies. Only injunctive relief is provided for in Delaware and Iowa.⁵² In California, Oregon, Texas and North Dakota the injured party is entitled to both injunction and damages.⁵³ Maintaining a secondary boycott is a misdemeanor in Georgia, Idaho, Iowa, Missouri and Texas, while in Delaware, Pennsylvania and Utah it is an unfair labor practice. North Dakota is the only state terming such activity a restraint of trade.

The aim of the acts prohibiting the secondary boycott is to prevent economic coercion of a third person, not a party to the original labor dispute, to withhold his business patronage from an employer with whom the union is in controversy. This objective is probably desirable, since there should be a limit beyond which unions may not go in bringing third persons into their disputes. But the statutes must be carefully drawn and construed to avoid violation of the right of free speech guaranteed by the Constitution.

The fate of the California statute may be taken as illustrative of the constitutional hazards that must be run. Superior court decisions held the statute a valid exercise of state police power but invalid to the extent that it was broad enough to authorize injunction against peaceful picketing and certain peaceful forms of concerted action.⁵⁴ Finally, in October, 1947, the California

nance of the existence of the national emergency and during a declared war. § 1135 of the CALIFORNIA LABOR CODE (1937), placing a limitation on the operative period of the statute, was repealed by Calif. Laws, 1947, c. 278, which made the law permanently operative. In view of the fact that the national emergency and the period of the war had not been terminated prior to Sept. 19, 1947, the law has been in effect from the date of its original enactment.

⁵¹ Both the California and Oregon statutes define hot cargo boycotts. Calif. Laws, 1947, c. 278 and Ore. Laws, 1947, c. 356.

⁵² Del. Laws, 1947, H. B. 212, § 9; Iowa Laws, 1947, S. B. 111.

⁵³ Calif. Laws, 1947, c. 278; Ore. Laws, 1947, c. 356; Tex. Laws, 1947, c. 387, §§ 3 and 4; and N. D. Laws, 1947, H. B. 160, § 13.

⁵⁴ *Farmer Bros. v. Wholesale Delivery Drivers & Salesmen Union Local 595*, 11 C. C. H. LAB. CAS. ¶ 63,352 (1946); *accord*, *Ensher, Alexander and Barsroom, Inc. v. Fresh*

Supreme Court declared the entire act unconstitutional because the provisions were “. . . too sweeping, vague and uncertain and permit the prior censorship of matters protected by the constitutional guarantee of free speech and press.”⁵⁵

The twelve state enactments passed in 1947 prohibiting secondary boycott are very similar to the California statute. In fact, the Texas statute defines “secondary boycott” in even broader terms, as follows:

“ . . . any combination . . . by two or more persons to cause injury to any person for whom they are not employees, by

(1) withholding patronage, labor or other beneficial intercourse from such persons . . . ; or

(2) picketing such person . . . ; or

(3) refusing to handle, . . . or work on the equipment . . . of such person . . . ; or

(4) instigating . . . a strike against such person . . . ; or

(5) interfering with the free flow of commerce; or

(6) by any means causing . . . any employer with whom they have a labor dispute to inflict any damage . . . to an employer who is not a party to such dispute.”⁵⁶

Despite the California decision the new statutes prohibiting secondary boycott may yet withstand constitutional challenge. It is to be noted that section 8 (b) (4) of the Taft-Hartley Act makes the secondary boycott an unfair labor practice⁵⁷ and that the section has been held constitutional in *LeBaron v. Printing Specialties and Paper Converters Union*. The court declared that

Fruit & Vegetable Workers Union, Local 78 et al., 3 C. C. H. LAB. LAW SERV. ¶ 64,051 (1947); *Northwestern Pac. R. R. v. Lumber & Sawmill Workers Union*, 11 C. C. H. LAB. CAS. ¶ 63,347 (1946); and *Union Ice Co. v. Sales Driver's Union*, 11 C. C. H. LAB. CAS. ¶ 63,156 (1946).

⁵⁵ *Ex Parte Blaney*, 184 P. (2d) 892 (Calif. 1947). In this case the court further stated: “The statute makes enjoined the mere combination or agreement to handle goods for their employer because of a dispute between some other employer and his employees or a labor organization.” Thus the court laid great stress on the statutes condemnation of a mere agreement to publicize a labor dispute.

⁵⁶ *Tex. Laws*, 1947, c. 387, § 2 e.

⁵⁷ The Labor Management Relations Act, 1947, § 8 (b) (4) forbids a union to engage in, or to induce the employees of any employer to engage in a strike or refusal to use or otherwise handle goods or materials, where an object there is forcing any employer to cease selling or otherwise dealing in the products of any other producer or manufacturer, or to cease doing business with any other person.

the section did not violate the First, Fifth or Thirteenth Amendments and that "only coercive and compulsive conduct was proscribed."⁵⁸

Texas and Utah alone have enacted statutes which prohibit secondary picketing.⁵⁹ This activity is a form of secondary boycott. It occurs where no labor dispute exists between the person picketed and the picketing union and the purpose is to compel the former to cease dealing with a person with whom the union has a labor dispute. The Texas statute declares secondary picketing to be a misdemeanor and subjects the violators to fine and imprisonment. The Utah act declares secondary picketing to be an unfair labor practice, expressly excluding any picketing which may be an exercise of the constitutional right of free speech.

REGULATIONS OF UNIONS

Reports and Financial Statements

Three states, Delaware, North Dakota and New Hampshire,⁶⁰ enacted statutes in 1947 requiring the annual filing of information concerning the internal affairs of labor organizations with the Secretary of State. The filing of an annual comprehensive financial statement is also required. Typical is the Delaware statute which renders necessary the filing by unions of the names of their officers, business organizations wherein the union operates, the amount of annual dues and assessments, the amount of the union initiation fees, the total number of members with any limitations on membership, the method and date of the last election of officers including a count of the total vote cast, the date of the

⁵⁸ 75 F. Supp. 678 (S. D. Cal. 1948). For a case holding a similarly worded Pennsylvania statute valid, see *Cleland Simpson Co. v. American Communications Assn.*, 3 C. C. H. LAB. LAW SERV. ¶ 64, 125 (1947). The court stated in that case that similar activities, even before the 1947 statute, had been outlawed by the Supreme Court in *Alliance Auto Service, Inc. v. Cohen, et al*, 341 Pa. 283, 19 A. (2d) 152 (1941); *Carnegie-Illinois Steel v. United Steel Workers of America*, 353 Pa. 420, 45 A. (2d) 857 (1946) and *Westinghouse Electric v. United Electrical, Radio & Machine Workers, Local 601, et al*, 353 Pa. 446, 46 A. (2d) 16 (1946).

⁵⁹ *Tex. Laws, 1947, c. 387, § 2 d* and *Utah Laws, 1947, H. B. 36, § 49-1-16 (2) (c)*.

⁶⁰ *Del. Laws, 1947, H. B. 212, § 11-12*; *N. D. Laws, 1947, H. B. 160, § 2-3* and *N. H. REV. LAWS, c. 212, § 21 (b) as amended by N. H. Laws, 1947, c. 194*.

last financial statement furnished the members of the union with a description of the method employed for distribution, and a copy of the constitution and by-laws of the union.

North Dakota further requires a signed statement to be filed with the secretary of state by the labor union as a prerequisite to organization.⁶¹ This statement must be under oath and must contain the names and addresses of the officers of the union, a general statement of the aims of the union, the scale of dues, initiation fees, assessments to be charged to the members, the salaries paid the officers, and the full and actual name of the union.

Union Suability

Five states⁶² have enacted laws which permit a union to sue or be sued as an entity or in its organizational name. In these states a money judgment accrues to the benefit of the union as an entity or is enforceable against the union's property depending upon whether it is plaintiff or defendant in the litigation.

In addition, the Minnesota statute declares that the transaction of business in the state by a union is deemed an appointment by the union of the secretary of state as its agent for accepting service of legal process.⁶³ This solves the problem of serving process where suit is instituted against a union.

Recent statutes in Delaware, Missouri, North Dakota and South Dakota⁶⁴ have sought to reinforce the binding obligation of collective bargaining agreements between employers and labor organizations by stating that they shall be enforceable against either party. The North Dakota statute further provides that a collective bargaining agreement shall be binding upon a successor union.⁶⁵

⁶¹ N. D. Laws, 1947, H. B. 160, § 2.

⁶² Delaware, Nebraska, North Dakota, South Dakota and Minnesota.

⁶³ Minn. Laws, 1947, c. 527.

⁶⁴ Del. Laws, 1947, H. B. 212, § 8; Mo. Laws, 1947, S. B. 79, § 5; N. D. Laws, 1947, H. B. 160, § 8; and S. D. Laws, 1947, S. B. 225, § 2-3.

⁶⁵ N. D. Laws, 1947, H. B. 160, § 14.

Union Discrimination

To prevent racial or religious discrimination by employers or labor unions, Connecticut has passed its Fair Employment Practice Law.⁶⁶ This act establishes an inter-racial commission whose duty it is to enforce the anti-discrimination law. Provision is made for petition by a person aggrieved to the commission to make findings of fact and appropriate orders. Review and enforcement by decree are had in the courts of the state.

Massachusetts has met the problem of union discrimination by an amendment to the state labor relations act.⁶⁷ The amendment permits an employee to file a complaint with the State Labor Commission, when union membership is a requisite to his obtaining or retaining employment at a particular place, alleging that membership is being denied him without just cause. An employee cannot be discharged or discriminated against because he is not in good standing with a union with whom the employer has a bargaining agreement unless the union certifies to the employer (1) that the employee was denied or deprived of membership because of occupational disqualification or administration of discipline and (2) that the employee has exhausted the available remedies within the union.

MISCELLANEOUS

Delaware alone in 1947 enacted a statute⁶⁸ prohibiting unions from conducting "hiring halls," which are placement offices established to cause employers to employ persons recommended by the unions. The act also prohibits unions from contributing financial aid to any political party or candidate for public office and forbids a communist or a person convicted of a felony from being an official of a labor union.

Minnesota alone has enacted a statute recognizing the right of

⁶⁶ Conn. Laws, 1947, Pub. Act No. 171, § 5.

⁶⁷ MASS. GEN. LAWS, c. 150A, § 4, §§ (6) (1938) as amended by Mass. Laws, 1947, c. 657.

⁶⁸ Del. Laws, 1947, H. B. 212, § 21-23.

an employer to refuse to bargain with a labor organization while he holds a valid collective agreement with another union.⁶⁹

Four states⁷⁰ have enacted laws which forbid the use of force or intimidation to compel an employee to join or refrain from joining a labor union. Violations of these statutes are generally misdemeanors punishable by fine and imprisonment. Closely related is legislation enacted in Delaware, Georgia, Michigan and Utah declaring acts of coercion or intimidation of an employee, or his family, in the enjoyment of their legal rights criminal offenses or unfair labor practices.⁷¹

CONCLUSION

If this review of 1947 legislation has proved anything, it indicates a widespread opinion among legislators that restrictions upon labor have become necessary. Rightly or wrongly, the blame for disruption in the national economy has been placed upon labor unions and their leaders. No doubt excessive restrictions will be modified. But the search for a "middle road" to be taken by labor and management will continue. Experimentation in legislation will persist so long as industrial unrest manifests itself. It will be of interest to observe in the future years whether or not the recent legislation will aid in approaching the goal of even-handed treatment of labor and management and stabilization of industrial relations.⁷²

J. Carlisle DeHay, Jr.

⁶⁹ Minn. Laws, 1947, c. 593.

⁷⁰ Delaware, Georgia, South Dakota and Utah.

⁷¹ Del. Laws, 1947, H. B. 212, § 4; Ga. Laws, 1947, Act No. 141, § 4-6; MICH. LAWS, 1940 Supp., § 17115-352, as amended by Mich. Laws, 1947, Pub. Act No. 297; and Utah Laws, 1947, H. B. 36, § 49-1-16.

⁷² References may be had to Commerce Clearing House Labor Law Service for the citations to state statutes that are not included in this study.