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JURISDICTIONAL DISPUTES

25. And if a house be divided against itself, that house cannot stand. Mark 3:25.

THE settlement of labor disputes has been called this country's most critical postwar domestic problem.¹ At a time when the public in general is concerned with problems of inflation and foreign affairs, little patience is accorded legitimate labor disputes where the goal sought is higher wages and better working conditions. It is to be expected therefore that those strikes caused by quarreling between crafts over jurisdictional matters are sorely condemned.² The legislative product of the current public sentiment on labor matters is the Labor Management Relations Act, 1947.³ One of the objects of the new law is to provide governmental machinery for the settlement of disputes existing within the family of labor. Considerable doubt exists as to the wisdom of injecting the bureaucracy of government into the internal affairs of labor organizations. As one Senator has said, the American people are expecting entirely too much of labor legislation as a panacea for industrial ills.⁴

¹ Preface, 12 LAW & CONTEMPT. PROB. 209 (1947).

² "It is time for unions themselves to consider some things other than just who will represent a certain group, and thus start these jurisdictional strikes and cause serious unemployment of the very laboring classes they are primarily supposed to represent and help. I fear that by such continued activities they will bring down upon themselves reactionary legislation which is always bad legislation, . . ." *American Chain & Cable Co. Inc. v. Truck Drivers and Helpers Union, Local 676, AFL*, 68 F. Supp. 54 (D. C. N. J. 1946).

"There is no form of labor warfare so opposed to public interest and to the interest of organized labor itself as the jurisdictional strike which stops the commerce of an employer who is trying to be fair to organized labor." *U. S. v. Hutcheson*, 32 F. Supp. 600 (E. D. Mo. 1940) *aff'd*, 312 U. S. 219 (1941).

³ Pub. L. No. 101, 80th Congress, 1st Sess. (June 23, 1947) (popularly known as the Taft-Hartley Law). In his veto message to Congress on June 20, 1947, President Truman said: "This bill is perhaps the most serious economic and social legislation of the past decade. Its effects—for good or ill—would be felt for decades to come." The bill was passed over the President's veto.

⁴ Senator Wayne Morse, Oregon, *A Realistic Approach to Labor Legislation*, 14 U. of CHI. L. REV. 337 (1947).

Jurisdictional disputes between the craft labor unions are as old as the organized labor movement itself, having existed since the time of medieval guilds.⁵ However, prior to the passage of recent legislation it was exceedingly questionable if there was any legal machinery available, judicial, quasi-judicial, or administrative, for the final disposition of these cases. It is curious that such a long standing problem has not been attacked with more vigor and determination by those concerned with harmonious labor relations. The purpose of this article is to examine some of the salient features of the jurisdictional dispute, both from the standpoint of past failures in handling such disputes and the new legislation attempting a solution.

The term "jurisdictional dispute" has been applied to both intra-union and inter-union conflicts. The loose application of the term has been unfortunate as it has served to confuse two different, if not distinct, types of labor disputes. In the true jurisdictional conflict, the question is: which union is going to get certain available work—the carpenters or the machinists?⁶ The question in the inter-union dispute is: who is going to represent certain employees—an AFL, CIO, or some independent union?⁷ Inter-union conflict is a result of national labor organizations competing for new members. This is dual unionism. But when both of the contending unions are members of the same national organization, a conflict exists which is beyond the functional purpose of labor unions. It is difficult for unions to justify the necessity for the economic loss caused thereby. While this article will comment upon

⁵ WEBB, INDUSTRIAL DEMOCRACY 510 (1902).

⁶ "Strikes of this sort occur frequently when the same employer hires members of two different craft unions to work for him at the same time. For instance, a general building contractor puts carpenters to hanging metal doors and the metal workers, who are engaged elsewhere on the operation, strike because they are not given this work to do. They claim that the work should be theirs because they have always installed materials made of metal. And the carpenters claim that the work is properly theirs because they have always hung doors, even if they had always been made of wood. If the general contractor gives the job to the metal workers, the carpenters will strike. If he does not, the metal workers will remain on strike. In either event the whole operation may come to a halt." GREGORY, LABOR AND THE LAW 113 (1946).

⁷ *Id.* at 317.

the true jurisdictional or intra-union dispute, some of the case material cited does not involve necessarily the aspects of a true jurisdictional dispute. However, it is believed that the principles of law in those cases are applicable to the topic under discussion here.

A case having the typical elements of a jurisdictional dispute is that of *Yoerg Brewing Co. v. Brennan*.⁸ This suit was brought in a federal district court by the employer requesting that an injunction be issued against the Teamsters' Union of the AFL. The drivers and helpers used by the employer in delivering his product were members of the Brewery Workers' Union, an industrial or vertical type union in the brewing industry. The Brewery Workers' Union has been in and out of the AFL because of its controversy with the Teamsters; the fight has been continuing in the brewing industry of the nation for fifty years.⁹ Because the Brewery Workers' Union refused to give up the drivers and helpers in the brewing industry to the Teamsters, it was expelled from the AFL in 1941.

The Teamsters' Union, claiming to represent a majority of the drivers and helpers employed in plaintiff's brewery, requested recognition from the employer as the exclusive bargaining agent of such employees. Recognition was refused on the grounds that there was an existing contract between the company and the Brewery Workers' Union. A petition was subsequently filed by the Teamsters with the National Labor Relations Board (hereafter referred to as the Board and the NLRB) for an election to determine the proper bargaining representative for the plaintiff's employees. The NLRB directed that the requested election be held, but the Teamsters refused to participate in the election when they learned that the election would not be held on a craft basis. The Teamsters filed a strike notice and thereafter went on strike. The plaintiff's brewery had been closed down since the strike began

⁸ 59 F. Supp. 625 (D. C. Minn. 1945).

⁹ For a history of the dispute between the Teamsters and Brewery Workers' Union, see Jaffe, *Inter-Union Disputes in Search of a Forum*, 49 *YALE L. J.* 424 (1940).

because of the refusal of other AFL workers to go through the picket lines of the Teamsters.

The court refused to issue the injunction holding that while the minority union has no standing as the collective bargaining agent of the employees covered by the election held by the NLRB, it may strike or otherwise manifest dissatisfaction or opposition to results of the election, notwithstanding the certificate of the NLRB designating the Brewery Workers' Union as the sole bargaining agent, so long as the minority union pursues lawful means of publicizing its grievance. The strikers, said the court, have the unquestioned right to inform their fellow members of the AFL, as well as the public, that they are on strike in protest against representation by the Brewery Workers' Union. Further, it was said that no court has authority to order the striking Teamsters back to work.

Injunctive relief was denied the employer because the court found the existence of a "labor dispute" as defined in the federal anti-injunction statute.¹⁰ However, the court was very sympathetic, saying,

"Although plaintiff's predicament has strong, appealing equities, we find ourselves without authority to grant relief. The situation presented strongly emphasizes the extreme one-sidedness of the National Labor Relations Act legislation; that is, the employer is bound to comply with the orders of the Board, but the employees are free to flout the Board's decision and create the anomalous and often calamitous situation of an employer's being caught, without fault on his part, between the upper and nether millstones."

The principal reason for the present importance of the jurisdictional dispute is the rapid growth of trade unionism as fostered by favorable governmental policies. Recent Bureau of Labor Statistics figures show that approximately 75% of all workers in all industries are presently embraced under one form or another of union-security agreement.¹¹ Few realize just how rapid this growth has been; one should consider that in 1900 trade union member-

¹⁰ NORRIS-LA GUARDIA ACT, 47 Stat. 73 (1932), 29 U. S. C. §§ 101-115 (1940).

¹¹ Thatcher, *Shall We Have More Regulation of the Internal Affairs of Labor Unions?* 7 LAW. GUILD REV. 14, 16 (1947).

ship in the United States was 868,500, in 1932 it was 3,298,000,¹² and in 1947 it was estimated to be 15,000,000 members.¹³ One could not expect that such a period of rapid growth could be bridged without some "growing pains."

The courts have aggravated the difficulty by applying to unions the rules of law applicable to the social and sick benefit societies of the 19th century.¹⁴ Decisions of the duly constituted governing body of a labor organization made in accordance with its constitution and bylaws generally will not be set aside by the courts.¹⁵ At the outset the NLRB refused to decide intra-union disputes stating that its purpose was to encourage collective bargaining and protect the rights of employees, not to decide matters which unions should be able to decide for themselves.¹⁶

RESORT TO INTRA-UNION TRIBUNALS

Both the AFL and CIO have provisions in their constitutions for the settlement of jurisdictional disputes.¹⁷ And a large number of these disputes are settled by the arbitration machinery of the parent union.¹⁸ Settlements are made through negotiation and confer-

¹² 8 ENCYC. SOC. SCI. 41 (1935).

¹³ METZ AND JACOBSTEIN, A NATIONAL LABOR POLICY 31 (1947).

¹⁴ Comment, 7 U. OF PITT. L. REV. 221 (1941).

¹⁵ In *California State Brewers' Institute v. International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers*, 19 F. Supp. 824 (N. D. Cal. 1937), the court said: "Decisions reached by labor unions according to their own constitution and by-laws of procedure are not to be invalidated by a court of law, provided that all parties have had the opportunity to be heard, that the decision has not been arbitrary, and that the fundamental law of the association has not been violated." *Accord, Screwmen's Benevolent Association v. Benson*, 76 Tex. 552, 13 S. W. 379 (1890).

¹⁶ This rule was expressed in the case of *Aluminum Company of America*, 1 N. L. R. B. 530, 537-8 (1936). The Board said: "It is preferable that the Board should not interfere with the internal affairs of labor organizations. Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that Act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems." The same policy was expressed in *Axton-Fisher Tobacco Co.* 1 N. L. R. B. 604 (1936) and *Curtis Bay Towing Co.*, 4 N. L. R. B. 360 (1937).

¹⁷ AFL Constitution Art. IX, Sections 11 and 12. CIO Constitution Art. VI, Section 6.

¹⁸ When a conflict occurs between two AFL unions, the two parent craft unions try to settle it directly. If necessary they take it to the Executive Council of the AFL. The Coun-

ences. The AFL particularly has followed a Fabian policy of persuasion. It is not uncommon to find the national body unable to control the controversy, and the matter extends on interminably.¹⁹ The AFL has been involved in the most notable jurisdictional disputes,²⁰ and several reasons are advanced as a partial explanation:

- (1) The AFL is only a loose confederacy.²¹
- (2) Early craft charters define jurisdiction broadly.²²
- (3) Both parties frequently have just claims.²³
- (4) Strong unions are favored and small unions coerced into accepting a ruling.²⁴
- (5) The Federation will rarely use its power to revoke the charter of unions who refuse to abide by its decision.²⁵

Negotiations between the lithographers' and the photo-engravers' unions have been conducted for more than twenty years and between the teamsters and the brewery workers for more than twenty-five years. The prolonged duration of these disputes illustrates the weakness of adjudication by the internal tribunals. Failing to

cil usually sets up a subcommittee on which neither of the two unions are represented. In making a recommendation to the Council, the committee gives great weight to how effectively each union can organize in the disputed field. This factor may override the fact that the field is not covered in the successful union's charter. The decision of the executive Council is binding, but some cases have been appealed to the convention. A good many decisions have been defied by strong national unions. In 1946 the AFL convention rejected a resolution requiring arbitration of jurisdictional disputes.

The CIO Executive Board has a three-man Jurisdictional Committee whose decisions may be appealed to the convention.

¹⁹ Jaffe, *supra*, note 9, at 443.

²⁰ Because of the craft organization of the AFL, this body is more vulnerable to jurisdictional disputes than the industrial type union, e.g., the CIO. But while demarcation disputes are most common among the skilled trades, the CIO has not entirely eliminated them. There have been jurisdictional disputes between the shipbuilders and the longshoremen over the organization of ship scalers, between automobile and agricultural implement workers over the organization of employees in plants producing agricultural machinery, and a serious dispute between the department store employees' union and the longshoremen over organizing warehousemen.

²¹ Note, 49 YALE L. J. 329 (1939).

²² Rottenberg, *Intra-Union Disputes Over Job Control*, 61 Q. J. ECON. 619 (1947).

²³ Comment, 7 U. OF PITT. L. REV. 221 (1941).

²⁴ Jaffe, *supra* note 9, at 434.

²⁵ Comment, 7 U. OF PITT. L. REV. 221 (1941).

obtain a satisfactory solution to its problems from the parent organization, one of the unions usually petitions the courts and administrative agencies for relief from attacks by its adversary.

RESORT TO THE COURTS

Jurisdictional disputes are brought into the courts upon application for a protective injunction by the employer whose property is endangered and operations interfered with, or by the labor union whose contract with the employer the defendant union is attempting to break.²⁶ In the absence of statutes restraining the court from granting injunctions where labor disputes are involved, courts of equity have little hesitancy in finding it necessary to protect property rights²⁷ or an existing contract between the employer and the incumbent union.²⁸

There are no statutes restricting the granting of injunctions in labor disputes in Texas. The Texas injunction statute is quite broad in its scope and provides that relief may be granted where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.²⁹ And the courts have been careful to point out that while there are statutes that declare it to be lawful for employees to organize and strike against their employer,³⁰ yet these statutes specifically pro-

²⁶ *Ibid.*

²⁷ *Truax v. Corrigan*, 257 U. S. 312 (1921); *In re Debs*, 158 U. S. 564 (1895); *American Steel & Wire Co. v. Wire Drawers' and Die Makers' Unions, etc.*, 90 Fed. 608 (C. C. N. D. Ohio 1898); *Jones v. E. Van Winkle Gin & Machine Works*, 131 Ga. 336, 62 S. E. 236 (1908).

²⁸ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229 (1917). Also see note in 6 TEX. L. REV. 402 (1928). In *Carpenters & Joiners Union v. Ritter's Cafe*, 138 S. W. (2d) 223, 226 (Tex. Civ. App. 1940) *error refused*, the court said: "... That our courts of equity will, in proper cases affecting labor organizations or unions, as well as any other litigants, grant protective injunctions where that relief is necessary to the continued preservation and enjoyment of an existing contract between parties having a legal right to make and live under it, as against third persons who sustain no relation either to such parties thereto or to the contract itself." *Accord*: *Borden Co. v. Local No. 133 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America*, 152 S. W. (2d) 828, 832 (Tex. Civ. App. 1941) *error refused*.

²⁹ TEX. REV. CIV. STAT. (1925) art. 4642, § 1.

³⁰ TEX. REV. CIV. STAT. (1925) arts. 5152-5154. TEX. PEN. CODE (1925) arts. 1643 and 1644.

vide that nothing shall be construed to repeal, affect or diminish the force and effect of any statute on the subject of trusts and conspiracies against trade.³¹

That Texas would grant injunctive relief in a jurisdictional dispute, even prior to recent legislation,³² is illustrated by the recent case of *International Association of Machinists Lodge 1488 v. Downtown Employees Association*.³³ In that case a local craft union undertook to organize the employees of a garage and to obtain from the employer a contract which required that all employees belong to or join the union. Instead the employees formed their own union and upon a showing that a majority of the employees favored the company union, a contract was drawn up by the employer. Twenty-three out of twenty-five employees signed the contract. The craft union authorized a strike against the employer unless a previously discharged union member was reinstated with back pay and unless the company signed the contract under which all employees must belong to the union. Failing in their demands, the union placed pickets on the sidewalks in front of the company's place of business. The picketing continued for five months until restrained by an injunction granted upon the petition of the employer and the company union. On appeal the craft union, seeking to dissolve the injunction, contended that the injunction should not have been granted because the peaceful picketing engaged in by the appellant resulted from the existence of a bona fide labor dispute between it and the employer. The union also claimed denial of free speech. But the appellate court affirmed the decision of the lower court and held that a finding that the picketing engaged in by the appellant union did cause substantial loss to the company and would continue to cause such loss was sufficient reason to continue the injunction.

³¹ *Cooks', Waiters' and Waitresses' Local Union v. Papageorge*, 230 S. W. 1086 (Tex. Civ. App. 1921).

³² See note 88 *infra*.

³³ 204 S. W. (2d) 685 (Tex. Civ. App. 1947) *writ of error refused, no reversible error. Accord, Dallas General Drivers, Warehousemen and Helpers Local Union No. 745 v. Oak Cliff Baking Co.*, 203 S. W. (2d) 586 (Tex. Civ. App. 1947).

The Texas courts have consistently held that a union which represents no employees is an "outsider" and may be enjoined from peacefully picketing an employer.³⁴ In some of the cases so holding the employees were already represented by another union, and interference with contractual relations was an added ground for injunction. One may fairly infer that a union which engages in a jurisdictional strike and pickets an employer because of his contractual relations with another union would be subject to injunction. It is by no means clear that such an injunction would violate the right of free speech protected by the Fourteenth Amendment.³⁵

The Norris-LaGuardia Act was passed, after Section 20 of the Clayton Act³⁶ proved ineffective, to restrict the jurisdiction of federal courts to grant protective injunctions where a "labor dispute"³⁷ was found to exist. The Act permits injunctive relief in a "labor dispute," which is broadly defined, only on prescribed conditions and after findings of fraud, violence, or wilful trespass upon property. About eighteen states have anti-injunction statutes similar to the Norris-LaGuardia Act.³⁸

³⁴ *Webb v. Cooks', Waiters' and Waitresses' Union No. 748*, 205 S. W. 465 (Tex. Civ. App. 1918); *Cooks', Waiters' and Waitresses' Local Union v. Papageorge*, 230 S. W. 1086 (Tex. Civ. App. 1921); *Culinary Workers' Union No. 331 v. Fuller*, 105 S. W. (2d) 295 (Tex. Civ. App. 1937); *International Assn. of Machinists Union, Local No. 1488 v. Federated Assn. of Accessory Workers*, 109 S. W. (2d) 301 (Tex. Civ. App. 1937); *Henke & Pillot, Inc. v. Amalgamated Meat Cutters & Butchers, etc.*, 109 S. W. (2d) 1083 (Tex. Civ. App. 1937); *Texas Motion Picture Operators, etc. v. Galveston Motion Picture Operators, etc.*, 132 S. W. (2d) 209 (Tex. Civ. App. 1939); *Carter v. Bradshaw*, 138 S. W. (2d) 187 (Tex. Civ. App. 1940); *Carpenters and Joiners Union v. Ritter's Cafe*, 138 S. W. (2d) 223 (Tex. Civ. App. 1940), 149 S. W. (2d) 694 (Tex. Civ. App. 1941) *aff'd* 315 U. S. 722 (1941); *Dallas General Drivers, Warehousemen and Helpers Local Union 745 v. Oak Cliff Baking Co.*, note 33 *supra*; *International Assn. of Machinists Lodge 1488 v. Downtown Employees Assn.*, note 33 *supra*.

³⁵ *Carpenters and Joiners Union v. Ritter's Cafe*, 315 U. S. 722 (1941).

³⁶ 38 STAT. 738 (1914), 29 U. S. C. § 52 (1940).

³⁷ "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." NORRIS-LA GUARDIA ACT, 47 STAT. 73 c. 90, § 13; 29 U. S. C. § 113 (c) (1940).

³⁸ Arizona, Colorado, Connecticut, Idaho, Indiana, Kansas, Louisiana, Maryland, Minnesota, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Utah, Wisconsin, and Wyoming. Anti-injunction statutes of more limited scope exist in the following states: Illinois, Massachusetts, Oklahoma, Maine, Montana, and Rhode Island.

The decisions are divided as to whether a "labor dispute" exists where an outside union pickets and carries on boycott activities where no controversy exists between the employer and his employees or the union representing them.³⁹ Probably the preponderance of authority, and the federal view, is that a "labor dispute" exists and that injunction may not issue against peaceful labor warfare. Under this authority a jurisdictional dispute probably is a "labor dispute," and the employer's prospects of securing an injunction are slim. The passage of the NLRA in 1935 complicated the picture, since unions engaged in jurisdictional (or inter-union) disputes occasionally are in the position of seeking ends inconsistent with the administration of the Act. But the NLRA has the same definition of "labor dispute" as the Norris-LaGuardia Act, and the courts generally have striven to give effect to both pieces of legislation.

The statutory limitations of jurisdiction of the federal courts to

³⁹ Cases holding that a "labor dispute" exists: *Lund v. Woodenware Workers Union*, 19 F. Supp. 607 (D. C. D. Minn. 1937); *Grace Co. v. Williams*, 96 F. (2d) 478 (C. C. A. 8th 1938); *Houston & N. T. Motor Freight Lines v. Local Union, International Brotherhood of Teamsters, etc.*, 24 F. Supp. 619 (W. D. Okla. 1938); *Fur Workers Union v. Fur Workers Union*, 105 F. (2d) 1 (App. D. C. 1939), *aff'd*, 308 U. S. 522 (1939); *Wishnetzky Food Products v. Osman*, 27 N. Y. S. (2d) 750 (1941); *Stone Logging & Contracting Co. v. International Woodworkers, etc.*, 171 Or. 13, 135 P. (2d) 759 (1943). This rule has been applied even though the employees were represented by a labor union which had been duly certified as the sole bargaining agent by the appropriate labor relations board: *Stalban v. Friedman*, 259 App. Div. 520, 19 N. Y. S. (2d) 978 (1940); *Yeorg Brewing Co. v. Brennan*, 59 F. Supp. 625 (D. C. Minn. 1945); *American Chain & Cable Co., Inc. v. Truck Drivers & Helpers Union, etc.*, 68 F. Supp. 54 (D. C. D. N. J. 1946). Cases denying that a "labor dispute" exists: *Donnelly Garment Co. v. International Ladies Garment Workers' Union*, 20 F. Supp. 761, 21 F. Supp. 807 (W. D. Mo. 1937), *vacated on other grounds* by 304 U. S. 243 (1938); *John F. Trommer, Inc. v. Brotherhood of Brewery Workers*, 167 Misc. 197, 3 N. Y. S. (2d) 782 (1938); *Spinner v. Doe*, 13 N. Y. S. (2d) 449 (1939); *Coward Shoe, Inc. v. Retail Shoe Salesmen's Union*, 177 Misc. 781, 31 N. Y. S. (2d) 781 (1941); *London Character Shoe Corp. v. Davis*, 31 N. Y. S. (2d) 807 (1941), *aff'd*, 263 App. Div. 865, 32 N. Y. S. (2d) 793 (1942). The tendency has been marked not to find a "labor dispute" where one union has been certified as exclusive bargaining agent and defendant union is an "outsider": *Oberman & Co. v. United Garment Workers*, 21 F. Supp. 20 (W. D. Mo. 1937); *Euclid Candy Co. v. Summa*, 174 Misc. 19, 19 N. Y. S. (2d) 382 (1940), *aff'd* 259 App. Div. 1081, 21 N. Y. S. (2d) 614 (1940); *Florsheim Shoe Store Co. v. Retail Shoe Salesmen Union*, 288 N. Y. 188, 42 N. E. (2d) 480 (1942); *Regal Shoe Co. v. Doyle*, 179 Misc. 696, 39 N. Y. S. (2d) 666 (1943); *Markham & Callow v. International Woodworkers, etc.*, 170 Or. 517, 135 P. (2d) 727 (1943); *Sachs Quality Furniture v. Hensley*, 269 App. Div. 264, 55 N. Y. S. (2d) 450 (1945); *Gulf Oil Corp. v. International Brotherhood of Teamsters*, 185 Misc. 409, 57 N. Y. S. (2d) 24 (1945).

deal with labor disputes did not mean Congress did not have constitutional power to provide for federal intervention in major industrial disturbances. The National Labor Relations Act, recently amended by the Taft-Hartley Act, empowers the Board to prevent any person from engaging in any unfair labor practice affecting commerce.⁴⁰ And in determining the constitutional bounds of authority conferred on the Board, it is the effect upon interstate or foreign commerce and not the source of the injury that is the criterion.⁴¹ Activities which when separately considered are intrastate may become subject to national authority when they have a close and substantial relation to interstate commerce.⁴² The judicial power of the United States also extends to all controversies, including labor disputes, where diversity of citizenship exists. It is apparent that federal power is ample to cope with jurisdictional disputes; it is the statutory restraints upon exercise of this power which prevents effective treatment of these disputes.

In summary, it may be said that in the federal and state courts where anti-injunction statutes are in force, the primary consideration is whether the court will find the existence of a "labor dispute," as defined. As previously noted, there is a split of authority as to whether or not a jurisdictional strike is a "labor dispute." It has also been seen that the NLRB refused to act where a jurisdictional strike was involved, preferring to leave the matter to the decision of the parent body. But even where the Board has certified a majority representative,⁴³ the cases conflict as to whether or not a "labor dispute" exists where the employer seeks an injunction against the minority union.⁴⁴

Another avenue to the solution of jurisdictional disputes was closed when the United States Supreme Court decided in *U. S. v.*

⁴⁰ 49 STAT. 453 (1935), 29 U. S. C. § 160 (1940).

⁴¹ Consolidated Edison Co. of N. Y. v. N. L. R. B., 305 U. S. 197 (1940).

⁴² N. L. R. B. v. Henry Levaux, Inc., 115 F. (2d) 105 (C. C. A. 1st 1940), *cert. denied*, 312 U. S. 682 (1940).

⁴³ Southwestern Public Service Co., 58 N. L. R. B. 926 (1944); W. H. Kistler Stationery Co., 51 N. L. R. B. 978 (1943).

⁴⁴ *E.g.*, Yoerg Brewing Co. v. Brennan, 59 F. Supp. 625 (D. C. Minn. 1945).

*Hutcheson*⁴⁵ that because of the Clayton Act and the Norris-La-Guardia Act the criminal provisions of the Sherman Anti-Trust Law⁴⁶ did not apply to a contest between two unions, both affiliated with the AFL. This case was a prosecution against one of two rival unions in a manufacturing plant for striking and carrying on a boycott causing union members and their friends throughout the country not to use the employer's product. The employer urged that the defendant union's activities were an unlawful restraint of interstate commerce. But the Court ruled in favor of defendant union saying that the conduct of the union must be treated in the same way as if it were carried on for increased wages, shorter hours, or improved working conditions.

"The fact that what was done was done in a competition for jobs against the Machinist rather than against, let us say, a company union is a differentiation which Congress has not put into federal legislation and which therefore we cannot write into it."⁴⁷

The object that Congress had in view in passing the Norris-La-Guardia Act, said the Court, was to restore a liberal judicial policy toward organized labor which it had attempted to do in the Clayton Act but which had been thwarted by unduly restrictive judicial construction limiting exemption from anti-trust prosecution only where the parties stood in the proximate relationship of employer and employee.⁴⁸ In view of the broad definition of "labor dispute" in the Norris-LaGuardia Act, the Clayton Act gives protection to the conduct it describes although directed in part against persons not immediately party to the labor dispute. Violence and trespass by a labor organization attempting to unionize the business of an employer has likewise been held without the purview of the Sherman Act.⁴⁹

⁴⁵ 312 U. S. 219 (1941).

⁴⁶ 26 STAT. 209 (1890), 15 U. S. C. §§ 1-7 (1940).

⁴⁷ 312 U. S. 219, 233 (1941).

⁴⁸ See Duplex Co. v. Deering, 254 U. S. 433 (1921).

⁴⁹ Apex Hosiery Co. v. Leader, 310 U. S. 469 (1939).

RESORT TO THE NEW LABOR RELATIONS BOARD

Prior to the 1947 amendment of the National Labor Relations Act, the NLRB operated under the assumption that since the law did not direct that it exercise its powers, it was within its discretion whether or not it would determine the appropriate bargaining unit of a group of workers when requested to do so.⁵⁰ The courts agreed with the Board in this interpretation of its powers.⁵¹ The Board relaxed its rule of non-intervention in jurisdictional disputes where it was apparent that the dispute would continue indefinitely unless the Board acted. Where the record disclosed a jurisdictional dispute of long duration,⁵² where the parent organization had failed to act,⁵³ where one of the disputing unions refused to recognize the superior authority of the parent body,⁵⁴ or where a third union not a party to the jurisdictional dispute was a contestant for bargaining rights,⁵⁵ the Board proceeded with representation hearings.

By a specific provision of the Labor Management Relations Act, 1947, the NLRB is directed to hear and determine jurisdictional disputes.⁵⁶ The jurisdictional dispute, defined in broad terms, is classed as an unfair labor practice on the part of unions.⁵⁷ Where

⁵⁰ 49 STAT. 453 (1935), 29 U. S. C. § 160 (1940).

⁵¹ *Solvay Process Co. v. N. L. R. B.*, 117 F. (2d) 83 (C. C. A. 5th 1941); *cert. denied*, 313 U. S. 596 (1941).

⁵² *W. H. Kistler Stationery Co.*, 51 N. L. R. B. 978 (1943); *B. F. Gilmour Co., Inc.*, 55 N. L. R. B. 767 (1944); *Curran Printing Co.*, 57 N. L. R. B. 185 (1944).

⁵³ *Archer-Daniels-Midland Co.*, 66 N. L. R. B. 25 (1946).

⁵⁴ *Harbison-Walker Refractories Co.*, 43 N. L. R. B. 936, 44 N. L. R. B. 343 (1942).

⁵⁵ *Long Bell Lumber Co.*, 16 N. L. R. B. 892 (1939); *Campbell, Wyant and Cannon Foundry Co.*, 32 N. L. R. B. 416 (1941); *Loew's, Inc. (Metro-Goldwyn-Mayer Studios)*, 52 N. L. R. B. 1453 (1943).

⁵⁶ Pub. L. No. 101, 80th Congress, 1st Sess. (June 23, 1947) § 10(k).

⁵⁷ *Id.* § 8(b) (4) (D). The Act provides: "Section 8(b). It shall be an unfair labor practice for a labor organization or its agents . . . (4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, or materials, or commodities or to perform any services, where an object thereof is . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work."

a charge of unfair labor practice is made, the Board has power to seek a restraining order or injunction in the appropriate federal district court.⁵⁸ Indeed, it is the duty of the regional officer to seek an injunction as to some unfair labor practices, but this is not true as to the jurisdictional dispute.

The federal courts are relieved of the fetters of the Norris-LaGuardia Act where the Board seeks an injunction against an unfair labor practice.⁵⁹ The NLRB is authorized to petition for injunction, and the court to grant it, where any unfair labor practice has been charged and a complaint issued, in order to restrain the continuance of the unfair labor practice during the adjudication of the issues raised by the charge.⁶⁰ An important change in the new law is the creation of the position of General Counsel of the NLRB as an independent office, filled by the President with the advice and consent of the Senate. The General Counsel is given final authority by the Act to decide whether or not action shall be taken with respect to a charge of unfair labor practices. He also supervises the regional offices of the Board. The decision as to whether a complaint should issue will rest ultimately with the General Counsel, the Board acting only as a rule making body and in a judicial capacity in cases brought before it.

Any appraisal of the future effect upon labor relations of the power placed in the hands of the General Counsel of the Board in regard to petitions for injunction in unfair labor practice cases should take into consideration a recent statement made by the General Counsel.⁶¹ He said that he did not believe Congress inserted the provision for the use of injunctive powers with the idea that an injunction should be invoked as a sort of preliminary cease and desist order every time a labor organization (or employer) is charged with unfair labor practices. He recognized the evils of repression of organized labor by the courts that

⁵⁸ *Id.*, §10(1).

⁵⁹ *Id.*, §10(h).

⁶⁰ *Id.*, §10(j).

⁶¹ N. L. R. B. Release R-4, September 23, 1947.

brought about the passage of the Norris-LaGuardia Act. The new Act, like the old National Labor Relations Act, does not set up or recognize any private rights. The purpose of the legislation is to serve the public and to preserve public rights. Therefore, before an injunction will be requested primary consideration will be given to the effect of the alleged unfair labor practices on the public at large.

Under the new NLRB Regulations issued under the amended Act, the Board has assigned second priority to the handling of jurisdictional disputes.⁶² Only complaints involving strikes or boycotts for purposes such as securing recognition of a minority union are given a higher priority. When a union engages in a strike or boycott to force an employer to transfer work to its members, or is encouraging employees to engage in such a strike or boycott, an employer, rival union, or an employee may file a charge at the regional office of the Board.⁶³ If the preliminary investigation indicates the case has merit, the Regional Director sends the parties a notice of a Board hearing, including a simple statement of the issues. The hearing is set for not less than ten days after receipt of the notice.⁶⁴ The parties are expected to try to settle the dispute during this time, and if they do settle within the ten days, the charge is dismissed.⁶⁵

If they do not settle, a hearing is held before a hearing officer. As in representation cases, the hearing is informal, and court rules of evidence do not apply. The hearing officer seeks to acquire all the pertinent facts and then sends to the Board an analysis of the evidence⁶⁶ without recommendation. The Board studies the

⁶² NEW N. L. R. B. REGULATIONS, effective August 22, 1947, § 203.74.

⁶³ *Ibid.* In his veto message to Congress on June 20, 1947, President Truman said: "The bill would force unions to strike or to boycott if they wish to have a jurisdictional dispute settled by the National Labor Relations Board. This peculiar situation results from the fact that the Board is given authority to determine jurisdictional disputes over assignment of work only after such disputes have been converted into strikes or boycotts."

⁶⁴ *Ibid.*

⁶⁵ Labor Management Relations Act, 1947, Pub. L. No. 101, 80th Congress, 1st Session (June 23, 1947) §10(k).

⁶⁶ NEW N. L. R. B. REGULATIONS, effective August 22, 1947, § 203.59.

evidence and then certifies what union, trade, craft, or class of employees is to perform the work in dispute.⁶⁷ The charge is dismissed if the parties comply.⁶⁸ If the parties do not comply, the Regional Director issues a formal complaint, and the case proceeds to hearing before a trial examiner, as any other complaint case. This hearing can be speedy since much of the evidence has already been presented in the first hearing and is officially part of the case.⁶⁹

As soon as he has issued the complaint, the Regional Director may apply to a federal district court for an injunction to maintain the status quo. Under the statute and the Board's procedures, he has power to apply within the first days of the case, as soon as he has reasonable cause to believe that the charge is true.⁷⁰ But in the interest of voluntary settlement, he probably will not seek an injunction until the complaint stage.

If the Board issues an order to cease and desist and a federal circuit court of appeals enforces it, the respondent union will be enjoined from bringing pressure to bear on an employer either by refusal to work or to handle his products or by encouraging the employees to refuse. After a Board order has been enforced by a court decree, the Board has the responsibility of obtaining compliance with the decree. Investigation is made by the Regional Office of the respondent's efforts to comply. If it finds that the respondent has failed to live up to the terms of the court's decree, the General Counsel may, on behalf of the Board, petition the court to hold the offender in contempt of court. The court may order immediate remedial action and impose sanctions and penalties. The Act does not make the commission of an unfair labor practice or failure to observe a Board order a criminal

⁶⁷ *Id.*, § 203.76.

⁶⁸ *Id.*, § 203.77.

⁶⁹ *Id.*, § 203.45.

⁷⁰ Labor Management Relations Act, 1947, note 65 *supra*, § 10(1); NEW N. L. R. B. REGULATIONS, note 66 *supra*, § 202.35.

offense. It is only after an injunction is obtained from the court that penalties may be imposed for non-compliance.

Another deterrent placed upon jurisdictional disputes by the Act is a section which declares such strikes unlawful and allows anyone injured thereby to sue for damages in any federal district court without respect to the amount in controversy.⁷¹ A money judgment secured against a labor organization in a federal district court is enforceable only against the organization as an entity and against its assets and is not enforceable against any individual member or his assets.⁷² The fact that this section declares the jurisdictional strike unlawful does not confer a right to private injunctive relief because the Norris-LaGuardia Act is still applicable except when the General Counsel for the Board brings action.⁷³

STATE LEGISLATION TO CONTROL THE JURISDICTIONAL STRIKE

The year 1947 was one of extensive changes in the labor laws of a large number of states.⁷⁴ Measures seeking to control the jurisdictional dispute have been among the new statutes passed. California,⁷⁵ Delaware,⁷⁶ Iowa,⁷⁷ Massachusetts,⁷⁸ Missouri,⁷⁹ Pennsylvania,⁸⁰ and Texas⁸¹ have declared the jurisdictional strike unlawful and enjoined. A Florida statute, passed in 1943, provides that it is unlawful to interfere with work by reason of any jurisdictional dispute, grievance or disagreement between or within

⁷¹ Labor Management Relations Act, 1947, note *supra*, §§ 303(a) and 303(b).

⁷² *Id.*, § 301(b).

⁷³ 93 CONG. REC. 5073, 5074 (1947).

⁷⁴ *Compilation of State Labor Laws 1947*, prepared by Committee on State Labor Relations, Section of Labor Relations Law, American Bar Association.

⁷⁵ Ch. 1388, L. 1947, approved July 12, 1947, effective September 19, 1947.

⁷⁶ H. B. 212, Laws of 1947, approved and effective April 5, 1947.

⁷⁷ S. B. 111, L. 1947, approved April 29, 1947, effective upon publication.

⁷⁸ Ch. 571, L. 1947, approved and effective June 25, 1947.

⁷⁹ S. B. 79, L. 1947, approved July 22, 1947, effective September 10, 1947.

⁸⁰ Act of July 7, 1947, Act No. 558, effective July 7, 1947.

⁸¹ Ch. 138, L. 1947, approved May 1, 1947, effective September 5, 1947. Ch. 387, L. 1947, approved June 13, 1947, effective September 5, 1947.

labor organizations.⁸² Idaho has amended its anti-injunction act, modeled after the Norris-LaGuardia Act, so as to limit the term "labor dispute" to controversies between an employer and the majority of his employees in a collective unit.⁸³ The Utah State Labor Relations Act, based on the National Labor Relations Act, has made it an unfair labor practice for employees to coerce or induce any employer to discriminate against the bargaining agent representing a majority of his employees.⁸⁴

Two Texas statutes passed in 1947 provide that strikes and picketing against an employer when there is no labor dispute between him and a majority of his employees as to wages, hours, or working conditions are forbidden. Violations are criminal offenses and enjoined. It is also unlawful for anyone to engage in picketing the purpose of which is to secure the violation of a valid labor agreement between an employer and the representatives designated for the purpose of collective bargaining or certified as the bargaining agent under the National Labor Relations Act.

CONCLUSION

Any prediction of the probable success or failure of the recent federal and state legislation on labor matters would be conjectural at this time. It will be, of course, several years before the principles of the acts are authoritatively established. Prior to the enactment of the Labor Management Relations Act, 1947, in the broad field of federal cognizance, the jurisdictional dispute was a controversy without a tribunal. Neither the parent organizations, courts, nor administrative agencies provided an effective solution to this difficult problem. Some measure of relief was obviously needed.

The new federal legislation has injected the government into

⁸² Section 9, Ch. 21968, L. 1943.

⁸³ Section 12, Ch. 215, L. 1933, as amended by Ch. 266, L. 1947, approved March 19, 1947, effective May 6, 1947.

⁸⁴ Sections 49-1-19—49-1-25, Utah Code Annotated, 1943, Ch. 55, L. 1937, approved and effective March 22, 1937.

jurisdictional conflicts in order to determine the issues. This is compulsory arbitration. It is doubtful that all jurisdictional disputes can be solved by means of administrative procedural regulations. For each case where the solution to the dispute is obvious, there will be many cases where, on both legal and practical grounds, the exercise of jurisdiction by government agencies would be of doubtful value. No one actually believes that industrial peace can be achieved by governmental mandate. To sew up the wound without first removing the source of infection would be to cause a more serious rupture than if no surgery had been attempted. The real solution to this as well as many other labor problems must come from within the labor movement. The principal purpose that the government can serve is that of fact finding and conciliation.

Governmental regulation of labor organizations was delayed several years because of the then recognized inequality of bargaining power of labor as compared with capital. When that bargaining power achieved a parity, or—as some believed—a superiority, it was to be expected that some abuses would become the subject of legislative regulation. But the labor union has a definite place in our economy, and it will continue to play a vital role in the future. The government has not ceased to protect and foster organized labor. There is no reason to believe that the present or a future administration will be hostile to labor. Short-sighted and biased legislation is to be condemned as a retrogressive step. But legislation needed to curb apparent abuses by the labor bosses, if prudently administered, should be a boon to labor as well as the public.

The jurisdictional dispute presents an acknowledged challenge to those charged with administering our new labor policy. The NLRB plans to make its policy as the cases are presented and decided. It will be a matter of trial and error for a while. Every one interested in labor-management relations is watching the current developments closely during this formulative period. The

Board has been given some powerful tools with which to work, and with a little cooperation from both sides of a labor controversy there is every reason to believe that it can be effective in the accomplishment of its objectives.

—*Lionel E. Gilly.*