

INDIANA LAW JOURNAL

Volume XXI

APRIL, 1946

Number 3

LABOR LAW

LEON H. WALLACE*

Without any attempt to make a comprehensive analysis, an effort is made here to present a compilation of the more important judicial decisions and laws affecting labor during the period from June, 1940, with a brief background. Since Acts of the Congress, and decisions of the federal judiciary are a part of the law governing labor problems in Indiana in a great many cases, a short review of the federal development has been included. The rapid progress in parts of the field of labor law during the period has made it difficult to state with clarity the principles which seem to be emerging.

FEDERAL DEVELOPMENTS: *Judicial Consideration of State Labor Law Cases.*

The Supreme Court of the United States has considered certain state statutes, and decisions of state courts from the standpoint of whether such statutes or decisions conflicted with the general public policy declared by Congress in the Wagner Act.¹

In the first of such cases considered, a union, its members and officers had been ordered by the Wisconsin Employment Relations Board, acting under Wisconsin law, to cease mass picketing of an employer's place of business, picketing of employees' homes, obstructing entrances, and threatening personal injury or property damage to working employees.²

* Associate Professor of Law, Indiana University.

1. National Labor Relations Act, 49 Stat. 449 (1935), 29 U.S.C.A., secs. 151 et seq. (1940).
2. Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740 (1942).

The Supreme Court held that this did not conflict with the policy of the Wagner Act.

An Alabama Act was attacked in separate actions by A.F. of L. and C.I.O. unions.³ The act requires all labor organizations to file copies of the constitution and by-laws of both its local and national organization, forbids demand for or receiving pay for work permits, requires filing of financial reports annually, and forbids supervisory employees belonging to a union. The Alabama Supreme Court upheld all the provisions of the Act. The Supreme Court of the United States denied writs of certiorari because a declaratory judgment proceeding was not a proper remedy under the issues.

The Florida legislature passed an act requiring licensing of business agents of labor organizations. Such agent must be of good moral character, must have been a citizen of the United States for at least ten years, and must never have been convicted of a felony. Labor unions were required to file annual reports giving address of offices and names and addresses of their officers and agents. In an injunction suit brought by the Attorney General of Florida the union involved was enjoined from acting as a labor union. On appeal, the Supreme Court of the United States held that the sections of the act, heretofore summarized, conflicted with the public policy expressed by the Congress in the Wagner Act.⁴

The Supreme Court of the United States has also considered state statutes and decisions from the standpoint of whether they violated due process under the Fourteenth Amendment of the Constitution of the United States.

The majority of these cases involved picketing as an incident of the right of freedom of speech. The Supreme Court held in 1940 that a statute prohibiting picketing in general was in violation of the Fourteenth Amendment by restraining freedom of speech.⁵ In 1941, the Supreme Court reversed the New York court which had granted an injunction against the Teamsters Union for picketing bakeries using

-
3. *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450 (1945). *Congress of Industrial Organizations v. McAdory*, 325 U.S. 472 (1945).
 4. *Hill v. Florida*, 325 U.S. 538, (1945). Stone, C. J., concurred as to the licensing provisions. Frankfurter, J., and Robert, J., dissented.
 5. *Thornhill v. Alabama*, 310 U.S. 88 (1940). See also *American Federation of Labor v. Swing*, 312 U.S. 321 (1941).

independent truckers to sell their products to retailers, such truckers being independent contractors.⁶ The reasoning followed that of the *Thornhill* case. But on the same day the Supreme Court upheld an injunction decreed by a Texas Court under a state anti-trust act against peaceful secondary picketing, where union carpenters picketed the independent restaurant premises, the owner of which was employing non-union labor to build another building having no connection with the restaurant business.⁷ The Court distinguished between the two cases by pointing out that in the *Ritter* case the relationship of the cafe to the labor dispute was too remote. The Court also held that an order of a state board enjoining picketing, interpreted by the Supreme Court of Wisconsin as not prohibiting peaceful picketing, did not violate due process.⁸ In two cases decided together in 1943,⁹ the Supreme Court reversed the New York Court, which had granted injunctions against the union from picketing restaurants, operated by their owners as partners without employees. A Texas statute, requiring paid labor organizers to register with the Texas Secretary of State before soliciting for members within the state, was held to be invalid by the Supreme Court in a 5-4 decision. The majority opinion held that this act conflicted with the right of free speech.¹⁰ But a New York statute prohibiting unions from denying membership or discriminating between members on employment opportunity because of race, color or creed, was unanimously upheld by the Supreme Court.¹¹

The foregoing brief summary indicates that the decisions of the Supreme Court have not clarified entirely the problem

6. *Bakery & Pastry Drivers & Helpers Local 802 of I.B. of Teamsters v. Wohl*, 315 U.S. (1942). Majority opinion by Jackson, J.; Douglas, J., joined by Black, J. and Murphy, J. join in concurring opinion.
7. *Carpenters & Joiners Union of America, Local 213 v. Ritter's Cafe*, 315 U.S. 722 (1942). Majority opinion by Frankfurter, J.; Reed, J.; dissenting in one opinion. Black, J. joined by Douglas and Murphy, JJ., dissented in another opinion.
8. *Hotel & Restaurant Employees International Alliance, Local 122 v. Wisconsin Employment Relations Board*, 315 U. S. 437 (1942). Roberts, J., did not participate.
9. *Cafeteria Employees Union, Local 302, v. Angelos*, 320 U.S. 293, (1943).
10. *Thomas v. Collins*, 323 U.S. 516 (1945).
11. *Railway Mail Ass'n. v. Corsi*, 325 U.S. —, 65 Sup. Ct. 1483 (1945).

of which state acts concerning labor activities violate due process.

Judicial Consideration of Cases Involving the Sherman Act, the Clayton Act and the Norris-LaGuardia Act.

It is necessary to provide a brief background of certain federal legislation in order to appreciate certain of the cases which have been decided in recent years by the federal judiciary.

The Sherman Anti-Trust Act¹² provided that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of commerce among the several states or with foreign nations was illegal. Violations of the provisions of the act were punishable by fine and imprisonment. Any person injured in his business or property by reason of anything forbidden by the act was given a remedy in a civil action and could recover treble damages.

In 1914 after long continued agitation, Congress passed the Clayton Act.¹³ Section 6 of this act provided that the labor of a human being was not a commodity or article of commerce; that nothing contained in the anti-trust laws should be construed to forbid the existence and operation of labor organization instituted for the purpose of mutual help, or to forbid or restrain individual members of such organizations from *lawfully* carrying out the *legitimate* objects thereof, and that such organizations or the members thereof should not be held or construed to be illegal combinations or conspiracies in restraint of trade under the anti-trust laws. Section 20 of the act forbade the granting of restraining orders or injunctions by any court of the United States in any case between employers and employees or persons seeking employment involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to the applicant.

In 1932 in the light of the construction which had been given the Clayton Act by the Supreme Court of the United States, the Congress passed the Norris-LaGuardia Act,¹⁴ which expressly denied jurisdiction to the courts of the United

12. Act of July 2, 1890, c. 647; 26 Stat. 209; 15 U.S.C.A., sec. 1 et seq.
13. Act of Oct. 15, 1914, c. 323; 38 Stat. 730; 15 U.S.C.A. secs. 12-27, 44; 18 U.S.C.A., sec. 412; 28 U.S.C.A. secs. 381, 383, 386-390a; 29 U.S.C.A. secs. 52, 53.
14. Act of March 23, 1932, c. 90; 47 Stat. 70; 29 U.S.C.A., sec. 101 et seq.

States to grant relief by injunction in labor disputes, which were enumerated with great particularity.

A major part of the labor law of the last generation revolves around the construction placed by the courts upon these three acts and in many cases the interplay of the acts as they were applied to different fact situations. In 1908 the Supreme Court of the United States held that the Sherman Anti-Trust Act applied to the activities of a labor union which restrains interstate commerce by means of a boycott.¹⁵ After the passage of the Clayton Act the Court sustained the granting of injunctive relief where the Court found that there had been a violation of the Sherman Act.¹⁶ In the same year the Supreme Court reiterated this position.¹⁷ The Supreme Court during this period continued to find that the Sherman Act applied to the activities of labor unions if those activities restrained commerce under the facts and were intentionally directed thereto.¹⁸ This series of decisions eventually resulted

15. *Loewe v. Lawlor*, 208 U.S. 306 (1908). The ruling of the court below sustaining a demurrer to the complaint seeking relief under the Sherman Act, and alleging a boycott restraining trade was reversed. A judgment for the plaintiff later was affirmed. *Lawlor v. Loewe*, 235 U.S. 522 (1915). (*Danbury Hatters Case*); See also *Gompers v. Buck's Stove and Range Co.*, 221 U.S. 418 (1911).
16. *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921). In the majority opinion, Pitney, J. observed "it (the Clayton Act) is but declaratory of the law as it stood before." Brandeis, J., with Holmes and Clarke, JJ., concurring, dissented.
17. *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184 (1921). Taft, J., in referring to Sec. 20 of the Clayton Act said . . . this introduces no new principle into the equity jurisprudence of those (federal) courts. It is merely declaratory of what was the best best practice always. Congress thought it wise to stabilize this rule of action and render it uniform. . . . Each case must turn on its own circumstances. It is a case for the flexible remedial power of a court of equity which may try one mode of restraint, and if it fails or proves to be too drastic may change it."
18. *Coronado Coal Co. v. United Mine Workers of America*, 268 U. S. 295 (1925). The Court had held previously in *United Mine Workers of America v. Coronado Coal Company*, 259 U. S. 344 (1922) that the evidence was insufficient to sustain a finding of violation of the Sherman Act, and had pointed out what evidence was lacking. *Bedford Cut Stone Company v. Journeymen Stone Cutters Association*, 274 U. S. 37 (1925). The Supreme Court upheld the granting of an injunction against a labor union and its members on the ground that their activities restrained trade in violation of the Sherman Act. In a majority opinion by Sutherland, J., Sandford, J., and Stone, J., wrote separate concurring opinions. Brandeis, J., with Holmes, J., concurring, dissented. See also *Alco-Zander Company v. Amalgamated Clothing Workers of America*, 35 F. (2d) 203 (1929).

in the passage of the Norris-LaGuardia Act. However the Supreme Court had consistently found that the Sherman Act applied to the activities of labor unions and their members when their strikes and boycotts intentionally interfered with the shipment of the employer's product in interstate commerce.

In 1940 the Supreme Court, in an important opinion, again considered the application of the Sherman Act to striking employees.¹⁹ This case involved the undisputed facts that the members of the union, who were not employees of the factory in question, seized the plant and declared a "sit-down strike." Then acts of violence were committed and the plant was held by the sit-down strikers for over six weeks. Both manufacture and flow of petitioner's product into interstate commerce were stopped. The court found that the activities affecting interstate commerce were not directed at the control of the market, and were not so wide-spread as to substantially affect it. In the opinion of the Court, these were the necessary elements before the Sherman Act would apply to such labor activities. Consequently, the Court found that the Sherman Act had no application here. A comprehensive review of the previous cases already cited was made in the opinion. The Court ingeniously used the language of previous opinions where the Court had found that the facts were insufficient to constitute a violation of the Sherman Act, and distinguished the facts of other prior cases where the Court had found a violation. An actual comparison of the facts of the various cases makes it apparent that the distinction, based upon the assumption that the facts of the earlier cases were substantially different, is questionable. In other words, the Court in the *Apex* case stressed the *language* used in the earlier cases denying application of the Sherman Act, and stressed the *facts* which the Court had found in the earlier cases in which it had held that there had been a violation. The action of the Court in the *Apex* case, upon a comparison of all the facts of the various cases, would seem to overrule the *Danbury Hatters* case, the *Duplex Printing Co.* case, the

19. *Apex Hosiery Company v. Leader*, 310 U.S. 469 (1940). The majority opinion written by Stone, J., said "the prohibitions of the Sherman Act were not stated in terms of precision or of crystal clarity, and the act itself did not define them. In consequence of the vagueness of its language, perhaps not uncalculated, the courts have been left to give content to the statute." A dissent was also written by Hughes, J., in which McReynolds and Roberts, JJ., joined.

Bedford Stone case, and the *Second Coronado* case, because the same test which was applied to them would have brought an opposite result had it been applied in the *Apex* case. However, the Court declined to overrule them.

During the same year, the Supreme Court again considered the effect of the Sherman Act in a case which involved criminal prosecution.²⁰ In this case, the members of the Carpenters Union were in a dispute with the members of the Machinists Union over which union had jurisdiction of certain work in erecting and dismantling machinery for Anheuser-Busch. Anheuser-Busch offered to submit the matter to arbitration in accordance with their agreement with the carpenters but the carpenters refused, caused a strike, picketed Anheuser-Busch, and requested through circular letters that union members refrain from buying Anheuser-Busch beer. The Court did not use the test which it had used in the *Apex* case, but resurrected Section 20 of the Clayton Act, redefined it in terms of the Norris-LaGuardia Act, and found, in the language of Mr. Justice Frankfurter, that "if the facts laid in the indictment come within the conduct enumerated in Section 20 of the Clayton Act, they would not constitute a crime within the general terms of the Sherman Act because of the explicit command of that section that such conduct shall not be 'considered or held to be violations of any law of the United States'." Mr. Justice Stone wrote a concurring opinion. However, Mr. Justice Roberts wrote a dissenting opinion, pointing out that by a unique process of construction, the Court had found that because Congress forbade the issuance of injunctions to restrain certain conduct, it intended to repeal the provisions of the Sherman Act authorizing actions at law and criminal prosecutions for the commission of torts and crimes defined by the anti-trust laws. On the authority of this case, the Supreme Court affirmed judgments sustaining demurrers to indictments under the Sherman Act in a number of cases.²¹ But the Supreme Court has said that where a labor union combines with others it may lose the immunity which was given it by the decisions heretofore dis-

20. *United States v. Hutcheson*, 312 U. S. 219 (1941).

21. *United States v. International Hod Carriers*, 313 U. S. 539 (1941).
United States v. Brotherhood of Carpenters, 313 U. S. 539 (1941).
United States v. Trades Council, 313 U. S. 539 (1941). See also
United States v. American Federation of Musicians, 310 U. S. 741
(1943). Cf. *Opera on Tour v. Weber*, 285 N. Y. 348, 34 N. E. (2d)
349 (1941). *Certiorari denied*, 314 U.S. 615 (1942).

cussed. Where the members of a union combined with contractors and manufacturers for the purpose of putting pressure on other contractors and manufacturers, or for the purpose of excluding other contractors and manufacturers, the Court held that the Sherman Act had been violated. However, the injunction, as approved, only covered combinations with non-labor groups.²²

However, on the same day the Court considered a case where the members of a union had procured the company with whom they had contracted to cancel its contracts with another firm because employees of such other firm were non-union employees. The union refused to permit such employees to join the union and refused to negotiate with their employer. As a consequence, the employer of the non-union men was forced out of business by reason of a cancellation of its contracts with the company, with whom the union had a contract. The court here found no violation of the Sherman Act.²³

Judicial Consideration Involving Cases Under the Anti-Racketeering Act.

The Court also considered a criminal case for conspiracy to violate the Anti-Racketeering Act.²⁴ Members of the defendant union had halted truckers at the outskirts of New York City and insisted on either furnishing drivers to carry the load into the city and out again, or that the trucker pay a member of the union the amount he would be entitled to receive had he driven the truck.²⁵ The Court found that the Anti-Racketeering Act, which prohibited the use or threat of force to obtain money except for the payment of wages by a bona fide employer to a bona fide employee, had not been violated. The distinction made in the majority opinion is a rather fine one.

22. *Allen Bradley Co. v. Local Union No. 3*, 325 U. S. 797 (1945). Roberts, J., dissented in part and Murphy, J., thought the case should be dismissed, since there would have been no violation had the union acted alone, and should not be penalized because it had procured aid of a non-labor group to further its own welfare.

23. *Hunt et al v. Crumboch et al*, 325 U. S. 821 (1945). Black, J., wrote the majority opinion. Jackson, J., dissented and said that the ruling in this case could not be reconciled with that of the *Allen-Bradley* case. Stone, C. J., and Frankfurter, J., joined in this dissent. Roberts, J., also wrote a dissent in which Stone, C.J., Frankfurter, J., and Jackson, J., joined.

24. Act June 18, 1934, 48 Stat. 979, 18 U.S.C.A. Sec. 420 a.

25. *U. S. v. Local Union No. 807*, 315 U. S. 521 (1942).

Judicial Consideration Involving Cases Under the Railway Labor Act.

The Court found contracts of railway terminal companies with redcaps were not in conflict with the collective bargaining conditions of the Railway Labor Act.²⁶ Two years later the Court adopted a policy of exclusive bargaining rights in the case of *Order of Railway Telegraphers v. Railway Express Agency, Inc.*²⁷ The reasoning in the *Railway Telegraphers* case seems contradictory to that of the *Williams* case. The Court also held that the Railway Labor Act created a duty on the part of a union acting as bargaining representative not to discriminate among employees because of race.²⁸

The Court also held that disputes between railway unions could not be litigated under the Act.²⁹

Judicial Consideration of Cases Under the National Labor Relations Act.

The cases arising under the National Labor Relations Act³⁰ comprise more than half of the labor cases which have been decided by the Supreme Court in the period covered herein. Section 7 of the act, known also as the Wagner Act, provides that employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection. Section 8 of the act defines five unfair labor practices for an em-

26. *Williams v. Terminal Co.*, 315 U. S. 386 (1942).

27. 321 U. S. 342 (1944).

28. *Steele v. L. & N. R. R.*, 323 U. S. 192, (1944). *Tunstall v. Brotherhood*, 323 U. S. 210 (1944). The Court held, however, that the dispute involved here was not one to be decided under the Railway Labor Act.

29. *Switchmens Union v. National Mediators Board*, 320 U. S. 297 (1943); *General Committee v. M. K. T. R. R. Co.*, 320 U. S. 323 (1943); *General Committee v. S. P. R. R. Co.*, 320 U. S. 338 (1943). Reed and Roberts, JJ., dissented in all three cases, Jackson, J., in the first case.

30. Act of July, 1935, Ch. 372, 49 Stat. 449, 29 U. S. C.A., Sec. 151 et seq. This act empowered the Board created thereunder to prevent and person from engaging in an unfair labor practice affecting commerce. Commerce is defined to mean trade, traffic, commerce, etc., among the several states or between any foreign country and any state. Sec. 2, Subsection 6. The Court has held the Act applicable to interstate insurance business, *Polish National Alliance v. N.L.R.B.*, 322, U. S. 643 (1944), which is interstate commerce. *U. S. v. South-Eastern Underwriters Ass'n*, 322 U. S. 533 (1944).

ployer: (1) to interfere with, restrain or coerce employees in the exercise of rights guaranteed in Section 7, (2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it, (3) to discriminate in regard to hire and tenure of employment, or any term or condition of employment, or to encourage or discourage membership in any labor organization, (4) to discharge or otherwise discriminate against an employee because he has filed complaint or given testimony under the act, and (5) to refuse to bargain collectively with the representative of his employees. The constitutionality of the act was upheld by the Court in 1937.³¹

Interference, restraint and coercion. In *N.L.R.B. v. Ford Motor Co.*,³² violence by company employees against members of the union was held to be an unfair labor practice. However, the Court also found that publications by Ford Motor Company urging the men to ignore the union was not an unfair labor practice. The finding of the Circuit Court of Appeals was not disturbed by the Supreme Court. Here the coercive effect of the employer's language was balanced against his right of freedom of speech, and freedom of speech was allowed to prevail. However, in another case,³³ the Circuit Court of Appeals had found that the printed statement of the employer to his employees that they were under no obligation to join a union was an unfair labor practice, and the Supreme Court declined to disturb this finding although the Board expressly called it to the attention of the Supreme Court that this case was in conflict with the finding in the *Ford* case and asked that the free speech question be reviewed. The Supreme Court declined. Spying and espionage by an employer has been held to be an unfair labor practice, under Section 8 (1) of the Act.³⁴ A profit-sharing contract, no matter how favorable to the employees, has been held to constitute an unfair labor practice where it bound the employee to

31. *N.L.R.B. v. Jones and Laughlin Steel Corporation*, 301 U.S. 1 (1936).

32. 114 Fed. (2d) 905, (CCA6) (1940), certiorari denied, 312 U. S. 689 (1941).

33. *N.L.R.B. v. Elkland Leather Company*, 114 Fed. (2d) 221, (CCA3) (1910), certiorari denied, 311 U. S. 705 (1940).

34. *Montgomery-Ward and Co. v. N.L.R.B.*, 115 Fed. (2d) 700, (CCA8) (1940). *N.L.R.B. v. Fansteel Metallurgical Corporation*, 306, U. S. 240 (1939).

remain at work for a period of two years.³⁵ Individual contracts with employees which obstruct unionization have been held to be an unfair labor practice.³⁶ Likewise, the urging of employees to bargain directly with the employer, coupled with the formation of an independent union, has been found to be an unfair labor practice, both as to interference with the rights of collective bargaining and as to the domination of the labor organization.³⁷

In a recent case the Court held that the announcement by an employer that it was asking authority to grant a wage increase was an unfair labor practice when made directly to the employees, and not to the bargaining representative.³⁸

In two cases in 1945, decided in a single opinion, the Supreme Court upheld a finding of the Board that an employer's order which prohibited union solicitation on company property was an unreasonable interference with the rights of the employees. The employer's rule applied to non-working hours.³⁹

Domination and Interference with the Formation and Administration of Labor Organizations. In the *Virginia Electric and Power Company* case discussed in the preceding section, the Court upheld the finding of the Board of an interference, with the formation of the independent union involved.⁴⁰ The power of the Board to make an order of disestablishment of such a union, dominated

-
35. N.L.R.B. v. Jahn and Ollier Engraving Company, 123 Fed., (2d) 589, (CCA7) (1941).
 36. National Licorice Co. v. N.L.R.B., 309 U. S. 350 (1940).
 37. Virginia Electric and Power Co. v. N.L.R.B., 319 U. S. 533 (1943). This case had been remanded by the Supreme Court for the finding of further facts before the court would sustain the finding of the Board. N.L.R.B. v. Virginia Electric and Power Company, 314 U. S. 469 (1941). The evidence in the case as shown by the record in 1941 merely shows the bulletin and two speeches of company officers standing alone and it might be inferred that the Court believed that the finding of the Board based on this evidence alone might be an interference with the employer's right of free speech.
 38. May Department Stores Company v. N.L.R.B., — U. S. —, 66 Sup. Ct. 203 (1945). The majority opinion upheld a finding of a violation of both Sec. 8 (1) and (5). In an opinion concurring in part, Rutledge, J., believed that the finding of violation as to Section 8 (1) should be eliminated and that the only violation was a refusal to bargain collectively with the bargaining agent. Stone, C.J., and Frankfurter, J., joined in this opinion.
 39. Republic Aviation Corporation v. N.L.R.B. v. Le Tourneau Co., 324, U. S. 793 (1945).
 40. Virginia Electric and Power Co. vs. N.L.R.B., 319 U. S. 533 (1943).

by the employer, has been upheld.⁴¹ Even though the employer has taken no part in the formation of a union, his expression of preference for it may constitute an unfair labor practice, which will be the basis of an order of disestablishment.⁴² The employer has been held to be responsible for the activities of his supervisory employees in promoting the interests of a certain union, even though the employer had not authorized the supervisors to do so.⁴³ Where the Board finds company domination, it orders the employer to disestablish the dominated union, which has been given notice of the proceedings, and is a party.⁴⁴ The Court also found that an employer had been guilty of an unfair labor practice when the employer offered the employees a wage increase if they would abandon the union.⁴⁵

Discrimination. The discharge of an employee because of his union affiliation, even though there may be valid other reasons for such discharge, has been held to constitute an unfair labor practice.⁴⁶ If there is any substantial evidence to support the finding of the Board, the Court will not disturb an order of the Board.⁴⁷ However, the Supreme Court has held that even though there were unfair labor practices indulged in by the employers, including discrimination, an order of the Board reinstating the men with back pay will not be upheld in the case of seamen actively employed in the operation of ships.⁴⁸ The Court has also upheld the Board in making an order to instate applicants for employment who were not

-
41. *N.L.R.B. v. Link-Belt Co.*, 311 U. S. 584 (1941). In *Humble Oil and Refining Co. v. N.L.R.B.*, 113 Fed. (2d) 85, C.C.A.5 (1940), the Circuit Court of Appeals refused to uphold the finding of the Board that a new independent union was company dominated, but in *N.L.R.B. v. American Potash and Chemical Corporation*, 98 Fed. (2d) 488, (CCA9) (1938) certiorari denied 306 U. S. 643 (1939), the finding of company domination by the Board was upheld. See also *American Enka Corporation v. N.L.R.B.*, 119 Fed. (2d) 60, (CCA4) (1941).
 42. *Valley Mould and Iron Corporation v. N.L.R.B.*, 116 Fed. (2d) 760, (CCA7) (1940), certiorari denied 313 U. S. 590 (1941).
 43. *Heinz Company v. N.L.R.B.*, 311 U. S. 584 (1941). See also *International Association of Machinists v. N.L.R.B.*, 311 U. S. 72 (1940).
 44. *N.L.R.B. v. Southern Bell Telephone and Telegraph Co.*, 319 U. S. 50 (1943).
 45. *Medo Photo Supply Corporation v. N.L.R.B.*, 321 U. S. 678 (1944).
 46. *N.L.R.B. v. Arcade-Sunshine Co.*, 118 Fed. (2d) 49, (U.S.C.A.-D.C.) (1940), certiorari denied, 311 U. S. 567 (1940).
 47. *N.L.R.B. v. Nevada Consolidated Copper Corporation*, 315 U. S. 789 (1942).
 48. *Southern Steamship Co. v. N.L.R.B.*, 316 U. S. 31 (1942).

employed because of their labor affiliations, and upheld an order that they should be paid what they would have earned, unless they had obtained other and substantially equivalent employment.⁴⁹ The Court also upheld the finding of the Board of unfair labor practice where an employer had procured employees to join a union with which he had a contract not providing for a closed shop. The making of a closed shop contract with this union was found to be a further violation of Section 8 (3).⁵⁰ Where an employer had been charged by certain employees of sponsoring an independent union, and subsequently all the parties had agreed for the Board to hold an election which was won by Independent, which then entered into a closed shop contract with the employer, refused to admit the employees who had complained in the first instance, and demanded and obtained their discharge, the Court upheld a finding of the Board that the discharge of the men was an unfair labor practice.⁵¹ The theory of the finding was that the company should have anticipated the demand and discharges. The Chief Justice, Mr. Justice Roberts and Mr. Justice Frankfurter joined in a dissenting opinion by Mr. Justice Jackson. However, the Court refused to permit the Board to vacate a part of its decree where by reason of later facts found, the Board believed that it had not ordered enough back pay for workers discriminated against.⁵²

Collective Bargaining. The Supreme Court has upheld the order of the Board in ordering an employer to bargain with the union which no longer represents a majority, but which had represented a majority at the time the employer refused to bargain with it.⁵³ Merely pretended bargaining is

-
49. *Phelps-Dodge Corporation v. N.L.R.B.*, 313 U. S. 177 (1941). Stone, J., dissented in the construction placed on the act that the Board was authorized to order the employer to hire applicants for work who had never been in his employ, and to compel him to give them back pay, contending that the order should have been limited to an order to cease and desist from the practice in the future.
 50. *N.L.R.B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685 (1942).
 51. *Wallace Corporation v. N.L.R.B.* 323 U. S. 248 (1944).
 52. *Frank Bros. Company v. N.L.R.B.*, 321 U. S. 702 (1944). In *Southport Petroleum Co. v. N.L.R.B.*, 315 U. S. 100 (1942), the Court held an application for leave to introduce additional evidence before the Board, addressed to the Circuit Court of Appeals, would be acted on by the Court in its sound discretion.
 53. *International Union v. Eagle-Picher Mining and Smelting Co.*, 325 U. S. 335 (1945). In *J. I. Case Co. v. N.L.R.B.*, 321 U. S. 332 (1944),

not enough.⁵⁴ The employer who has failed to comply with an order to bargain must comply, even though he is assured that the bargaining agent no longer represents the majority.⁵⁵ The Court has also upheld the Board that its orders may be binding on the successors and assigns of an employer.⁵⁶ In 1944, the Supreme Court upheld a finding of the Board that newspaper carriers were employees and being such were entitled to the rights conferred in connection with collective bargaining.⁵⁷

WAR AND POST WAR LEGISLATION.

The Selective Training and Service Act of 1940. In 1940, the Congress enacted the Selective Training and Service Act of 1940.⁵⁸ Under Section 8 of the Act, any person inducted into the land or naval forces, upon application within forty days after his discharge, may apply for re-employment in the position or job he left upon his induction, if he is still qualified to perform the duties of such position, or unless the employer's circumstances have so changed as to make it *impossible* or *unreasonable*. This is mandatory on the United States Government, its Territories or possessions, or the District of Columbia, and on private employers. The policy is also recommended by the Congress to the States and subdivisions thereof. In case of refusal by any employer, the United States district attorney in the appropriate district is charged with the duty of acting as attorney for the discharged veteran, either in making an amicable settlement, or in the filing of any appropriate motion, petition or pleading, and the prosecution thereof, in the appropriate District Court of the United States, to specifically require such employer to comply with the provisions of the Act. The Di-

employer, when union had not represented majority of employees, made one year individual contracts with majority. Before contracts expired Union was certified as representing majority, and employer refused to bargain, relying on the individual contracts. The Court upheld the Board's order to bargain.

54. N.L.R.B. v. Ross Manufacturing Co., 118 Fed. (2d) 187 (CCA 7) (1941). N.L.R.B. v. Pilling & Son Company, 119 Fed. (2d) 32 CCA 3) (1941).
55. N.L.R.B. v. P. Lorillard Co., 314 U. S. 512 (1942).
56. Regal Knitwear Company v. N.L.R.B., 324 U. S. 9 (1945).
57. N.L.R.B. v. Hearst Publications Inc., 322 U. S. 111 (1944).
58. Act September 16, 1940, c. 720, 54 Stat. 885; 50 U.S.C.A., App. Secs. 301 et seq.

rector of Selective Service is also charged with the duty of establishing a Personnel Division with adequate facilities to give aid to veterans in replacement in their former positions, or in securing new positions for them.

It has been held that an action for wages may be maintained by the veteran in the appropriate court for the wages which he would have earned after he should have been re-employed.⁵⁹ The Court also found that the provisions of the section were not unconstitutional because of the vagueness or uncertainty of the word "impossible" or "unreasonable" as used in the act in reference to excusing re-employment.

However, the provisions of the section have been held not to require the payment of wages, or group insurance premiums, of an employee after he quits his employment and during the period he awaited induction.⁶⁰

It is the opinion of the Attorney General of the United States that civil service "war appointees" are not entitled to restoration to such civil positions after they have completed military service.⁶¹

In view of the duties imposed on the several District Attorneys, it is probable that the practicing attorney is concerned with the provisions of this section of the Act only in advising honorably discharged veterans of their rights, and in defending employers in actions instituted under the section.

This Act also extends to all persons inducted into the land or naval services the benefits of the Soldiers and Sailors Civil Relief Act of 1918,⁶² which was substantially re-enacted as the Soldiers and Sailors Civil Relief Act of 1940, as subsequently amended.⁶³

The War Labor Disputes Act. In 1943, the Congress enacted the War Labor Disputes Act.⁶⁴ This act provided procedure for the settlement of disputes, and for seizure of industrial facilities by the President, with governmental op-

59. *Hall v. Union Light, Heat & Power Co.*, 53 Fed. Supp. 817 (D.C. Ky.) (1944).

60. *Murphy v. Chrysler Corp.*, 306 Mich. 610, 11 N. W. (2d) 261 (1943).

61. 40 Op. Atty. Gen.—, 1943.

62. Act March 6, 1918, 40 Stat. 440; 50 U.S.C.A., App. Secs. 101-165.

63. Act October 17, 1940, c. 888, 54 Stat. 1178; 50 U.S.C.A., App. Sec. 501 et seq.

64. Act June 25, 1943, c. 144, 57 Stat. 163; 50 U.S.C.A., App. Sec. 1501 et seq. (Smith Connally Anti-Strike Act.)

eration of such facilities. Provision was made for the giving of notice by employees anticipating strike action, and the taking of a vote among the employees involved on the question of striking after a thirty day period. There is pending proposed legislation which, if enacted, would repeal the act. However, the power of seizure and operation still exists.

The Stabilization Act of 1942. Under the provisions of the Stabilization Act of 1942,⁶⁵ which will be terminated, unless extended, on or before June 30, 1946, the President is empowered to stabilize wages and salaries affecting the cost of living, and may provide for making adjustments in wages and salaries to the extent that he finds necessary to correct gross inequities. Most of the administrative procedure and regulation created under the act, and operative during the war years, have been abandoned since the surrender of Japan, but the power still exists.

INDIANA DEVELOPMENTS

JUDICIAL DECISIONS. In 1939, the Supreme Court of Indiana had considered a case where an outside union sought to compel an employer to sign a closed shop contract, whereby his employees would be compelled to join the union. The Court held that lawful picketing by a labor union cannot be utilized to accomplish an unlawful purpose.⁶⁶ However, in 1941,⁶⁷ the Supreme Court of Indiana held that picketing of mines by union men who were not employees of the mine, when conducted peacefully, could not be enjoined, and to do so was a denial of the right of free speech. The Court cited *Milk-wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 61 Sup. Ct. 552, 85 L. Ed. 836, 136 A.L.R. 1200 (1941); *American Federation of Labor v. Swing*, 312 U.S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855 (1941); *Thornhill v. Alabama*, 312 U.S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940); and *Senn v. Tile Layers Union*, 301 U.S. 468, 57 Sup. Ct. 857, 81 L. Ed. 1229 (1937). The Court obviously believed that the cited cases required it to overrule the Roth case. In 1943, the Court again ruled that picketing by an outside union in

65. Act October 2, 1942, c. 578, 56 Stat. 765; 50 U.S.C.A., App. Secs. 961 et seq.

66. *Roth v. Local Union No. 1360*, 216 Ind. 363, 24 N. E. (2d) 280 (1939), and cases cited.

67. *Davis v. Yates*, 218 Ind. 364, 32 N.E. (2d) 86 (1941).

an effort to unionize the employees of the picketed employer could not be enjoined because of the right of free speech.⁶⁸

The Court has also held that the Indiana courts have jurisdiction to enjoin the breach of a contract between an employer and a labor union where the employees were parties and the union was not a party, but that a court of equity would not decree specific performance of the agreement in the contract to submit to arbitration of damages for breach of the contract.⁶⁹

In 1944, the Indiana Supreme Court found that the refusal of an oil company to sell gasoline to a union member who was violating a union rule concerning closing hours was not a part of a combination in restraint of trade in violation of law,⁷⁰ because the refusal was not by reason of the fact that the person seeking relief was not a member of the "combination or association," but because of the violation of rules by the member. The Court also affirmed the right of the union to peacefully picket the premises, since no fraud or violence was involved.⁷¹

The Indiana Supreme Court has also held that the courts will not interfere with a reasonable interpretation of the rules and regulations of a trade union by its officers, so long as such interpretation does not amount to regulation of or control generally the public policy expressed "by the laws of the land."⁷²

ADMINISTRATIVE OPINIONS. In an opinion of the Attorney General, no law prevents governmental employees from joining a trade union. However, there is no authorization in any statute for collective bargaining between a governmental unit and its employees, or for collective bargaining between a governmental unit and a union,⁷³ if the agreement growing out of such negotiations be construed as a contract, on the theory that a member of the union authorizes his agents, the union officers, to enter into a contract binding

68. *Local Union No. 1460, Retail Clerks Union v. Peaker*, 222 Ind. 209, 51 N.E. (2d) 628 (1943).

69. *Janalene Inc. et al v. Burnett*, 220 Ind. 253, 41 N. E. (2d) 942 (1942).

70. *Ind. Stat. Ann.*, 1933, Sec. 23-107 Burns.

71. *Cass v. Continental Oil Co.*, 222 Ind. 224, 52 N.E. (2d) 614 (1944).

72. *Louisville and Nashville R. R. Co. v. Miller*, 219 Ind. 389, 38 N. E. (2d) 239 (1942).

73. *Op. Atty Gen.*, 1944, p. 224.

on the individual members of the union, for their own benefit, and also for the benefit of third parties who might subsequently become members of the union. Where merit or civil service provisions are mandatory, as in the State Personnel Act, or in cases where competition is required, such a possibility is precluded. It is the opinion of the Attorney General that until the legislature specifically provides for the making of such agreements, they would be *ultra vires* and of no legal force.

LEGISLATION.

A 1941 act⁷⁴ amends previous legislation and provides the terms and conditions for the hiring of miners, and the exceptions to such hire. A 1943 act⁷⁵ exempts operators of mines, quarries, or manufacturing plants owned by the United States, or any agency thereof, from filing bond with the Clerk of the Circuit Court to insure the payment of wages of employees. Another 1943 act⁷⁶ confers upon the employees of strip coal mines a miner's lien for wages. Legislation has also been enacted⁷⁷ providing for the posting of a no-lien contract, if laborers are not to have a lien on the real estate on which work is done. Two 1945 acts both purport to amend a 1943 act⁷⁸ concerning the employment of girls. The 1943 act provided for maximum hours of work for boys and girls between 16 and 18 years of age with an eight hour day and six day week, except those engaged in farm labor, or domestic service, or as pin boys in bowling alleys or newspaper carriers and that, aside from those exceptions, none should be employed prior to 6:00 A.M. or after 7:00 P.M. Acts 1945, Ch. 31, p. 52 amending the 1943 Act, authorized the employment of girls between the ages of 16 and 18 until 10:00 P.M. This act was approved February 20, 1945, and carried no emergency clause. Acts 1945, Ch. 314, p. 1391, amending the same section, created substantially the same authorization. Chapter 314 had an emergency clause and took effect March 7, 1945. Under the decision of *Metsker v. Whitsell*, 181 Ind. 126, 103 N.E. 1078 (1914), the Supreme Court under similar

74. Acts 1941, Ch. 51, Ind. Stat. Ann., 1943 Supp., Sec. 28-518 et seq. Burns.

75. Acts 1943, Ch. 180, Ind. Stat. Ann., 1943 Supp., Sec. 40-112 Burns.

76. Acts 1943, Ch. 246, Ind. Stat. Ann., 1943 Supp., Sec. 46-1514 Burns.

77. Acts 1943, Ch. 187, Ind. Stat. Ann., 1943 Supp., Sec. 43-701 Burns.

78. Acts 1943, Ch. 155, Ind. Stat. Ann., 1943 Supp., Sec. 28-521 n. Burns.

facts established a rule which would require that Ch. 314 be enforced and Ch. 31 not be enforced. Another 1945 act suspended all laws respecting days and hours within which women may be employed for the duration of the war or the duration of the contract made by any industry producing materials, or equipment, or rendering service in aid of the war program, but not beyond March 15, 1947.⁷⁹ All such laws were retroactively suspended to December 7, 1941.

An act of 1941⁸⁰ provides for the payment by an employer of earnings of deceased employees, up to \$150.00, to designated next of kin, without administration.

In 1941 comprehensive amendments were made to the Indiana Employment Security Act,⁸¹ relating to benefits, claims, contributions, and the rights and benefits of those entering military service. Again in 1943, the Act was extensively amended.⁸² In 1945, additional amendments were made.⁸³

In 1941, a State Personnel Merit System was created,⁸⁴ providing an employment system resembling civil service. Provision was made to extend the benefits of the Act to employees of political subdivisions of the State. In 1943,⁸⁵ sections 4 and 5 of the original act, creating a Board and the office of Director, were repealed, and new provision made therefor. Additional amendments were made in 1945,⁸⁶ in which veterans were given preference.

In 1943 the Workmen's Occupational Disease Act⁸⁷ was amended, and rates of compensation changed,⁸⁸ in case of the death of the employee. Burial benefits were provided.

79. Acts 1945, Ch. 23, p. 39.

80. Acts 1941, Ch. 184, p. 555; Ind. Stat. Ann., 1943 Supp., Sec. 6-1514 Burns.

81. Acts 1941, Ch. 277, p. 735; Ind. Stat. Ann. 1943 Supp. Secs. 52-1502 to 52-1508; 52-1510 to 52-1518, 52-1520 to 52-1523, all inc. Burns.

82. Acts 1943, Ch. 286, p. 805; Ind. Stat. Ann. 1943 Supp. Secs. 52-1502 to 52-1510; 52-1514 to 52-1520, all inc. Burns.

83. Acts 1945, Ch. 315, p. 1393, amending Ind. Stat. Ann. 1943 Supp., Secs. 52-1512 to 52-1514, inc., Burns.

84. Acts 1941, Ch. 139, p. 387; Ind. Stat. Ann. 1943 Supp., Sec. 60-1301 et seq.

85. Acts 1943, Ch. 101, p. 304; Ind. Stat. Ann. 1943 Supp., Secs. 60-1304; 60-1305 Burns.

86. Acts 1945, Ch. 287, p. 1266, amending Ind. Stat. Ann., 1943 Supp., Secs. 60-1313; 60-1324; Acts 1945, Ch. 153, p. 354, amending Ind. Stat. Ann. 1943 Supp., Sec 60-1319 Burns.

87. Ind. Stat. Ann. 1940 Repl. Sec. 40-2201 et seq. Burns.

88. Acts 1943, Ch. 115, p. 364, amending Ind. Stat. Ann. 1943 Supp., Secs. 40-2207; 40-2211 Burns.

Two important amendments from the viewpoint of labor were made to the Workmen's Compensation Act in 1945. The first⁸⁹ increased the compensation payments for medical and hospital care, and provided for the division of compensation into shares for the dependents of a deceased employee, and for payment to partial dependents. The second⁹⁰ provided that the employer cannot be relieved of his obligation under the act by any contract, rule, regulation or device. The status of an employee receiving a permanent injury after a previous permanent injury, or the aggravation of a previous injury, is clarified.

In 1945 the legislature enacted what may be termed a fair employment practice act.⁹¹ The act set out the policy of the state against discrimination, a comprehensive list of definitions, gave the commissioner of labor the power to appoint employees to carry out the purpose of the act, and the power to assist in bringing about the removal of discrimination in regard to hire or tenure, or terms or conditions of employment because of race, creed, or color. The act ordered the commissioner to make a study and to report to the legislature, authorized him to receive and investigate complaints of discrimination, created an advisory board of nine members to advise him, *and provided no remedy whatsoever if discrimination is found.*

89. Acts 1945, Ch. 188, p. 580, amending Ind. Stat. Ann. 1940 Repl. Secs. 40-1213; 40-1225; 40-1227; 40-1401; 40-1402; and 40-1405 Burns.

90. Acts 1945, Ch. 284, p. 1261, amending Ind. Stat. Ann. 1940 Repl. Secs. 40-1215; 40-1305 Burns.

91. Acts 1945, Ch. 325, p. 1499.