Conclusion

Whatever may be the constitutional fate of Indiana's anti-hate act, it is difficult to refute the merit or deny the applicability of these words of the late Mr. Justice Brandeis:

"Those who won our independence believed that . . . without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that public discussion is a political duty; and that this should be a fundamental principle of the American Government. . . .

"No danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."[85]

And ponder the words of Chafee:

"The danger is not in the suppression of any particular doctrine or group, but in the very existence of suppression . . . The suppression of opponents has the same delightful fascination in our day that cutting off head had in the French Revolution. But the moderate republicans who first rejoiced in that method soon found it employed by their opponents, and the control of the guillotine shifted from group to group, of increasingly extreme views, until finally the conservatives seized it and beheaded Robespierre."[86]

THE ANTI-STRIKE ACT

Chapter 341 is designed to prevent disruption of public utility services resulting from strikes, slowdowns, lockouts or similar work stoppages in the electric, gas, water, telephone or transportation industries.[1] Strikes are prohibited

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actment of the statute cannot alone establish the facts which are essential to its validity." For complete concurring opinion see pp. 372-380 of the report.

85. Concurring opinion in Whitney v. California, 274 U.S. 351, 375, 377 (1926).

86. Chafee, Free Speech in the United States (1940), p. 527. Cf. Thornhill v. Alabama, 310 U.S. 88, 97 (1940).

1. The act has been informally interpreted as not being applicable to municipally owned utilities in view of the construction that a statute must be in terms applicable to the sovereign or its po-

and compulsory conciliation and arbitration are substituted. The Act provides for the appointment of (a) a panel of 10 persons to serve as Conciliators and (b) a panel of 30 persons to serve as members of Boards of Arbitration.

In the event of a bargaining stalemate between one of the specified employers and its employees, a Conciliator is appointed by the Governor upon the petition of either party. In the event no settlement is reached within 30 days,[2] the Conciliator reports this fact to the Governor who then selects three members from the Panel of Arbitrators to sit as a Board of Arbitration.[3]

The Board of Arbitration holds hearings, makes findings of fact and is empowered to interpret the existing contract, or if none exists, to establish, within 60 days, the terms of a contract fixing the wages or conditions of employment which are in dispute.[4] The findings, decision and order of the Board are filed in the office of the Clerk of the Circuit Court wherein the dispute arose or in any county where the employer operates or maintains an office. The date of filing is the efective date of the order and it is effective for one year, subject to modification by agreement of the parties.

Judicial review, when desired, must be taken within 15 days of the filing by petition to the Circuit Court of any county where the employer has an office or place of business. Judicial review is limited to the following statutory grounds: (a) that the parties were not given a reasonable opportunity to be heard, or (b) that the Board of Arbitration exceeded its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion or other unlawful means. The normal rules of civil procedure concerning summons and change of venue from county or judge are retained. Reversal of the order of the Board is confined to the statutory grounds given above.[5] In the event of reversal, the Governor must appoint another Board of Arbitration or attempt further conciliation.

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litical subdivisions. U.S. v. United Mine Workers of America, 67 S. Ct. 677 (U.S., 1947). Further, there is no righht on the part of municipal utilities to enter into collective bargaining agreements, Ops. Att'y Gen., Ind. (1944) p. 224.

2. An additional 30 days may be granted by the Governor.
3. The act also permits 2 ex-officio members, one designated by each party to the dispute to sit on the Board.
4. See § 10 of the Act.
5. Ind. Acts 1947, c. 365, regulating proceedings, orders, determinations, and judicial review of state administrative agencies is

Violation of the Act by any party constitutes a misdemeanor and is amenable by fine of no less than five hundred dollars ($500) or more than twenty-five hundred dollars ($2500) and imprisonment for not more than six months.[6] No attempt is made to (a) make the union liable as a legal entity or (b) impart liability upon its officers for action not amounting to active participation or encouraging such unlawful action.[7] The Act is directed toward concerted action to stop work in the specified industries and specifically exempts the individual's right to cease employment. It further prohibits any judicial order compelling an individual to render labor or services. Any person adversely affected by violation of the act may restrain such violation by petition to the Circuit Court of the county in which the violation occurs.[8]

Statutes with a parallel objective have been recently considered and passed by Congress[9] and by other states,[10] notably New Jersey[11] and Virginia.[12] These statutes, however, provide different methods of arbitration and enforcement when conciliation and arbitration fail.[13]

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applicable to the Board of Arbitration proceedings since the Board is not expressly exempted. Section 18 of c. 365 provides for judicial review "exclusively upon the record.."

6. See Ind. Acts 1947, c. 341, § 13.
7. Cf. United Brotherhood of Carpenters and Joiners of America v. U.S., 67 S. Ct. 775 (U.S., 1947).
8. The "Little Norris-LaGuardia Act" is made inapplicable in this situation. Ind. Stat. Ann. (Burns, 1933) §§ 40-501 to 514.
9. Taft-Hartley Act, H.R. 3020, passed 23 June 1947.
10. See 39 P.U. Fort, 34, 276, 687 (1947).
11. N.J. Laws 1946, c. 38, amended by N.J. Laws, 1947, cc. 47 and 48; 3 P.H. Labor Serv. ¶ 47,522, 2 A. C.C.H. Labor Serv. N.J. 42,503.
12. Va. Laws 1947, c. 9, 3 P.H. Labor Serv. ¶ 47,648, 2 A. C.C.H. Labor Serv. Va. 43,406 et seq.
13. Under the New Jersey Act, in the event of failuure to agree to conditions of employment and no submission to arbitration, both parties choose Public Hearing Panel of 3 members who hold public hearings and submit findings to the Governor. If either party refuses to abide by the recommendation of the Panel, and if in the opinion of the Governor, it interferes with public health, etc., the Governor seizes and operates for the state. Upon settlement the plant is returned. See (1946) 59 Harv. L. Rev. 1002.

Under the Virginia act, either party gives notice to the Governor, who calls a conference. If no agreement after a second conference and either party feels it is useless to further negotiate or refuses to do so, the Governor is notified and he requests arbitration. If the parties refuse, the Governor then seizes the industries. They are returned when in a position to resume normal operation. See, (1946) 32 Va. L. Rev. 955.

The following major legal issues are raised concerning the validity of the Act: (1) its validity in the light of possible conflict with federal legislation, (2) federal constitutionality under the 13th and 14th amendments, and (3) state constitutionality with reference to (a) separation of powers and (b) the legislative power to regulate judicial review.

1. Conflict with federal legislation.

Limitations upon the state power to regulate are dependent upon: (a) express provisions of the Federal Constitution,[14] (b) the exclusive federal nature of the subject matter[15] and (c) whether the federal government has acted in a field of concurrent jurisdiction to the exclusion of the state.[16] Consideration of the Indiana act falls within the latter classification since the federal power in this field stems from the Commerce Clause[17] which has been interpreted to permit some state regulation of 'local' matters.[18]

State regulation in the face of federal action within a concurrent field is void where there is a direct conflict with the federal regulation on the subject.[19] Also, where enabling authority to act under federal legislation is unexercised, state authority is limited to parallel action,[20] however, it must not "so deal with matters left to its control as to stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[21]

Considering the Indiana Act in the light of federal legislation in the field, two problems are raised: first, conflict with the Railway Labor Act[22] as applied to those transportation companies falling within its purview and, secondly, conflict with the National Labor Relations Act as amended[23] in the remaining public utility fields covered by the Indiana Act.

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14. E.g., the power to levy import and export taxes, to make treaties, etc.
15. Hines v. Davidowitz, 312 U.S. 52 (1941).
16. Bethlehem Steel Co. v. New York Labor Rel. Bd., 67 S. Ct. 1026 (1947).
17. N.L.R.B. v. Jones & Laughlin Steel Corp., 310 U.S. 1 (1937).
18. Cooley v. Bd. of Wardens of Phila., 12 How. 299 (U.S. 1851).
19. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148 (1942).
20. Parker v. Brown, 317 U.S. 341 (1943).
21. Bethlehem Steel Co. v. N.Y. Labor Rel. Bd., n. 16, supra. at 1030; Cf. Hill v. Fla., 325 U.S. 538 (1945).
22. 45 U.S.C., § 151 et seq.
23. 29 U.S.C. § 151 et seq. and Taft-Hartley Act, HR 3020, passed 23 June 1947.

It is clear that the conciliation and mediation measures of the Railway Labor Act supersede the Indiana provisions inasmuch as Congress has pre-empted this field.[24] The Railway Labor act, however, does not provide for compulsory arbitration nor does it prohibit strikes in the event of the failure to reach a settlement.[25] It is possible that the Indiana Act, in providing for compulsory arbitration and refusing the right to strike, would find application to railroads under the Railway Labor Act, if at all, subsequent to the refusal of the parties to submit the dispute to the Railway Mediation or Adjustment Board.

In the second category, i.e., possible conflict with the National Labor Relations Act as amended, in the remaining industries covered by the act, the basic problem presented is the conflict with the "purposes and objectives"[26] of the federal legislation rather than that of direct conflict. Inasmuch as the Supreme Court's interpretation and construction of the Congressional intent in enacting this legislation[27] ultimately determines the validity of the Indiana Act, it is feasible pede or diminish the right to strike. One rule of concould be sustained or defeated.[28]

Section 13 of the National Labor Relations Act provides that nothing therein shall be construed to interfere with, impede or diminish the right to strike. (Under) One rule of struction utilized by the Supreme Court, that "any concurrent state power that may exist is restricted to the narrowest of limits"[29] would indicate that the Indiana Act would fall as being in conflict with the "purposes and objectives" of the National Labor Relations Act. The above provision of the National Labor Relations Act, however, does not purport to grant the right to strike. It is merely a negative restric-

24. 45 U.S.C. § 152 (10).

25. Erie R.R. v. N.Y., 233 U.S. 671 (1914); cf. Railway Mail Assn. v. Corsi, 326 U.S. 88 (1945).

26. See n. 21, supra.

27. The question of Congressional intent in passing the National Labor Relations Act was raised but not decided in A.F.L. v. Watson, 327 U.S. 582 (1946).

28. "The line of demarcation (between state and federal power) 'exists' only in the sense that it lies somewhere at a given time; it is impossible to draw the line without reference to a specific time. You know where it was yesterday but only litigation can determine where it will be tomorrow," B. W. Levit, "Federalism, Centralization and the States," (1944) 19 Calif. S.B.A.J. 73, 85.

29. Hines v. Davidowitz, 312 U.S. 52, 69 (1941).

tion upon the construction of the National Labor Relations Act.

Notwithstanding the National Labor Relations Act, it has been judicially determined that some state action is permitted.[30] The state may regulate employee and union practices and behavior in prohibiting violence and regulating strike conduct.[31] Further, "a state statute will be condemned as in conflict with national legislation only if the conflict is clearly shown."[32] It could be further argued that the policy of the Indiana Act is parallel to that of the Taft-Hartley amendment to the National Labor Relations Act in regulating strikes affecting the public interest.

2. Federal Constitutionality.

The Act does not purport to restrict the right to picket, therefore, no problem is raised concerning restraint of freedom of speech.[33] The Act specifically preserves the individual's right to cease employment.[34] No problem of conflict with the 13th Amendment is presented since, as individuals, one or many may leave work.[35] The criminal penalty attaches only when one induces or agrees with others to cease employment in concert.

The remaining federal constitutional issue presented is the possible contention that the Act restricts the individual's freedom of contract and right to strike.[36] In a 1925 case in-

30. Hotel and Restaurant Employees Int. Alliance v. Wisc. Employ. Rel. Bd., 315 U.S. 437 (1942); United Elec., Radio and M.W. v Westinghouse, 65 F. Supp. 420 (E.D. Pa. 1946).

31. Hotel and Restaurant Employees Int. Alliance v. Wisc. Employ. Rel. Bd., n. 30, supra; Allen-Bradley Local U.E.R.M.W. v. Wisc., Employ. Rel. Bd., 315 U.S. 740 (1942); cf Fashioncraft v. Halpern, 313 Mass. 385, 48 N.E. (2d) 1 (1943).

32. Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 467 (1945).

33. Cf. Thornhill v. Ala., 310 U.S. 88 (1940).

34. Section 15 provides, "Nothing in this act shall be construed to require an individual employee to render labor or service without his consent, or make illegal the quitting of his labor or service or the withdrawal from his place of employment in concert or by agreement with others . . . "

35. People, by Keyes, Att'y. Gen. v. United Mine Workers, 70 Colo. 269, 201 Pac. 54 (1921).

36. The Supreme Court in 1923-25 declared unconstitutional, in its application to the meat packing industry, a Kansas act similar to the Indiana Act. Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522 (1923); 267 U.S. 552 (1925). The case is of doubtful value today in view of the fact that it was decided in the hey-day of substantive due process which has since been severely limited by the Supreme Court. Also decided under

volving a Kansas statute similar to the Indiana Act, the Supreme Court upheld a conviction for violation of the act in inducing a strike which was illegal under both that act and the common law.[37] The Court went on to say that "Neither the common law, nor the 14th amendment confers the absolute right to strike."[38] While the right to strike is recognized as a privilege and has been removed from the common law crime of conspiracy, it has not yet been given the status of a constitutional guarantee.[39]

In view of the tendency of the Supreme Court to uphold state exercise of police power[40] when not in conflict with federal legislation or federally reserved constitutional prerogatives, coupled with the dormancy of substantive due process[41] and the impotency of the contract clause,[42] it is believed that the Act would not be held unconstitutional upon federal grounds.

3. State Constitutionality.

Only two principle issues of state constitutionality are raised by the Act. The delegation of functions of a judicial nature to an administrative body presents what is by now an academic question. The establishment of administrative bodies with quasi-judicial functions has long been upheld in Indiana.[43]

Section 12 of the Act, however, purports to make the decision of the Circuit Court, on review, final. In view of

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the Kan. Act were: Dorchy v. Kansas, 264 U.S. 286 (1924); Dorchy v. Kansas, n. 37, infra.

37. Dorchy v. Kansas, 272 U.S. 306 (1926).

38. Id at 311; See also Wilson v. New, 243 U.S. 332, 353 (1917).

39. Cf. N.L.R.B. v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939).

40. West Coast Hotel v. Parrish, 300 U.S. 379 (1937); Nebbia v. N.Y., 291 U.S. 502 (1934); Parker v. Brown, 317 U.S. 341 (1943); So. Carolina State Highway Dept. v. Barnwell, 303 U.S. 177 (1938).

41. See, C. P. Curtis Jr., "Due, and Democratic Process of Law," (1944) 44 Wisc. L. Rev. 39.

42. Home Bldg. and Loan Assn. v. Blaisdell, 290 U.S. 398 (1934); Veix v. Sixth Ward Bldg. & Loan Assn., 310 U.S. 32 (1940); East New York Savings Bank v. Hahn, 326 U.S. 230 (1945).

43. Blue v. Beach, 155 Ind. 121, 56 N.E. 89 (1900) [Public Health]; Financial Aid Corp. v. Wallace, 216 Ind. 114, 23 N.E. (2d) 472 (1939) [Banking]; cf. Wallace v. Feehan, 206 Ind. 522, 190 N.E. 438 (1934) [Dept. of Conservation] Dunn, Auditor, v. City of Indianapolis, 208 Ind. 630, 196 N.E. 528 (1935) [State Bd. of Tax Comm.]; In re Northwestern Indiana Telephone Co., 201 Ind. 667, 171 N.E. 65 (1930) [Public Service Comm.]; cf. Mo. ex rel. Haughey v. Ryan, 182 Mo. 349, 81 S.W. 435 (1904).

the prior decisions, it is clear that the legislature cannot so limit the right of judicial review.[44]

ADMINISTRATIVE LAW

Introduction. Chapter 365 regulates administrative adjudication and judicial review thereof. This act completes the establishment of uniform methods for administrative action.[1] The acts of 1945 and 1947 are the state counterpart of the Federal Administrative Procedure Act;[2] however, the procedure prescribed is considerably different. Chapter 365 is confined to "administrative adjudication"[3] which is defined as the determination by an agency of issues applicable to particular persons.[4]

The act applies to "all agencies of the state of Indiana,"[5] except those specifically exempted. By one interpretation this would mean only those agencies whose jurisdiction is co-extensive with the state.[6] By a more enlarged interpretation it could mean those agencies that receive their authority under the laws of the state and perform some of the governmental functions of the state.[7] The latter interpretation has been applied in cases deciding whether a person is holding more than one lucrative office at the same time.[8] But if that interpretation is used, the act would drastically change the administration of county and other local government. It

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44. Curless v. Wilson, 180 Ind. 86, 102 N.E. 497 (1913); Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N.E. (2d) 399 (1940); Square D Co. v. O'Neal, 72 N.E. (2d) 654 (Ind. 1947).
1. An act of 1945, governs administrative "rule making." Ind. Acts 1945, c. 120, Ind. Stat. Ann. (Burns, Supp. 1945) §§60-1501 to 60-1511.
2. 46 Stat. 324, 951 (1946), 5 U.S.C.A. §§1001 to 1011 (Supp. 1946). For model state act see, (1944) Handbook, Nat'l Conf. Comm'r Uniform State Laws, p. 329.
3. See, Fuchs, "Procedure in Administrative Rule Making" (1938) 52 Harv. L. Rev. 259.
4. Ind. Acts 1947, c. 365, §2. Compare with the more limited definition in the Federal act. Because of this difference in definition, the Indiana act will have a much wider application than the provisions of the Federal act dealing with "administrative adjudication."
5. Ind. Acts 1947, c. 365, §1.
6. See Ramsay v. Van Meter, 300 Ill. 193, 200, 133 N.E. 193, 195 (1921); People v. Evans, 247 Ill. 47, 555, 93 N.E. 388, 391 (1910).
7. See Ex parte Preston, 72 Tex. Cr. 77, 161 S.W. 115, (1913).
8. Chambers v. State, 127 Ind. 365, 26 N.E. 893 (1891); Foltz v. Kerlin, 105 Ind. 221, 4 N.E. 439 (1886); see Ops. Att'y. Gen., Ind. (1943) p. 693.