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THE LABOR INJUNCTION IN MINNESOTA

By Ben Chernov*

I. INTRODUCTION

A LTHOUGH labor unions have travelled far from the point in the first part of the nineteenth century where they were held to be criminal conspiracies, the exact status of labor's rights under the present state and federal statutes is still uncertain. The shift in attack on labor has been from criminal indictments brought by the government to injunctions at the suit of a private individual. The purpose of the recent statutory labor legislation has been an attempt to regulate the weapon of the injunction.

The purpose of this paper is to endeavor to trace the role of the labor injunction in Minnesota through its various stages, including the present statutory era, to the end of trying to predict its function in labor disputes today.

II. EARLY CASES AND STATUTES

Although involving interference with advantageous business relations rather than labor disputes, three early Minnesota cases have been of basic importance to the development of the use of the injunction in labor disputes. In Bohn Manufacturing Co. v. Hollis, an association of retail lumber dealers, pursuant to its laws, was about to stop dealing with plaintiff wholesaler, who had sold directly to a customer in a vicinity where a member retailer was doing business. The order granting the injunction was reversed on appeal.

2. The court has often decided the particular controversy before it as being within the rule of one of the above cases. Thus in Tuttle v. Buck, (1909) 107 Minn. 145, 119 N. W. 946, 22 L. R. A. (N.S.) 599, 16 Ann. Cas. 807, the court refused to apply the rule of the Bohn Case, (1893) 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319, that an act otherwise lawful is not unlawful because of its motive, to the facts in that case. In Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663, 1118, the court distinguished the Bohn Case, saying that in the former case there had been no pressure on third persons.
and the court held that since the purpose was lawful, the fact that several had combined to effect the purpose could make no difference, since "the number who unite to do an act cannot change its character from lawful to unlawful." The court further declared that it was not unlawful for a person, or group of persons, to refuse to work, or as in the present case, to refuse to deal with any man or class of men as he sees fit. Furthermore the court held that a bad motive could not make a lawful act unlawful.

In the case of Ertz v. Produce Exchange of Minneapolis, plaintiff brought an action for damages against an association of produce men for interference with his business. The association's demurrer to the complaint was overruled, and on appeal judgment was affirmed. The complaint alleged that the defendants had no legitimate interest to protect in agreeing and conspiring not to sell to the plaintiff, and in conspiring to induce customers of the plaintiff to cease dealing with him by informing them that the plaintiff could no longer obtain goods. The court distinguished the Bohn Case saying (a) that here defendants had a malicious purpose, since they had no legitimate interest to protect, and (b) that here the acts of the defendants extended to inducing third persons not to deal with the plaintiff, and therefore the defendants' acts were unlawful.

In Tuttle v. Buck, the plaintiff alleged in his complaint that the defendant banker had opened up a barber shop for the express purpose of ruining the plaintiff's business and that the defendant did this solely out of malice toward the plaintiff. The trial court overruled defendant's demurrer, and on appeal judg-

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6The court pointed out that in the Bohn Case the retail lumber dealers were justified in trying to prevent a wholesaler from obtaining their business.
7The court also pointed out that in the Bohn Case, (1893) 54 Minn. 223, 55 N. W. 1119, 21 L. R. A. 337, 40 Am. St. Rep. 319, the pressure brought to bear on the plaintiff was only by the association and even so, each retailer member was free to deal with the plaintiff and drop out of the association.
8The court is actually drawing a distinction between an agreement not to deal with a certain person by the parties interested (a primary boycott) and an agreement to induce third persons also not to deal with him (a secondary boycott), and holding the former to be lawful and the latter unlawful. For discussion, see (1917) 1 MINNESOTA LAW REVIEW 437.
9(1909) 107 Minn. 145, 119 N. W. 946, 22 L. R. A. (N.S.) 599, 16 Ann. Cas. 807. Here, as in the Ertz Case, (1900) 79 Minn. 140, 81 N. W. 737, 48 L. R. A. 90, 79 Am. St. Rep. 433, the action was at law for damages and not in equity for an injunction.
ment was affirmed. The court held that although an act taken by itself may be lawful, nevertheless when inspired by a bad motive it becomes an actionable tort. The court indicated a desire to limit the rule as stated in the *Bohn Case*, saying:

"It is not at all correct to say that the motive with which an act is done is always immaterial, providing the act itself is not unlawful," and further adding that "We are not able to accept without limitations the doctrine [announced in *Bohn Case*] above referred to. . . ."

There have been several Minnesota decisions dealing with interference with contracts of employment, as distinguished from the cases already discussed dealing with interference with plaintiff's business and advantageous relationships. In an early case\(^10\) a statute\(^11\) making it a misdemeanor for any employer to blacklist a former employee or in any way to "prevent, hinder, or restrain" such a person from obtaining employment elsewhere, was held valid against an objection that it was class legislation and in violation of the equal protection clause of the fourteenth amendment, since it applied equally to all employers. Another provision\(^12\) of the same statute making it a misdemeanor for two or more employers to agree, combine, or agree to combine for the purpose of preventing any person from getting employment by means of threat, promises, blacklists, etc., was given effect in two cases.\(^13\) The actions under this statute have been at law for damages. The question whether it would be a defense to a suit for an injunction that the act sought to be enjoined was also a crime was not considered in any of the above cases. In a later\(^14\) case, arising under a different criminal statute,\(^15\) it would seem that this fact would have made no difference.\(^16\)

There are several Minnesota cases dealing with interference

\(^{10}\) State ex rel. Scheffer v. Justus, (1902) 85 Minn. 279, 88 N. W. 759.
\(^{11}\) Mason's 1927 Minn. Stat., sec. 10378—next to the last sentence.
\(^{12}\) Ibid., third sentence.
\(^{13}\) Joyce v. Great Northern Ry., (1907) 100 Minn. 225, 110 N. W. 975; Carnes v. St. Paul Union Stockyards Co., (1925) 164 Minn. 457, 205 N. W. 630, discussed in (1926) 10 MINNESOTA LAW REVIEW 448. This is clearly so if there is an existing contract relationship, (1917) 2 MINNESOTA LAW REVIEW 71; (1921) 6 MINNESOTA LAW REVIEW 58; (1923) 7 MINNESOTA LAW REVIEW 254; (1928) 12 MINNESOTA LAW REVIEW 162. And the same is true if there is merely the prevention of the formation of a contract, Carnes v. St. Paul Union Stockyards Co., (1925) 164 Minn. 457, 205 N. W. 630. See discussion in (1928) 12 MINNESOTA LAW REVIEW 162.
\(^{15}\) Mason's 1927 Minn. Stat., sec. 10463.
\(^{16}\) Fitchette v. Taylor, (1934) 191 Minn. 582, 584, 254 N. W. 910 is to the same effect.
with contracts of employment not within the scope of the above mentioned statute.17 There is another statute18 which prohibits any person, corporation, firm, or agent or employee thereof, from discharging any employee or preventing employment from being obtained by reason of such person having engaged in a strike. Likewise it is provided that no person shall be required as a condition of obtaining employment to state his record or conduct in a previous strike.19 No case has ever arisen under these statutes.

"Yellow dog contracts" were subject to early legislation20 in this state. A yellow dog contract is an agreement exacted of an employee or one seeking employment whereby, as a condition of obtaining or retaining work, the employee agrees not to join any labor organization, and in the event that he does, that he will withdraw from employment. Such a contract when coupled with the injunction to prevent its breach is a powerful weapon against labor.21 In State v. Daniels22 it was held that such contracts could not be prohibited by any legislative enactment, and that in so far as the Minnesota statute had this effect, it was void. The court based its holding upon a decision by the United States Supreme Court23 in so far as24 that court held that a similar statute enacted by Congress violated the liberty of contract of employers under the fifth amendment.25 Two26 further attempts

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17 For complete discussion see Note (1928) 12 Minnesota Law Review 162.
19 Mason's 1927 Minn. Stat., sec. 4202.
20 Mason's 1927 Minn. Stat., sec. 10378, first sentence.
22 (1912) 118 Minn. 155, 136 N. W. 584.
24 Defendant Adair was indicted on two counts, (1) unlawful discrimination against an employee because of union membership, and (2) unlawful threatening of an employee with loss of employment. In State v. Daniels, (1912) 118 Minn. 155, 136 N. W. 584, the Minnesota court said that the question of threat and coercion had not been decided in the Adair Case, (1908) 208 U. S. 161, 28 Sup. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764, and that the question was still open in Minnesota. The court pointed out that coercion may exist under Mason's 1927 Minn. Stat. sec. 10431 as well as under Mason's 1927 Minn. Stat. sec. 10378, but that no such facts were shown here.
25 By the same reasoning the state statute is a violation of the em-
To prohibit yellow dog contracts have been made by the Minnesota legislature. The courts are not in accord in deciding the problem of when a contract relationship exists between an employer and employee\textsuperscript{27} so that an attempt to organize employees will amount to a breach of such contract.\textsuperscript{28}

Before treating the cases involving labor injunctions, it may be well to point out the effects of an injunction and a temporary restraining order on the activities of organized labor. Since the temporary restraining order is usually issued ex parte on the basis of affidavits of the applicant, the effect is often to place a check on practically all activities\textsuperscript{39} of labor until a motion for a temporary injunction may be heard, unless the restraining order by its terms has expired prior to such time. As has been pointed out,\textsuperscript{50} the effect of this is disastrous to organized labor, since it stops the strike before it has started, and since it creates public opinion against the strikers. Such criticism can no longer be applied to Minnesota courts, since the matter is now governed by statute.\textsuperscript{21} The temporary injunction\textsuperscript{32} may have a like effect on labor but usually will be more just, since both parties have been heard.

A case of basic importance in Minnesota labor law is \textit{Gray v. Building Trades Council}.\textsuperscript{33} Defendant union, in an effort to force plaintiffs, electrical contractors who employed non-union men, to accede to its demands, resorted among other things to the practice\textsuperscript{44} of threatening labor trouble to persons for whom plaintiff's liberty of contract under the fourteenth amendment.

\textsuperscript{27}See complete discussion in (1933) 17 \textit{MINNESOTA LAW REVIEW} 228.
\textsuperscript{28}At least the restraining order may be as broad as the applicant desires to have it, assuming he has affidavits in support thereof. Naturally the exact scope of such orders will vary with the particular case.
\textsuperscript{33}Cf. \textit{Currier & Sons v. International Moulders' Union}, (1921) 93 N. J. Eq. 61, 66. Also \textit{Interborough Rapid Transit Co. v. Lavin}, (1928) 247 N. Y. 65, 159 N. E. 863.
\textsuperscript{29}At least the restraining order may be as broad as the applicant desires to have it, assuming he has affidavits in support thereof. Naturally the exact scope of such orders will vary with the particular case.
\textsuperscript{44}The facts showed that defendant had caused the cancellation of two existing contracts of plaintiffs at which they were working, and had prevented the formation of a third contract.
tiffs worked if the plaintiffs were continued on the job. A broad injunction granted by the trial court was modified on appeal and sustained as modified. The court recognized that a strike to obtain better wages or otherwise better conditions is lawful, although there may be a resulting injury to plaintiffs, citing Bohn Manufacturing Co. v. Hollis. But the court felt the facts before it to be such as to make the acts of the defendants unlawful and a boycott, and therefore enjoinable as a conspiracy. The court, after holding the Bohn Case inapplicable to the facts, distinguished it from the Ertz Case on the ground that the former did not involve any pressure on third persons and so was not a boycott.

The injunction of the trial court was divided into three parts: (1) it enjoined the defendants from interfering with plaintiffs' business through the use of threats or intimidation of any kind against the customers or prospective customers of plaintiffs; (2) the same as (1), and in addition enjoined defendants from notifying customers or prospective customers that plaintiffs were unfair; and (3) the defendants were enjoined from entering the premises where the plaintiffs were employed for the purpose of interfering with plaintiffs' business, and to that end, from directing or notifying members of allied unions at work thereon to desist from work upon the said premises because of the fact that plaintiffs were employed there. On appeal it was held that the first section merely restrained a boycott, and was therefore proper. The second section was held too broad, in so far as it prohibited defendants from notifying plaintiffs' customers or prospective customers that plaintiffs were unfair. Whether or not a notification that plaintiffs are "unfair" involves a threat or intimidation so as to be within the first section was disposed of by the court on the ground that the findings based on the complaint did not support such a conclusion. The court further left the

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35 Mason's 1927 Minn. Stat., sec. 10055-(5) would seem applicable; still it was not applied by the court. See infra, footnote 51 and text.

36 The court defined a boycott as being "a combination of several persons to cause a loss to a third person by causing others against their will to withdraw from him their beneficial business intercourse through threats that, unless a compliance with their demands be made, the persons forming the combination will cause loss or injury to him; or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts, which tend to violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs." The first part of the definition (italics added) was applied to the defendants in the case. The latter part of the definition seems never to have been applied in any case.

37 It is obvious that the Minnesota court uses "boycott" in the sense of a secondary boycott. See supra, footnote 8.
question open by saying that such a question can be decided only "from all the facts and circumstances of each particular case." The third section was likewise modified by the court to allow the defendants and their agents to refuse to deal with the plaintiffs and for that purpose to persuade members and associates to cease work and join their union. Defendants were allowed further to enter the premises where plaintiffs were at work to effect the above purpose, if it were done with the consent of the owner of the premises.

In *Scott Stafford Opera House Co. v. Minneapolis Musicians Association* plaintiff sought to enjoin the enforcement of a union rule by which no union member would play for plaintiff unless a certain number of union men were hired. The plaintiff alleged that it did not require so many musicians, that it had no dispute with any of the musicians, and that if the rule were enforced it would be unable to get any other musicians and therefore would be unable to conduct its performance. A demurrer to the complaint was sustained, and on appeal the order was affirmed, the court finding that the rule was beneficial to the members, that the purpose was lawful, and that the defendants could refuse to work for whomever they saw fit. As a result of this case it was at one time questioned whether there was any limit to the extent to which a union could pursue its purposes. On a similar state of facts, a Massachusetts court had held directly to the contrary.

In a sequel to the *Gray Case*, the Minnesota court in *Grant Construction Co. v. St. Paul Building Trades Council* was again faced with the troublesome problem of the point at which the activities of a union cease to be lawful and become a secondary boycott. A motion for a temporary injunction pending trial was refused, and on appeal the order was affirmed. The court stated that for purposes of review it must take the view of the

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38 The court indicated that there could be intimidation without threats of violence to either person or property. Such a guide is uncertain, and the question was again left unanswered by Hallam, J. in the Steffes Case, (1917) 136 Minn. 200, 161 N. W. 524, who applied the rule laid down in the *Gray Case*. See infra, pp. 765, 766.

39 (1912) 118 Minn. 410, 136 N. W. 1092.


41 (1918) 2 MINNESOTA LAW REVIEW 524.


43 (1917) 136 Minn. 167, 161 N. W. 520, 1055.

44 See footnote 37.
facts most favorable to the defendant since the refusal of the injunction by the trial court amounted to a finding that the allegations of plaintiff's complaint and affidavits in support thereof were not true in so far as denied. Accordingly the court found that although defendants had tried by various means to induce plaintiff contractor to employ only union men, no one act of the defendant had resulted in substantial damage to plaintiff, there was no threatened injury to be enjoined, and that the few and isolated interferences were not "important enough to warrant injunctive relief." The court held that the desire to strengthen the union was a justification for the defendant's activities, and therefore it was lawful for defendant to refuse to work for a subcontractor on a building who used only union men if the plaintiff was working or had worked on the same building with his nonunion men, citing as authority the Gray Case. The court recognized that generally an interference with a third person with whom defendant has no contract relation would be unlawful but that "conditions may be such as to furnish justification for such conduct." The justification might be found in the pursuit of a lawful object, even though the necessary result might be an injury to others.

In a second opinion, the court passed on two statutes raised by the plaintiff on appeal, but not mentioned in the first opinion. The court found that defendant was not guilty of a conspiracy

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45The same construction is adopted by the court in later cases, as will be pointed out.

46The facts showed that the defendants had refused to work on a building where plaintiffs had worked unless plaintiff be given no more work (plaintiff had already performed most of the work); that defendant had placed a lumber company on an unfair list for employing plaintiff company instead of union labor; that defendants on a few occasions had refused to work with a steam shovel and scaffold belonging to plaintiff and being used by another contractor.

47The court's stress on the facts as the basis for its decision and its desire to limit the decision to the facts is found in its statement (at p. 172), "We will do well to confine ourselves to the facts of this case, and determine only the rights of the parties arising from those facts."

48As to what a "lawful object" is, the court is not clear, but it does indicate that the test is broader than intent.


50Filed May 4, 1917. The first opinion of the court was filed Feb. 23, 1917.

51Mason's 1927 Minn. Stat. sec. 10055, provides that:

"Whenever two or more persons shall conspire:
(5) to prevent another from exercising any lawful trade or calling or from doing any other lawful act, by force, threats, intimidation . . .
(6) or to commit any act injurious to . . . trade or commerce
Every such person shall be guilty of a misdemeanor."

This appears to have been the first time this statute was passed on. See supra, footnote 35 and text.
nor was it guilty of a combination in restraint of trade. The court pointed out that a statute expressly exempts a peaceable assembling by labor to raise wages from the operation of the conspiracy statute.

From some of the general language used in the first opinion it may perhaps be argued that the effect of the Grant Case was to make boycotts legal. Yet sufficient indications of a contrary intent of the court may be found. The court cautioned that it was confining itself to the facts of the case and was not attempting to define the limits of activities of labor in general. Furthermore, in holding the acts of the defendant to be lawful the court professed to base its decision squarely on the Gray Case. In the light of such qualifying words, it is not safe to assume that the Minnesota court has legalized boycotts.

The question of the extent to which a union may banner an employer who refuses to employ union members was raised directly in Steffes v. Motion Picture Machine Operators Union of Minneapolis. Plaintiff appealed from an order denying his motion for an injunction pendente lite, and the court, in affirming the order, stated that it must take a view of the facts most favorable to the defendant. The plaintiff theater owner employed a non-union operator and threatened to discharge him if he joined the union. As a result, defendants employed a picket to banner plaintiff's place of business with a sign saying "Unfair to Organized Labor." The court found that it was lawful and justifiable for the defendant union to attempt to induce plaintiff to hire a union operator, and that to this end the defendants had the right to picket and carry the above banner as long as it was done reasonably and without malice, regardless of the resulting injury to plaintiff's business.

As to bannering, the court repeated the rule laid down in the Gray Case, saying that the words "unfair" when used in a banner may be lawful or not, depending on the circumstances. The

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52Mason's 1927 Minn. Stat. sec. 10463, prohibits agreements in restraint of trade, or which tend to limit the price of any article of trade. This is a criminal statute.
53Mason's 1927 Minn. Stat. sec. 10056.
54(1917) 1 MINNESOTA LAW REVIEW 437; (1920) 4 MINNESOTA LAW REVIEW 544.
55The court, after stating the holding in the Gray Case, (1903) 91 Minn. 171, 97 N. W. 663, 1118, said, "We adhere to this decision."
56(1917) 136 Minn. 200, 161 N. W. 524.
court admitted that such a “notification to customers that the plaintiff is unfair may portend a threat or intimidation, in which case it will constitute a boycott and is unlawful,” but added that a mere notification without more is not unlawful, since it is not a threat. Mr. Justice Hallam, in speaking for the court, also defined “unfair” to connote an unfriendliness on the part of the person so labeled toward organized labor, and nothing more. So once again the question of when an “unfair” banner portends a threat or intimidation was left open. Perhaps the court’s attitude is manifested in that part of the opinion where it refers to the right of a picket to use the streets.

Another case involving a similar question arose in Roraback v. Motion Picture Machine Operators Union. The facts were in dispute, the plaintiff claiming that defendant’s sole purpose in bannering the plaintiff’s place of business was to prevent the plaintiff from running his own machine, while the defendant claimed that the plaintiff had hired a non-union man to operate the machine and wanted a union operator to work with him, and that the right of the plaintiff to work at his own business was only one of the factors involved. Plaintiff’s motion for a temporary injunction having been denied, the court on appeal said it had to take the defendant’s allegations of fact as true. The actual disposition of the case was to affirm the order of the trial court, since it was found that on the basis of the facts as presented by the pleadings and the affidavits pro and con it could not be said that the trial court had abused its discretion.

In a very vigorous opinion the court recognized that the defendant had relied on the decision in the Steffes Case and had

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68But is not such a notification an implied threat to any business man who “breaks” the picket line? And is not the union policy of blacklisting such business man a well known fact? Quaere, whether the court would recognize this as a threat.

59(1921) 4 MINNESOTA LAW REVIEW 544, points out the problem. Cooper, The Fiction of Peaceful Picketing, (1936) 35 Mich. L. Rev. 73, concludes that practically all bannering is prohibited in most states despite statutes to the contrary.

60The court referred to the hired picket as a “pedestrian.”

61In Hanson v. Hall, (1938) 202 Minn. 381, 279 N. W. 227, defendant strikers had stopped trucks and cars on a public highway at night, causing the plaintiff truck driver to collide with one of the trucks so stopped by defendants. The defendants were held liable for damages caused to the truck. The court stated that while unions have the right to use the highways equally with others, such a right must be exercised in a legitimate and lawful manner and could not be used to impede the reasonable use of the highway by others.

62(1918) 140 Minn. 481, 168 N. W. 766.

63See supra, pp. 763 and 765 in same construction on appeal.
confined its acts to what the court had indicated was permissible in that decision, but then added that in order for the rule of the *Steffes Case* to apply the purpose of the defendant must be lawful.\(^6\) If the purpose was to prevent the owner from working at his own machine as plaintiff claimed, then the court announced that the *Steffes Case* would not apply, since no such issue was involved in that case. The court declared that,

"However far members of an organization may go in an attempt to force an employer to employ members of the organization, an attempt to force him to desist from working himself in his own business was an invasion of the rights secured to him by the constitution."  
[The Bill of Rights and the fourteenth amendment.]

Mr. Justice Hallam, concurring in the result, redeclared the rule he had laid down in the *Steffes Case*, saying that union members had a right to refuse to work with non-union men, and that they had

"a right in a proper and orderly manner to advise one another or the public that a certain employer does not employ union operators or that he insists in operating his own machines. It seems to me that the main question in the case is whether the conduct of defendant has amounted to more than that. If not, their acts have not been unlawful."  

Plaintiff's petition for a rehearing on the ground that defendant had violated the state anti-trust statute\(^7\) was denied,\(^8\) thus paving the way for the determination of this question in the *Wonderland Theater Case*.

In this case, *Campbell v. Motion Picture Machine Operators Union*,\(^9\) the question of a theater owner's right to operate his

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\(^6\) Compare Senn v. Tile Layers Protective Union, (1937) 301 U. S. 468, 57 Sup. Ct. 857, 81 L. Ed. 1229, where a contrary result was reached on similar facts.

\(^7\) The court also emphasized that to permit such action by the defendant union would lead to a result where no individual could undertake any enterprise which would involve personal work on the part of the owner. In Senn v. Tile Layers Protective Union, (1937) 301 U. S. 468, 57 Sup. Ct. 857, 81 L. Ed. 1229, the right to picket was said to be based on freedom of speech and therefore could not be unreasonably abridged. That there is a conflict between the above two fundamental rights is obvious; whatever way the balance be decided, its basic importance cannot be overlooked.

\(^8\) From this statement it would seem that a union may always inform the public of plaintiff's "unfair" attitude or policy, and that if no more than this be done, it is not unlawful. This would seem to eliminate the qualification previously placed on the right to picket that it must not "portend a threat or intimidation." See footnote 58.

\(^9\) Mason's 1927 Minn. Stat. sec. 10463.

\(^9\) The court said that this question could be better decided in a trial on the merits in the trial court.

\(^9\) Campbell v. Motion Picture Machine Operators Union, (1922) 151 Minn. 220, 186 N. W. 781.
own machine was again raised directly. But here the issue was presented in a different setting. The exact application of the state anti-trust statute prohibiting combinations in restraint of trade to labor unions had long been in doubt and was expressly left open in the Roraback Case; consequently the Campbell Case was chosen to serve as a test case. The facts as found by the majority of the court were that plaintiff owner, who had a contract with the defendant union, decided to operate the machine himself for purposes of economy, and to that end gave the proper notice of termination of the contract to the union, telling the latter that he would be willing to employ a union operator at union wages for part time relief. The union refused this arrangement and placed the plaintiff on the "We Do Not Patronize List" of the Trades and Labor Assembly, an association of local labor and trade unions of which defendant union was a member, and also published this fact in the official organ of the Assembly, along with other articles saying that plaintiff was unfair to labor, etc. The union also employed a picket to carry a banner reading "This Theater Unfair to Organized Labor" in front of plaintiff's theater.  

The trial court found plaintiff to be suffering irreparable injury and enjoined defendant and its members from "interfering with the patronage of plaintiff's theater by picketing or bannering it or by publishing statements in the Labor Review that plaintiff is unfair to organized labor, or by publishing in any other manner statements naturally tending to injure or restrain his business." On appeal the judgment was affirmed, the court saying that the injunction was justified by the law and facts. 

The first question raised under the anti-trust statute prohibiting agreements, trusts, combinations, etc., in restraint of trade, or agreements, etc., tending to limit, fix, control, etc. the price of any "article of trade, manufacture, or use," was as to the right of a private individual to an injunction restraining a violation of the statute. The majority decided this question in the affirmative, saying that regardless of the anti-trust law, such an injunction was clearly maintainable under a law enacted in 1917, if

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70See footnote 67.
71The duration of the picketing here seems to have reached a new high. It began shortly after Feb. 24, 1917, and except for a few weeks' interruption, lasted until the time of the trial of this action on Sept. 23, 1919.
72This was the official organ of the Minneapolis Trades & Labor Assembly and circulated to all its members.
irreparable injury is found and if there is no adequate remedy at law. The fact that the act enjoined would also be a crime if committed is immaterial. The rule for which the case is known is that a labor union is subject, as is any other combination, to the anti-trust laws. The court declared the case to be one of first impression in the state, saying that the question of the application of the anti-trust law to trade unions was not decided, even if mentioned, in two previous Minnesota decisions. The court pointed out the similarity between the state and federal laws, and applied the rule of the United States Supreme Court in the Danbury Hatters Case construing the federal act, as binding on it. To bring the present case within the prohibitions of the anti-trust statute, the court defined "trade" to include labor, and then further defined "trade" to include the theater business, saying that "trade has been used in its broadest sense and includes business of any kind in which a person engages for profit."

Treating the question of bannering, the court reiterated the rule of the Gray and Steffes Cases saying that a publication that plaintiff is "unfair" depends for its lawfulness upon the circumstances of each case. Here the majority found that defendant's purpose was to restrain plaintiff's trade, and that this was unlawful, and the publication being in furtherance of the unlawful combination, were also unlawful. The court did not discuss the implication of threat or intimidation from such a banner, but merely stated that since here it was done for the unlawful purpose of restraining plaintiff's business it was properly enjoinable.

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74 No decision in Minnesota ever has held a trade union as such to be itself a combination in restraint of trade.
75 State v. Duluth Board of Trade, (1909) 107 Minn. 506, 517, 121 N. W. 395, 23 L. R. A. (N.S.) 1260; Grant Construction Co. v. Building Trades Council, (1917) 136 Minn. 167, 161 N. W. 520, 1055, see supra, p. 765.
79 This decision would seem to make any act whereby a union attempts to exert pressure on plaintiff by causing a loss of business to the plaintiff by picketing, etc., as in Steffes v. Motion Picture Machine Operators Union of Minneapolis, (1917) 136 Minn. 200, 161 N. W. 524, and Roraback v. Motion Picture Machine Operators Union, (1918) 140 Minn. 481, 168 N. W. 766, to be an unlawful purpose under the anti-trust law. If this is so, this decision is very destructive of the interests of organized labor.
80 The court would seem to allow bannering if the only purpose were to notify the public of the controversy with plaintiff. But obviously there is always an accompanying purpose to restrain plaintiff's trade; and if this
This would seem to contradict the Steffes Case, although purporting to recognize it, since the bannering is allowed even under the Steffes Case only when the purpose is lawful; and by the majority opinion in the Campbell Case it seems that the purpose is unlawful when it is intended to restrain plaintiff's business. The attitude of the court would seem to support such an implication, although it may be argued and is to be hoped that the decision was limited to the situation where the pressure is exerted against plaintiff because he wishes to engage personally in his business.

Mr. Justice Dibell in a vigorous dissenting opinion, concurred in by Mr. Justice Hallam, argued that the anti-trust statute did not apply to labor unions. His conclusion was based on three grounds: (1) the history of the enactment of the statute, (2) the plain meaning of the statute itself, and (3) that by the terms of two other statutes, express exemptions are made for labor unions. It was also pointed out that the anti-trust statute was intended to complement art. 4, sec. 35 of the Minnesota constitution as amended in 1888, making a combination to monopolize food markets, etc., a conspiracy. Second, it was said that by the terms of the statute itself labor is not mentioned, and that labor clearly is not a commodity or article of trade or commerce. Finally, the dissent argued that by express provision unions are exempted from operation of the conspiracy statutes and are allowed to assemble peacefully for the purpose of cooperating to obtain

is true, then the purpose would always be unlawful by the test of the majority opinion.

The court said that the injunction against bannering the plaintiff as unfair, and against the publications in the Labor Review, did not deprive the defendants of freedom of speech, saying that here the words had become verbal acts and were enjoindable to the same extent as the use of any other means of force whereby property is wrongfully injured. Cf. Senn v. Tile Layers Protective Union, (1937) 301 U. S. 468, 57 Sup. Ct. 857, 81 L. Ed. 1229; Schuster v. International Ass'n of Machinists, (1938) 293 Ill. App. 177, 12 N. E. (2d) 50, 53-4. Furthermore the court seemed to lose no time in applying the 1917 Act so as to allow a private individual an injunction, despite the fact that no injunction was requested by either counsel in their briefs.

Compare the attitude of the court in Roraback v. Motion Picture Machine Operators Union, (1918) 140 Minn. 481, 168 N. W. 766.

Minn. Laws 1917, ch. 493, sec. 1, Mason's 1927 Minn. Stat., sec. 4255; Mason's 1927 Minn. Stat., sec. 10056.

"Any combination of persons . . . to monopolize the markets for food products in this state . . . is hereby declared to be a criminal conspiracy and shall be punished in such manner as the legislature may provide."

The dissent cites State v. Duluth Board of Trade, (1909) 107 Minn. 506, 517, 121 N. W. 395, 23 L. R. A. (N.S) 1260, as holding to the above effect. On this point it is in express disagreement with the majority opinion.

Mason's 1927 Minn. Stat., sec. 10056.
an increase in wages, and that by a statute enacted after the anti-trust act, labor is declared not to be "an article or commodity of commerce." The dissent further urged that even under the common law rules the injunction granted was too broad, and that the prohibitions against publications in the Labor Review and peaceful bannering merely setting forth the facts of the dispute to the public should be omitted.

In Minnesota Stove Co. v. Cavanaugh, certain unlawful activities of strikers were restrained as exceeding the rights of labor even in a situation clearly involving a dispute between an employer and his employees. A motion for an injunction pendente lite was granted by the court on the basis of the complaint and answer, affidavits pro and con, and certain records of the municipal court. It appeared that the defendants had threatened injury to those who continued to work and to their families, and that three of the defendants had pleaded guilty in municipal court to charges of abusive language tending to provoke assault. On appeal the order was affirmed as modified, the injunction being sustained except in so far as it restrained defendants from "compelling or inducing or attempting to compel or induce employees of plaintiff to refuse or fail to perform their duties as such employees;" the court held that such peaceful persuasion to induce others to quit plaintiff's employ was lawful.

The first comprehensive legislative attempt to define the rights of organized labor in Minnesota was made in 1917. Although more specific than the federal law, the Minnesota Act, like other state laws, was based in part on sections 6 and 20 of the Clayton Act passed by Congress in 1914.

By section 1, the right of labor to organize is clearly de-
clared, and it is stated that it shall not be unlawful for working
men and women to organize into unions for purposes of raising
wages or shortening hours or bettering conditions of the members
of such unions, or for carrying out their legitimate purposes as
freely as they could do if acting singly.

By section 2, the jurisdiction of the court to issue an injunc-
tion in cases concerning disputes over terms or conditions of
employment is limited to cases where it is necessary to prevent
irreparable injury to property or to a property right of the per-
son making the application, regardless of whether the dispute is
between an employer and employee or employees, or between
employees, or between employees and persons seeking employment.
As amended in 1929, section 2 now specifies that the showing of
irreparable injury must be made in court after a notice and
hearing. Section 2 was further amended by adding to the last
sentence a proviso allowing a temporary restraining order to
issue without such notice and hearing "upon a proper showing that
violence is actually being caused or is imminently probable on the
part of the person or persons sought to be restrained," and pro-
vided that all persons be equally restrained.

By section 3, the court is prohibited from enjoining certain
enumerated acts which are declared not to be unlawful whether
done "singly or in concert," including the following acts: ending
any employment relationship and ceasing to work, and persuading
others to do so by peaceful means; going to any place where
persons are at work to so persuade them to cease work; ceasing
to patronize any party to such dispute; peacefully assembling in
a lawful manner for a lawful purpose.

By section 4, it is declared that the "labor of a human being
is not a commodity or article of commerce" and that the right

Compare 2 Mason's U. S. Code, tit. 29, sec. 52.
4260-7-8 (Minnesota Labor Disputes Injunction Act 1933), and also Minn.
Laws 1939, ch. 440, sec. 14, Mason's Minn. Stat., 1940 Supp., secs. 4254-34
(Minnesota Labor Relations Act). See supra, footnotes 29 and 30.
97Minn. Laws 1917, ch. 493, sec. 4, Mason's 1927 Minn. Stat., sec. 4258.
In section 6 of the Sherman Act, 2 Mason's U. S. Code, tit. 15, 2 U. S. C. A.
tit. 15, it is likewise declared that "labor of a human being is not a commodity
or article of commerce," and that nothing in the anti-trust laws shall be
construed to forbid labor organizations instituted for purposes of self help,
nor any such organization from lawfully carrying out its objects if legiti-
mate; and that such organizations and members thereof shall not be con-
strued to be illegal combinations or conspiracies in restraint of trade under
the anti-trust laws.
of the laborer to enter into any employment relationship or withdraw therefrom "shall be held and construed to be a personal, and not a property right;" that in all cases involving a violation of an employment contract by either the employer or employee the parties shall be left to their remedy at law; and that no injunction shall issue unless necessary to prevent irreparable damage to property or a property right of either.

By section 5, it is declared that no person is to be indicted for entering into any agreement, combination, etc., for the purpose of increasing wages or bettering conditions, etc., "unless such act is in itself forbidden by law if done by a single individual."

By section 6, the power of the courts to issue injunctions in cases of violence, threats, or unlawful acts to prevent irreparable injury to business or property is said not to be limited.

The passage of the various state acts modeled after the Clayton Act was an attempt to get around the decisions of the courts declaring unions to be subject to the anti-trust laws. But even this was to no avail once the destructive forces of judicial interpretation seized hold of the "Magna Charta" of labor. In Minnesota, the 1917 act has been considered only in the Campbell Case, where the court refused to apply the law except in so far as section 2 allowed an injunction when necessary to prevent irreparable injury. By the majority opinion section 3 was said to be declaratory of the principles previously announced by the court, while section 4 was not even mentioned. Since no further cases have treated this law, its exact application is uncertain, although it would seem that at least in so far as its provisions differ from the provisions in the Clayton Act, and that in so far as no federal decision has construed identical provisions in the Clay-

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103See footnote 94.
104See footnote 96.
105See footnote 97.
106Three decisions by the United States Supreme Court soon eliminated the supposed gains provided for labor by the Clayton Act, 2 Mason's U. S. Code, tit. 29, 29 U. S. C. A. sec. 52. In Duplex Printing Press Co. v. Deering, (1921) 254 U. S. 443, 41 Sup. Ct. 172, 65 L. Ed. 349, the court held that the Act applied only to direct disputes between an employer and an employee. In American Steel Foundries v. Tri-City Central Trades Council, (1921) 257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, the right to picket was limited to the posting of one picket at each place of ingress and egress. In Truax v. Corrigan, (1921) 257 U. S. 312, 42 Sup. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375 and note, 411, discussed in (1922) 31 Yale L. J. 408, the court held that an Arizona statute similar to the 1917 Minnesota Act,
ton Act, the 1917 law is still capable of application in Minnesota. It is clear that some state courts have given such effect to similar state laws.

III. The Labor Disputes Injunction Act of 1933

A second effort to limit the application of the injunction to legitimate labor activities was given impetus in 1932 with the passage by Congress of the Norris-La Guardia Act. The state legislatures soon adopted similar laws, Minnesota being one of the first to do so with its passage in 1933 of the Labor Disputes Injunction Act. The Minnesota statute, based on the federal law rather than the model state act, may be divided into three parts, (1) the provision making yellow dog contracts unenforceable, (2) the provisions prohibiting injunctions in certain enumerated cases and limiting the jurisdiction of the courts to grant injunctions in other cases unless certain procedural requirements be met, and (3) the provision for jury trials in cases of contempt for the violation of an injunction.

Section 1 places a general limit on the jurisdiction of the courts if construed to deny employers of labor the right to an injunction, was void under the equal protection clause of the fourteenth amendment as unreasonable, and if construed to make non-violent acts of strikers lawful was void under the due process clause.


Similar state laws have been adopted in Colorado, Idaho, Indiana, Louisiana, Maine, Maryland, Massachusetts, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, Washington, Wisconsin, Wyoming.

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to issue any temporary or permanent injunction or any temporary restraining order in cases arising out of labor disputes, except by a strict conformity with the provisions of the Act.

In section 2 the policy of the law is declared to be that the individual worker shall be free to associate with a labor organization or not as he sees fit and that he shall be free from any interference from employers.

In section 3 the Act provides that any agreement or promise in conflict with the policy set forth in section 2 and any agreement not to join a labor organization or to withdraw from employment if the employee joins such an organization shall not be enforceable in any court of the state and shall not be the basis for legal or equitable relief. In other words, yellow-dog contracts are declared invalid.

By section 4, in cases involving or growing out of labor disputes as defined in the Act, the court is deprived of jurisdiction to issue an injunction or temporary restraining order against any person participating in or interested in such dispute to prevent the doing of certain specified acts,116 whether singly or in concert.

In section 5 it is provided that no court shall have jurisdiction to issue an injunction or restraining order on the ground that a person is engaged in an unlawful combination or conspiracy because of the doing of the acts set out in section 4.

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116(a) "Ceasing or refusing to perform any work or to remain in any relation of employment;
(b) Becoming or remaining a member of any labor organization or of any employer organization regardless of any such undertaking or promise as is described in section 3 of this Act;
(c) Paying or giving to, or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;
(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of this state;
(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;
(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;
(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;
(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and
(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act."

It will be noted that section 4 is very similar to Mason's 1927 Minn. Stat. sec. 4257, and sec. 20 of the Clayton Act, 2 Mason's U. S. Code, tit. 29, sec. 52, 29 U. S. C. A. sec. 52, except that the words "lawful" and "lawfully" are omitted.
In section 6 the liability of labor organizations, officers, and members for unlawful acts committed during a labor dispute is limited to those cases where clear proof of participation in, authorization of, or ratification of such acts is shown.

In section 7, the procedural limit on the granting of injunctions is set out. The court's jurisdiction to grant temporary restraining orders or injunctions is conditioned upon several things: (1) there must be a hearing in open court with witnesses and a chance to cross-examine, (2) there must be findings of fact to the effect that,

(a) unlawful acts have been done or are threatened,
(b) substantial and irreparable injury will be caused complainant's property,
(c) greater injury will be caused complainant if relief is denied than will be caused the defendant by the granting of such relief,
(d) no adequate remedy at law exists,
(e) the public officers charged with the duty to protect plaintiff's property have failed to do so.

This provision further requires that certain persons be given notice of the above hearing. A proviso is added that a temporary restraining order may be issued without notice of such hearing if it is alleged that irreparable injury is unavoidable, and if the testimony given under oath would be sufficient to support an injunction upon hearing after notice. The temporary restraining order expires with the hearing of the motion for temporary injunction, but in no case can it last for more than ten days unless renewed by the court. The complainant must further file a bond to secure any damages to the defendant and any expenses incurred because of the "improvident or erroneous issuance of such order or injunction."

Section 8 limits the scope of the injunction to the findings of fact as based on the acts expressly complained of in the complaint.

Section 9 provides for a speedy review in the Supreme Court by appeal from cases involving labor disputes.

Section 10 provides that in all cases of contempt of court the accused shall have the right to a speedy trial, and also the right to a jury trial, except where the contempt is committed in the presence of the court or in some other manner directly interferes with the administration of justice.
Section 11 allows the removal of the judge in certain contempt proceedings for certain designated reasons.

In section 12 the terms used in the Act are defined. Under subsection (a), a case involves or grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or if not so engaged, if it involves persons who have direct or indirect interests therein; or where the dispute involves employees of the same employer; or persons who are members of the same organization of employers or employees. A labor dispute is further said to exist where such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees, (2) between different employers or associations of employers, (3) between different employees or associations of employees, or when the case involves any conflicting interest in a "labor dispute" as hereinafter defined of "persons participating or interested" therein (as hereinafter defined). By subsection (b) a person or association is said to be interested or participating in a labor dispute if relief is sought against him or it, or if he is engaged in the same industry, etc., or if he has a direct or indirect interest therein, or if he is a member of any association, etc., engaged in such industry, etc. Under subsection (c) a "labor dispute" exists where there is a controversy over terms or conditions of employment or over representation to fix terms or conditions of employment "regardless of whether or not the disputants stand in the proximate relation of employer and employee." Subsection (d) defines a "court of the state of Minnesota" to mean a legislative court.

This Act was not intended to repeal previous legislation. Although this statute has been before the supreme court several times since its passage, the issue of constitutionality never has been raised directly. This fact may perhaps be taken as indicative of its validity.

IV. VALIDITY OF THE ANTI-INJUNCTION ACTS IN GENERAL

The exact status of the Norris-La Guardia Act remained uncertain until the decision of the United States Supreme Court in *Lauf v. Shinner.* In that case, although the constitutionality of the Act was not directly in issue, the granting of the injunction by the federal district court was set aside on the ground that the district court had exceeded its jurisdiction in granting the injunc-

111See footnote 105.
112(1938) 303 U. S. 323, 58 Sup. Ct. 578, 82 L. Ed. 872.
tion without having made the necessary findings of fact as re-
quired in section 7.\textsuperscript{113} The court further held that Congress
had the power to limit the jurisdiction of the inferior courts of
the United States.\textsuperscript{114}

A similar position had already been taken as to the Wisconsin
anti-injunction law\textsuperscript{115} by both the Wisconsin court\textsuperscript{116} and the
United States Supreme Court.\textsuperscript{117} The Wisconsin court sustained
the statute, saying that it did not violate the fourteenth amend-
ment of the federal constitution, either as to the due process or the
equal protection clause, and also that it did not violate any of
the provisions in the state constitution granting equity jurisdiction
to the courts or guaranteeing an injured party a certainty of remedy
under the law. The provision of the Wisconsin act expressly
declaring certain acts to be lawful was also sustained on the
ground that it was a proper exercise of a legislative function
since it tends to offset the advantages inherent in the employer in
cases involving labor controversies.\textsuperscript{118}

In the Senn Case, the United States Supreme Court sustained
the Wisconsin Act finding a labor dispute to exist where the
defendant union sought by picketing to induce the plaintiff con-
tractor to cease working personally on jobs, and saying that such
a purpose was lawful,\textsuperscript{119} since it was for the general welfare of
union members. The court allowed the picketing, stating that a
state law could make lawful peaceful picketing\textsuperscript{120} in pursuit of a
lawful purpose without violating the due process clause of the

\textsuperscript{113}This provision is identical with sec. 7 of the Minnesota Act, supra, p. 776.
\textsuperscript{114}(1938) New Negro Alliance v. Sanitary Grocery Co., (1938) 303
U. S. 552, 58 Sup. Ct. 703, 82 L. Ed. 1012 accord.
\textsuperscript{115}Wis. Laws 1931, ch. 376, Wis. Stats., sec. 103: 51-103: 63.
\textsuperscript{116}American Furniture Co. v. I. B. of T. C. & H. of A., (1936) 222
Wis. 338, 268 N. W. 250, discussed in (1937) 21 MINNESOTA LAW REVIEW
467.
\textsuperscript{117}Senn v. Tile Layers Protective Union, (1937) 301 U. S. 468, 57 Sup.
Ct. 857, 81 L. Ed. 1229, discussed in (1938) 22 MINNESOTA LAW REVIEW
271.
\textsuperscript{118}Such a frank recognition of the inequality of labor and capital in
bargaining ability is commended by various comments, (1937) 35 Mich. L.
Rev. 340; (1935) 33 Mich. L. Rev. 777; (1939) 23 MINNESOTA LAW
REVIEW 853.
\textsuperscript{119}Compare the attitude of the Minnesota court in Roraback v. Motion
Picture Machine Operators Union, (1918) 140 Minn. 481, 168 N. W. 766,
and Campbell v. Motion Picture Machine Operators Union, (1922) 151
390, 7 N. E. (2d) 674.
\textsuperscript{120}The court distinguished Truax v. Corrigan, (1921) 257 U. S. 312,
42 Sup. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375, on its facts saying that
there the decision was based on the abusive and libellous language used
against the plaintiff.
fourteenth amendment. The court did not pass on the question of the equal protection clause, but merely commented that the conduct authorized by the statute was lawful, and therefore the plaintiff could have no right to a "remedy" against the lawful conduct of another.

The state anti-injunction acts may be divided into two classes in so far as they affect the rights of the employer to maintain a suit for injunction against alleged unlawful acts of a labor union. By far the most common type is that similar to the Minnesota Act. This type of act operates negatively, in that it eliminates the jurisdiction of the court in certain specific instances, while in all other situations certain procedural requirements are imposed upon its jurisdiction. The second type of law is that adopted by Wisconsin in 1931. By that law, the acts enumerated in the counterpart of section 4 of the Minnesota Act are not only declared immune from injunctive relief but are also declared to be legal. That there is a vast difference between these two types of laws is obvious, since the prohibition of the injunction merely abrogates or limits, as the case may be, the right of the employer to equitable relief, but still leaves him an action for damages—which, in one case at least, has been allowed in the same proceeding after the injunction had been denied, notwithstanding no allegation of damages had been made in the complaint. If such relief remains for the employer, it seems that the rights and remedies of the employer in labor disputes are not so drastically curtailed as might appear upon first glance.

Some of the peculiar obstacles facing the state acts in their construction by the court are found in the provisions of the various state constitutions granting jurisdiction to the courts in equity matters and guaranteeing an injured party a certain remedy in the laws. Also the provisions in the various state laws of the first type defining the "courts" referred to through-

122 See footnote 110.
123 See supra, p. 776.
124 See footnote 115.
126 The court found the issue of the right to an injunction had become moot, since the activities complained of had ceased.
127 Minnesota constitution, art. 6, sec. 5: "District court has original jurisdiction in all civil cases of law and equity over one-hundred dollars."
128 Minn. constitution, art. 1, sec. 8.
out the acts to be legislative courts\footnote{Thus Mason's Minn. Stat., 1940 Supp., sec. 4260-12-(d).} present difficult problems under the constitutional doctrine of separation of powers. Another basis for constitutional difficulties is found in the provisions in the statutes granting jury trial\footnote{Mason's Minn. Stat., 1940 Supp., sec. 4260-10.} to the accused in contempt proceedings arising from a violation of the injunction or other indirect contempts. All this is in addition to the constitutional objections suggested before the passage of some state acts,\footnote{In re opinion of Justices, (1931) 275 Mass. 580, 176 N. E. 649; In re opinion of Justices, (1933) 86 N. H. 597, 166 Atl. 640.} and to the decision of the United States Supreme Court in \textit{Truax v. Corrigan}.\footnote{(1921) 257 U. S. 312, 42 Sup. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375, and note, 411.} In spite of all this the constitutionality of the state acts has been upheld, with one exception,\footnote{Blanchard v. Golden Age Brewing Co. (1936) 188 Wash. 396, 63 P. (2d) 397.} in every state court where the issue has been raised.

Except where the statute expressly has so declared,\footnote{State v. Fuller, (Tex. Civ. App. 1937) 105 S. W. (2d) 295.} no court passing on the question has held the effect of the first type of law to be to make lawful any of the enumerated activities declared to be exempt from injunction, although a different construction seems to have been given by some courts\footnote{State v. Cooper, (Minn. 1939) 285 N. W. 903. Three of the six justices sitting seemed to assume that the 1933 Act made lawful the acts which were not to be enjoined in section 4. Of course such a conclusion would not necessarily be binding in a future case, since the above three justices did not constitute a majority; furthermore, the assumption was not necessary to reach the decision. See discussion in Fraenkel, One Hundred and Fifty Years of the Bill of Rights, (1939) 23 \textit{MINNESOTA LAW REVIEW} 719, 769.} to the earlier statutes modeled after the Clayton Act. The construction which the Minnesota court would give to the 1933 Act has perhaps been indicated in a recent decision.\footnote{Washington, constitution, art. 4, sec. 6.}

In the only case dealing with the matter, the Washington court in the \textit{Blanchard Case} held that a statute identical with that in Minnesota was void as a violation of the state constitutional provision\footnote{Starr v. Laundry and Dry Cleaning Workers Local Union, (1936) 155 Or. 634, 63 P. (2d) 1104.} granting judicial power to the court in equity cases. Although no similar provision exists in the Oregon constitution, the Oregon court\footnote{The statutes in all three states are identical, except that the Min-
ment with the majority opinion in the Washington case, and agreed with the dissenting opinion in that case which argued that the legislature could limit the remedy of injunction. The Oregon court further pointed out that by a provision in the Washington constitution (art. 4, sec. 6) the court is given express power to issue injunctions. As to this point, the Minnesota constitution would seem to be half-way between the Washington and Oregon constitutions since the Minnesota constitution does provide that the district court shall have equity jurisdiction, but does not expressly provide that the court shall have power to issue injunctions. It has been pointed out by one writer that the extent to which the Minnesota court will find the Washington decision to be persuasive authority may depend upon the previous attitudes of the two courts in construing their respective constitutional provisions.

Provisions similar to that in the Minnesota constitution guaranteeing a certain remedy in law for injuries sustained to property, person, or character have been passed on in a few states. In a Wisconsin case, the court held that the Wisconsin law did not violate the constitutional guarantee of a certain remedy in the law. Likewise in Indiana, the court, in sustaining its anti-injunction law, applied the rule announced in a previous Indiana decision, that a prohibition against injunctions in certain cases did not abridge the constitutional guarantee of a certain remedy in the laws. The Minnesota court has not expressed any opinion on this point since the passage of the Labor Disputes

140The dissent in the Washington case based its argument upon an analogy to a statute which limited the right to obtain an injunction to restrain the collection of taxes where a tax dispute existed, except under certain circumstances, which law was held valid in Casco v. Thurston County, (1931) 163 Wash. 666, 2 P. (2d) 677, 77 A. L. R. 622.
141McKinlock, The Minnesota Labor Disputes Injunction Act, (1937) 21 MINNESOTA LAW REVIEW 619, 629-31, in which it is suggested that the two courts have not reasoned the same in analogous cases, and that even in the Washington case itself, three of the eight justices dissented.
143Local Union, etc. v. City of Kokomo, (1937) 211 Ind. 72, 5 N. E. (2d) 624.
144The Indiana Act is identical with the Minnesota Act of 1933, except that the Minnesota Act does not require the plaintiff to resort to arbitration.
146Indiana, constitution, art. 1, sec. 12.
147The court relied on Fenske Bros. v. Upholsterers International Union of North America, (1934) 358 Ill. 239, 193 N. E. 112.
Injunction Act, but in dictum in the *Gray Case*\(^{149}\) the court recognized the importance of the above constitutional provision, saying the "rights so guaranteed are fundamental" and that they could be "taken away only by ... lawful regulation adopted as necessary for the general public welfare." It may well be urged that the policy set forth in section 2 of the 1933 act would be such as to meet the requirement of "being necessary for the general public welfare," and in view of the broad construction given to the words "labor dispute" in a recent Minnesota case,\(^{150}\) such an approach by the court may be plausible, and certainly would be desirable.

In a case involving contempt proceedings for the violation of an injunction, a person not a party to the original action has been held guilty of contempt on the basis that he knew of the injunction.\(^{151}\) The court held that a provision in the state anti-injunction law granting such person a right to a jury trial was an unconstitutional encroachment by the legislature on the inherent power of the courts to punish violators of its orders in contempt proceedings. Such a result was predicted in a Massachusetts advisory opinion.\(^{152}\) A decision to the contrary by the United States Supreme Court\(^{153}\) was distinguished in the *Blanchard Case*, the court stating that no analogy could be based on a similar provision in a federal law as applied to federal district courts, since the latter were legislative courts whereas the Washington courts were constitutional courts. Such treatment of the *Michaelson Case* seems to be common in the state courts.\(^{154}\) No other cases having passed on this point since the Washington decision, it would seem that on the basis of present authority the provision as to jury trial in contempt proceedings is unconstitutional unless a court presented with the problem would feel free to hold such a provision valid on the basis of changing social and economic conditions. Of course if the other sections of the laws should be found valid, then on the basis of the separability clause,\(^{155}\) and

\(^{149}\)Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663, 1118.

\(^{150}\)Lichterman v. Laundry and Dry Cleaning Drivers Union, (1938) 204 Minn. 75, 282 N. W. 689, 283 N. W. 752.

\(^{151}\)Blanchard v. Golden Age Brewing Co., (1936) 188 Wash. 396, 63 P. (2d) 397.


on the basis of the general independence of this section from the other provisions in the law, the invalidity of the above provision would not be fatal.

The procedural limits placed on the court's jurisdiction to grant injunctions, assuming an injunction suit is otherwise maintainable, present a difficult constitutional question and one on which the courts are not in accord. As to the federal act the fourteenth amendment is of course no obstacle, and it does not appear that the question of the violation of the fifth amendment ever has been raised before the United States Supreme Court. Although any argument to the Minnesota court based on an analogy of the interpretation of the Wisconsin law is weakened because of the express provision in the Wisconsin act making lawful the acts declared non-enjoinable, still it is to be noted that no violation of either the due process or the equal protection clause was found by the Wisconsin court, while the United States Supreme Court found that it did not have to pass on the question, since it was not raised on appeal.

In the Washington opinion the court did not discuss the question of the fourteenth amendment, but held the statute invalid on the basis of the state constitution. In two companion cases, the Oregon court held that their statute was not in conflict with state or federal constitutional provisions. The granting of an injunction by the trial court was set aside on appeal for the reason that the court had no jurisdiction, since the statutory requirement that notice of the hearing for the temporary injunction be given to certain public officers had not been complied with. As to the argument raised on appeal that the anti-injunction act violated the equal protection clause, the court replied that it found "nothing objectionable in a statute prescribing a special procedure having for its object the prevention of unjustly pre-


160Starr v. Laundry and Dry Cleaning Workers Local Union, (1936) 155 Or. 634, 63 P. (2d) 1104; Geo. B. Wallace Co. v. International Ass'n of Mechanics, (1936) 155 Or. 652, 63 P. (2d) 1090.
icipitated permanent injunctive restraint upon the exercise of this judicially approved lawful right [peaceful picketing]."

In Goldfinger v. Feintuch161 the New York court found that its anti-injunction law162 did not violate the fourteenth amendment, relying on the reasoning of the Senn Case. In Indiana163 the court found that since the statute merely limited the remedy164 of the employer no question of due process existed, and did not find the question of the equal protection clause to be in issue. No federal constitutional question was raised in a Louisiana opinion,165 and the court sustained the state act against objections on state constitutional grounds. Although the Massachusetts court in an advisory opinion166 had indicated that a law providing a special procedure as to the granting of injunctions in situations involving labor disputes would violate the equal protection clause, the court in a case before it167 subsequent to the enactment of a modified168 anti-injunction law refused to pass on the validity of the statute, saying that since the activities sought to be enjoined had ceased, the question of the right to an injunction was moot. In an unsatisfactory opinion the Pennsylvania court169 seemed to refuse to recognize that the state anti-injunction act deprived the court of jurisdiction in cases arising out of labor disputes, although it seemed willing to concede that in so far as a labor dispute was within the situations said to be non-enjoinable in the act,170 the court had no power to issue injunctions.

The Minnesota law, in section 12 (d) defines "courts" as used in the statute to mean legislative courts.171 Such a definition, if taken literally, renders the Act an absurdity, since the state district courts are clearly constitutional courts.172 A similar pro-

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163 Local Union, etc. v. City of Kokomo, (1937) 211 Ind. 72, 5 N. E. (2d) 624.
164 See discussion, (1937) 46 Yale L. J. 1064.
165 Dehan v. Hotel & Restaurant Employees, etc. Union, (La. App. 1935) 159 So. 637.
168 Massachusetts Stat. 1935, ch. 407. This statute omitted the provision making yellow dog contracts unenforceable, and also omitted the enumeration of specific situations in which an injunction could not issue—for example, as in Mason's Minn. Stat., 1940 Supp., sec. 4260-4.
170 Pennsylvania, P. L. 1937, 1198, secs. 6 and 7.
171 This is due to a verbatim copying of the Norris-La Guardia Act, 2 Mason's U. S. Code, tit. 29, sec. 113 (d), 29 U. S. C. A. sec. 113 (d).
172 Minnesota, constitution, art. 6, sec. 5.
vision has existed in the other state acts already discussed, except Wisconsin, and seems never to have been accepted by the courts as an argument that the statute did not apply to constitutional courts. As one writer has pointed out, the court in construing this provision of the statute would probably recognize the apparent oversight, and in the light of the legislative history, would disregard the express language rather than hold the Act to be of no effect on that ground.

Provisions in the federal act and in most state acts declare that yellow dog contracts "shall not be enforceable" and shall not be the basis of "legal or equitable relief by any court." It probably is not necessary to distinguish the earlier statutes, which unsuccessfully tried to outlaw such contracts, as being criminal statutes while the present anti-injunction acts merely deny enforcement of such contracts, since the persistently declared legislative policy and public hostility against yellow dog contracts would probably be given effect.

Assuming the constitutional validity of a law, its effectiveness in fulfilling its purpose depends largely upon the interpretation placed upon it by the courts. Since its passage the Minnes...
sota Labor Disputes Injunction Act has been the subject of several cases.

V. CASES UNDER THE MINNESOTA LABOR DISPUTES INJUNCTION ACT OF 1933

In the first case involving consideration of the 1933 Act, *Jensen v. St. Paul Moving Picture Machine Operators Union No. 356*, the court in an unilluminating per curiam opinion held that no "labor dispute" existed within the terms of the act, and therefore that the case was "outside the prohibition in regard to the issuance of injunctions." In this case plaintiff theater owner had employed a union operator under a contract with the defendant union, but in violation of the contract plaintiff discharged the union operator and operated the machine himself. As a result defendants published circulars saying plaintiff was "unfair" and picketed plaintiff's theater and continued so to picket during and beyond the time which the contract was to run. A motion for a temporary injunction made prior to the expiration of the contract was denied, but after the contract had expired, the court granted plaintiff's motion for a permanent injunction. On appeal the order granting the permanent injunction was affirmed, and the court held that after the expiration of the contract the defendants had an adequate remedy at law in a cause of action for damages for breach of the contract; that plaintiff had a right to settle a claim for damages at law; and that the statute could not be sustained if it were construed to permit "compulsion" to be brought to bear upon the plaintiff through picketing, bannering, etc., to force a settlement of the cause of action. The court further stated that since the controversy related to damages and did not concern "terms or conditions of employment" there was no "labor dispute" within section 12 (c).

In *State v. Perry* the defendants were strikers and bannered one Gustafson, a foreman, at his residence as being a "scab." Defendants were found guilty of violating a municipal ordinance against disorderly conduct. The court referred to the 1933 Act, 

183 (1935) 194 Minn. 58, 259 N. W. 811.
184 The opinion stated that appellants had conceded that an injunction would be proper if there had been no contract. Such concession appears to have been made upon oral argument, since a contrary position was assumed in the Appellant's Brief, p. 15.
185 Does such a right in fact exist?
186 (1936) 196 Minn. 481, 265 N. W. 302.
187 A similar question had arisen six years earlier in *State v. Zanker*, (1930) 179 Minn. 355, 229 N. W. 311.
and held that it was not applicable since the question of the right of pickets to be free from injunctions was not involved. The court admonished the defendant, saying that industrial conflicts could not be carried into private homes.

In *Reid v. Independent Union of All Workers,* the defendant was held in contempt of court for the violation of an injunction, and as a defense claimed that the court was without jurisdiction to issue an injunction under the terms of the 1933 law, and that therefore the injunction was void. The majority opinion rejected this argument, saying that in order for the 1933 Act to apply, it must be found that a "labor dispute" exists; that in deciding this question the jurisdiction of the court is necessarily invoked; that once invoked, jurisdiction includes the power to make an erroneous decision; and that where as here the question passed on is a mixed question of law and fact, the decision is not subject to collateral attack in a proceeding for contempt. The majority opinion suggested that under section 9 of the Act a method of speedy appeal is provided, which amply protects the interests of the party or parties enjoined.

In a concurring opinion Chief Justice Gallagher found that on the facts, no labor dispute existed. The case arose out of the fact that the defendant union tried to force the plaintiff beauty shop owner to charge certain prices for services, since the wages of its employees were dependent thereon, being largely on a commission basis. It was said that this was an attempt to fix prices and was illegal.

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183(1937) 200 Minn. 599, 275 N. W. 300.
180 Does this view of the majority opinion indicate that the Minnesota court will construe the 1933 Act as not depriving the court of jurisdiction, and thus eliminate the objection raised to the Washington Act in Blanchard v. Golden Age Brewing Co., (1936) 188 Wash. 396, 63 P. (2d) 397?
189 In (1938) 47 Yale L. J. 1136, the Reid Case is criticized, and it is pointed out that unless collateral attack is allowed, the courts can vitiate the anti-injunction acts by merely refusing to recognize a particular controversy to be a "labor dispute." This criticism itself seems unwarranted insofar as it is based on the premise that the courts will deliberately attempt to avoid the anti-injunction acts.
190 The provision even as to speedy appeal (Mason's Minn. Stat., 1940 Supp., sec. 4260-9), by the terms of the Act itself would seem to apply only where the court had found a "labor dispute" to exist. Here no such "labor dispute" was found, and yet the court would seem to allow a "speedy appeal." Although this is illogical it seems to answer the criticism made in (1938) 47 Yale L. J. 1136, mentioned supra, note 190.
191 Loring, J., concurring, also agreed with the majority opinion expressed by Stone, J.
192 Compare Lichterman v. Laundry and Dry Cleaning Drivers Union, infra, pp. 788, 789.
In a vigorous dissent Justice Peterson asserted that a labor dispute existed here, although there was no dispute between an employer and employees, and that since the Act applied the court was required to make certain findings of fact as a prerequisite to the granting of an injunction, and since this was not done, the court was without jurisdiction. This fact, appearing on the face of the record, made it subject to collateral attack. The dissent disagreed with the majority opinion and found the question of whether a labor dispute existed to be a question of law, and therefore subject to collateral attack.

The question of what constitutes a "labor dispute" within the meaning of section 12 was finally raised directly in *Lichternan v. Laundry and Dry Cleaning Drivers Union.* In that case the plaintiff launderers refused to agree to a price list adopted pursuant to the Unfair Trade Practice Act, and as a result the salary of plaintiff's employees was reduced. Defendants caused plaintiff's establishment to be picketed, and although no controversy was found to exist between plaintiff and his employees, the court found a "labor dispute" to exist on the basis that the dispute was between "persons who are engaged in the same occupation" as set out in section 12, subsections (a) and (b). The court further indicated that the statute would be satisfied if the parties had an indirect interest in the controversy. The question of constitutionality was not raised in the case, since the parties had stipulated that if no labor dispute were found the plaintiff would be entitled to an injunction, but that if such a labor dispute were found to exist then no injunction should issue.

The court speaking through Mr. Justice Stone, did not mention the position taken by Chief Justice Gallagher in the *Reid Case,* and held that although the defendants could not dictate

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194 So held in *Lauf v. Shinner,* (1938) 303 U. S. 323, 58 Sup. Ct. 578, 82 L. Ed. 872.
195 The dissent also argued that the existence of a "labor dispute" was a question of law, and not a mixed question of law and fact, and therefore was capable of being collaterally attacked.
196 (1938) 204 Minn. 75, 282 N. W. 689, 283 N. W. 752, discussed in (1939) 23 MINNESOTA LAW REVIEW 549.
198 "In its final analysis the only issue between the plaintiff and the defendant union and its officers pertained to the rates plaintiff must charge her customers for services rendered. That was clearly a price fixing requirement and illegal." The court in *Lichternan v. Laundry and Dry Cleaning Drivers Union,* (1938) 204 Minn. 75, 282 N. W. 689, clearly indicated that it was not deciding the legality of price fixing agreements or the validity
prices to be charged by plaintiff, they had a "manifest interest in opposing a manner of doing business . . . which threatens their own security as to status or wages." In concluding, the court assumed a broad-minded attitude toward the problem of labor controversies, and pointed out that laws such as the one in question were intended as "aids to a greater degree of economic security and social order," and that to the extent that both capital and labor recognize the rights of the other will the interests of industrial democracy be advanced.²⁹⁰

The issuance of a temporary restraining order as allowed under the provisions of section 7 (e) of the 1933 Act was perhaps tacitly accepted by the Minnesota court in American Gas Machine Co. v. Voorhees.²⁹¹ Defendants had engaged in a sit-down strike, plaintiff had brought suit for an injunction and damages, and the court had issued a temporary restraining order upon the filing of a bond by the plaintiff pursuant to the above provision in the statute. Later the parties agreed to dismiss the entire proceeding, each releasing the other of any claims it may have. Upon dismissal of the action defendant made a motion for an order assessing damages under section 7 (e), and from a denial of this motion, defendant appealed. The court, in affirming the order of the trial court, clearly pointed out that under this section a recovery is predicated on an "erroneous or improvident" issuing of a temporary restraining order, and that no such finding of fact is permissible where, as here, the parties merely agreed to a dismissal, since such dismissal only serves to show the fact of discontinuance and not the plaintiff's right to the restraining order. Assuming that damages were awarded for the improvident or erroneous issuance of a temporary restraining order, it is still likely that this remedy would be inadequate.²⁹²

²⁹⁰This would seem to dispel any of the fears voiced by Mr. Justice Peterson in his dissent in Reid v. Independent Union of All Workers, (1937) 200 Minn. 599, 275 N. W. 300. Cf. comments in (1939) 23 MINNESOTA LAW REVIEW 853; (1937) 35 Mich. L. Rev. 340; (1935) 33 Mich. L. Rev. 777.


²⁹²The result of the wrongful issuance of a temporary restraining order has already been pointed out, supra, p. 761. Furthermore, even an award of damages as allowed under section 7 (e), Mason's Minn. Stat., 1940 Supp., sec. 4260-7 (e), may be inadequate, since it is difficult to measure the probable damages caused by an improperly frustrated strike. Moreover it has been pointed out in McClintock, The Minnesota Labor Disputes Injunction Act, (1937) 21 MINNESOTA LAW REVIEW 619, 620, that even the ten day limit on the duration of a restraining order may be defeated in
In *State v. Cooper* the question of the right to picket a private residence was raised again. The defendant had been hired to picket and banner a private home in a residential district, the owner of the house having discharged a chauffeur employed by him for several years. The defendant was convicted of violation of a municipal ordinance against disorderly conduct, and on appeal three of the six justices sitting found that the evidence was sufficient to sustain such a conviction, and further that the 1933 Act, especially section 4 (e), did not apply—no labor dispute being involved within the terms of the statute, since "labor disputes" as used in the statute meant industrial disputes.

In a concurring opinion by Chief Justice Gallagher, in which Mr. Justice Stone also concurred, it was urged that no labor dispute existed on the basis of the record, and that therefore the right of a person to picket a private home should not have been decided. The concurring opinion agreed that the conviction on the basis of the municipal ordinance was proper.

In a dissenting opinion, Mr. Justice Peterson disagreed, claiming that there was no breach of the peace or disorderly conduct shown by the evidence, and that the conviction was therefore improper. The dissent also contended that under section 4 (e) the right to picket peacefully is protected from injunction even when it involves a private residence, and further that such legislation recognizes the lawfulness of the conduct which it exempts from injunctive restraint.

The result reached by the majority opinion may be justified as a proper limit beyond which disputes between an employer and an employee can not be carried. Assuming this for the moment, the fact still remains that the court may have erred in sustaining the conviction as to disorderly conduct, since here the evidence showed that no commotion or disturbance had been caused by the defendant, and in this respect the case is essentially different from both *State v. Perry* and *State v. Zanker*, a fact pointed out by the dissent. Second, it would seem that the three
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justices need not have treated the matter of the application of the Labor Disputes Injunction Act of 1933, since by the very terms of the Act it serves only as a limit on the jurisdiction of the court to grant injunctive relief, while here the action was a criminal charge based on disorderly conduct.

The dissent, it is submitted, was correct in its interpretation as to the right to enjoin the peaceful picketing of a residence under the Minnesota law both by common law rules and under the 1933 Act, and in this case under the municipal ordinance. But to the extent that the dissent based its result on an application of the 1933 Act to the particular facts of the present case, it would seem incorrect inasmuch as the proceeding was not a suit for an injunction but a criminal action based on disorderly conduct.

In looking back on the Labor Disputes Injunction Act as construed by the Minnesota court, it is not possible to be very certain of what injunctive immunity the 1933 Act has succeeded in granting organized labor. Dictum in the Lichterman Case indicates a receptive attitude on the part of the court toward such labor legislation, and the court recognized that it is a sound approach to the establishment of a greater degree of social and economic security. The decision in that case would also seem to eliminate any fears as to the construction of the Act which may have been raised by the opinion in the Jensen Case. The opinion of the three justices in State v. Cooper need not be regarded as hostility on the part of the court to the 1933 Act, since it may well be limited to its facts, in which case the major source of true labor controversies would be unaffected.

A comparison of the previous decisions in Minnesota based on common law principles with the 1933 Labor Disputes Injunction Act may well prove instructive as to the extent to which the 1933 law has changed the rights of labor in pursuing its purposes.

The question of the legality of boycotts as defined in the Gray Case would seem to be unaffected. It would certainly


207 Nothing in the 1933 Act can be construed to limit its application to industrial disputes, and the definition given to "labor disputes" in section 12 (Mason's Minn. Stat., 1940 Supp., sec. 4260-12) is broad enough to include disputes involving a domestic servant and his employer, (1939) 24 MINNESOTA LAW REVIEW 132. A clear legislative expression on this point would be desirable.

208 The Wisconsin law (see footnote 115) expressly declares that secondary boycotts are not made lawful.

209 Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663, 1118.
seem that section 4 (e) could not be given the effect of allowing any such pressure to be exerted on neutral third persons, nor would subsections (g), (h), or (i) have this effect, since they refer back to the previous subsections, which certainly cannot be construed to sustain any such argument. Also it would seem that if any labor controversy were to satisfy the requirements of being an unlawful act, or causing irreparable injury, etc., necessary to the granting of an injunction as set out in section 7, it would clearly be a boycott as defined in the Gray Case. On this basis it may safely be said that the rule laid down in the Gray Case is still binding law in Minnesota today.

It is obvious that subsections (a), (e), (g), (h), and (i) of section 4 are merely declaratory of the rules laid down in the Grant Case. By subsection (e) the rule of the Steffes Case seems to be reiterated in an equally uncertain form. In regard to the right of a union to enforce one of its rules with the consequent injury to an employer or potential employer, the rule of the Scott-Stafford Case could easily be the basis for section 4, subsections (a), (g), (h), and (i).

Violent and intimidating activities on the part of labor, even when done in pursuance of a legitimate purpose have always been subject to injunction. The soundness of such a position by the courts is recognized in section 4, subsections (e) and (i), which exclude the acts set forth in the respective subdivisions from injunctinal exemption if done with fraud or violence. Also in section 7 (a), unlawful acts committed or threatened, when accompanied by the conditions set out in subsections (b), (c), (d), and (e) therein, are the basis for an injunction.

In two situations however it would appear that the 1933 Act, assuming it to be constitutional, has effected important changes. As previously pointed out, by section 3 the legislature has attempted

[Notes]

210 See supra, pp. 761, 762. It is to be remembered that the court allowed a peaceful notification to the plaintiff's customers that the plaintiff was "unfair," which seems to be substantially section 4 (e) of Mason's Minn. Stat., 1940 Supp., sec. 4260-4 (e), and also allowed defendants to enter projects where its members were at work and notify and persuade them to cease work, which is a substantial embodiment of subsections (a), (h), and (i), of section 4 (Mason's Minn. Stat., 1940 Supp., sec. 4260-4).
211 Supra, pp. 763-5.
212 Supra, pp. 765-6.
213 Supra, p. 763.
214 Minnesota Stove Co. v. Cavanaugh, (1915) 131 Minn. 458, 155 N. W. 638, supra, p. 771.
to avoid the result produced by *State v. Daniels*, and has declared yellow dog contracts unenforceable.

Of more practical importance today is the question of the right of the owner of a business to work at his own occupation. The Minnesota court, in the *Roraback Case*, indicated by strong language the fundamental nature of such a right. In the *Campbell Case* an attempt so to limit an owner's right to work was found by both the majority and the dissenting opinions to be unlawful under the common law, and by the majority to be a violation of the anti-trust statute. This situation would clearly involve a labor dispute within section 12 of the 1933 Act, and by section 4 (e) this fact may properly be given publicity if it is done in a peaceful manner. Also by section 8 the scope of the injunction is narrowed, and it may prohibit only the specific acts complained of in the complaint.

In general it would seem that the 1933 Labor Disputes Injunction Act has effected no such radical changes as was at first feared by some employers.

VI. THE MINNESOTA LABOR RELATIONS ACT OF 1939

By far the most comprehensive attempt to regulate industrial disputes ever undertaken by the Minnesota legislature was made with the recent passage of the Minnesota Labor Relations Act in 1939. After defining such ambiguous words as employee, labor dispute, strike, and others, the Act in section 2 establishes a department of conciliation under the direction of a permanent

217 The justices differed in their interpretation of the facts, and also as to the proper scope of the injunction. See supra, pp. 767-771.
218 McClintock, *Minnesota Labor Disputes Injunction Act*, (1937) 21 MINNESOTA LAW REVIEW 619, 640. *Cf.* Thompson v. Boekelout, (1937) 273 N. Y. 390, 7 N. E. (2d) 674, where the court held no labor dispute to exist within the state anti-injunction act (see footnote 162), on similar facts, but granted permission to maintain one picket on the basis of common law rules.
219 Minnesota Laws 1939, ch. 440, p. 777, sec. 1 (c); Mason's Minn. Stat., 1940 Supp., sec. 4254-21 (c)—includes one whose work has ceased because of an "unfair labor practice" set out in section 12, and who has not received other regular and substantially equivalent employment.
219 Minnesota Laws 1939, ch. 440, p. 777, sec. 1 (g), Mason's Minn. Stat., 1940 Supp., sec. 4254-21 (g)—"the temporary stoppage of work by the concerted action of two or more employees as a result of a labor dispute as herein defined." There can be no one-man strike. *Att'y Gen. Oct. 18, 1939.* The defining of a strike, when left to the courts, often has resulted in limiting the activities of labor. *Note, (1935) 84 U. of Pa. L. Rev. 771; Note, (1927) 40 Harv. L. Rev. 896, 900.*
220 The previous provision for temporary arbitration and conciliation, Mason's 1927 Minn. Stat., sec. 4046-4, is expressly repealed by sec. 20 of
By section 6, both the employer and the labor organization or representative are required to give notice to the other party of any intended change in the working agreement, etc.; and upon the giving of such notice, a duty on the parties to attempt a peaceable settlement is created; and if after ten days this has failed, a strike or lockout may be called, provided notice to that effect is given both the other party and the conciliator ten days in advance. The giving of this notice creates a duty on the conciliator to try to settle the dispute. If the dispute is in a business affected with a "public interest," under section 7 a commission of three may be appointed by the governor, and the period postponing the beginning of a strike or lockout is increased.

Provision is also made for voluntary arbitration. Employees are declared to have the right of self-organization and the right to bargain collectively through agents of their own choosing, and also the right to refrain from such activities.

In section 11 certain unfair labor practices for employees and labor organizations are set out, and by section 12 certain correspending acts of employers are declared to be unfair labor practices. In a subsection to each, some of the unfair practices are the 1939 Act (Minn. Laws 1939, ch. 440, sec. 20, Mason's Minn. Stat., 1940 Supp., sec. 4254-40).


Minnesota, Laws 1939, ch. 440, sec. 9, Mason's Minn. Stat., 1940 Supp., sec. 4254-29. Compare the provision for the Kansas Industrial Court, held to violate the due process clause of the fourteenth amendment as an interference with the employer's freedom of contract, in Wolff Packing Co. v. Court of Industrial Relations of State of Kansas, (1923) 262 U. S. 522, 43 Sup. Ct. 630, 67 L. Ed. 1103. The previous provision for arbitration in Minnesota was contained in Mason's 1927 Minn. Stat., secs. 9513-19. By Minn. Laws 1939, ch. 439, Mason's Minn. Stat., 1940 Supp., sec. 9513, sec. 9513 was amended so as to include "labor disputes" as defined in the Minnesota Labor Relations Act.


Minnesota, Laws 1939, ch. 440, sec. 11 (h), sec. 12 (g), Mason's Minn. Stat., 1940 Supp., secs. 4254-31 (h), 4254-32 (g).
also declared to be unlawful acts. In section 13, certain additional acts are declared to be unlawful.

The injunction is specifically treated in sections 14 and 15, the first section allowing an injunction to issue against any unfair labor practice, as long as certain procedural requirements as to hearings, witnesses, cross-examination, etc., be met and expressly making inapplicable in such situations the 1933 Labor Disputes Injunction Act as well as the main provisions of the 1917 Act. By section 15 the right to maintain an injunction of an employee, labor organization, or employer who has violated any provision of the 1939 Act is also upheld if a certain further requirement be met. Collective bargaining, the procedure therefore, and the choosing of appropriate units, etc., are provided for.

Since the use of an injunction depends to a large extent upon the finding of an unfair labor practice, it is necessary to treat sections 11 and 12 in more detail; furthermore, invalidity of any specific unfair labor practice provision will reinstate to that extent the previous Minnesota law as affected by the 1933 Labor Disputes Injunction Act.

It is an unfair labor practice although not an unlawful act "for any employee or labor organization to institute a strike if the calling of such strike is a violation of any valid collective agreement between any employer and his employees or labor organization and the employer is, at the time, in good faith complying with the provisions in the agreement." Although collective bargaining agreements are not made enforceable as a contract by this provision, and although the question of the validity of such bargaining agreements never has been passed on by the Minnesota court, it would seem that the persuasive...
authority of decisions in other states holding such agreements valid, and the general desirability and urgency of holding such agreements valid would be given effect by the Minnesota court, at least to the extent of allowing an injunction to prevent its breach. It must also be remembered that "neither the common law, nor the fourteenth amendment, confers the absolute right to strike." It is both an unfair labor practice and an unlawful act for any employee or labor organization to institute a strike in violation of the sections providing for: (a) peaceable settlement of labor disputes between the parties, (b) giving of notice of intent to call a strike or lockout, and (c) providing for conciliation. Although the problem does not appear to have been much considered, the effect of issuing an injunction against the improper calling of a strike in either of the above mentioned situations constituting unfair labor practices may well involve a violation of the thirteenth amendment as being involuntary servitude in so far as such an


Riesenfeld, Recent Developments in French Labor Law, (1939) 23 MINNESOTA LAW REVIEW 407, 444-5, where the writer suggests: "It might well be that on the success of collective bargaining is hinged the fate of industrial democracy and democracy in general."

Assuming that the Act made possible a civil action for damages for violation of a collective bargaining agreement, it still appears that the remedy would be inadequate for two reasons: (1) The general rule in Minnesota is that an unincorporated association cannot be sued as such even under Mason's 1927 Minn. Stat., sec. 9180, allowing suit under a common name in certain cases, St. Paul Typothetae v. St. Paul Book Binders Union, (1905) 94 Minn. 351, 102 N. W. 725, discussed in (1929) 14 MINNESOTA LAW REVIEW 193, unless it is also engaged in business in the group name. Fitzpatrick v. International Typographical Union of North America, (1921) 149 Minn. 401, 184 N. W. 17. (2) Even if the union were engaged in a business so as to be capable of being sued as an entity, the damages would be hard to ascertain, McClintock, Equity (1936) 62, 63, even if it be further granted that the union were solvent.

And where the remedy at law is inadequate, an injunction is properly issued, Mason's 1927 Minn. Stat., sec. 9386; McClintock, Adequacy of Ineffective Remedy at Law, (1931) 16 MINNESOTA LAW REVIEW 235, 255.


injunction against a strike would amount to ordering the striking employees back to work. Yet as a practical matter it has been recognized that an employee has the right to quit work and that no court decree can effectively force an employee to return to work. Probably for this reason the courts have rarely enjoined a strike as such, even if called for an obviously unlawful purpose, but rather usually have framed their injunctions in terms to prohibit the paying of any strike benefits by the union, the giving of support by the labor organization to the strike, or the enjoining of picketing in general. The court could probably also frame its injunction in the alternative of forcing the strikers either to return to work or to quit. With such injunctions being issued by the courts, the problem of involuntary servitude resulting from section 14 when applied to section 11, subsections (a) and (b), is not very acute. It may be added that under the latter an injunction or temporary restraining order could be issued to prevent the calling of a strike (or lockout) within the ten day period for conciliation if such an act appeared imminent and if the relief could be had in time.

Although the sit-down strike has never arisen before the Minnesota supreme court, two distinct attacks are made by the statute against this weapon of labor so as to dispel any future doubts. Most courts have agreed that such activities by labor


Minnesota, Laws 1939, ch. 440, sec. 1 (c), Mason's Minn. Stat., 1940 Supp., sec. 4254-21 (c)—employees retain this status even though striking because of a current labor dispute, if no other substantial employment is obtained.


The prohibition against such an injunction in Mason's Minn. Stat., 1940 Supp., sec. 4260-4 (c), as well as Mason's 1927 Minn. Stat., sec. 4257, is inapplicable by Minn. Laws 1939, ch. 440, sec. 14, Mason's Minn. Stat., 1940 Supp., sec. 4254-34, when injunction is sought against an "unfair labor practice."

The same is true of Mason's Minn. Stat., 1940 Supp., secs. 4260-4 (d) and (h).

Minnesota, Laws 1939, ch. 377, ch. 440, sec. 11 (c), Mason's Minn. Stat., 1940 Supp., sec. 4254-31 (c). No provision as to sit-down strikes was included in the 1933 Act (Minnesota Labor Disputes Injunctions Act).

are unlawful, but still the question remains whether an injunction should be allowed, in view of the fact that the injunction probably could not be enforced effectively at any event.\textsuperscript{247}

By the Minnesota Labor Relations Act the controversial question of the right of labor to picket is divided into two classes: first, where a strike is in progress, and second, where no strike is in progress. In section 11 (d),\textsuperscript{248} the right to picket where a strike is in progress has many possibilities: (a) If only employees picket, there appears to be no limit on the number allowed,\textsuperscript{249} nor does the right to picket seem to depend upon the lawfulness of the purpose of the strike. (b) If employees picket, non-employees may also picket as long as they remain in the minority. (c) If no employees picket\textsuperscript{250} despite the fact that there is a strike in progress, then non-employees cannot picket at all. It is obvious that this section does not prohibit picketing by an employee, and by necessary implication allows even non-employees to picket within the above mentioned limits. The validity of such a regulation has been urged,\textsuperscript{251} and it would seem that such a position is sound when based on the police power.\textsuperscript{252}

The right to picket in Minnesota never has been confined to situations where a strike was in progress.\textsuperscript{253} By section 11 (e) 2\textsuperscript{47}McClintock, Injunctions Against Sit-Down Strikes, (1938) 23 Iowa L. Rev. 149.

\textsuperscript{248}"It shall be an unfair labor practice: "For any person to picket or cause to be picketed a place of employment of which place said person is not an employee while a strike is in progress affecting said place of employment, unless the majority of persons engaged in picketing said place of employment at said times are employees of said place of employment."

\textsuperscript{249}By section 13 of Minn. Laws 1939, ch. 440, Mason's Minn. Stat., 1940 Supp., sec. 4254-33, it is possible that an unreasonable number of pickets could be held to be unlawful either as "interfering with the free and uninterrupted use of the roads," etc., or as obstructing wrongfully "ingress to and egress from any place of business or employment." In Mason's Minn. Stat., 1940 Supp., sec. 4260-4 (c), there was also no limit placed on the number of pickets. As a practical matter, no case arising before the Minnesota Supreme Court where picketing was sustained has involved the use of more than one picket.

\textsuperscript{250}By People v. Harris, (Colo. 1939) 91 P. (2d) 989, the court said that a regulation but not a prohibition of picketing is valid. In (1939) 88 U. of Pa. L. Rev. 118, it is suggested that a law distinguishing the rights of employees and non-employees to picket is reasonable as tending to lessen possible violence. And in (1938) 48 Yale L. J. 308, it is pointed out that although the right to picket is said to be guaranteed by the constitutional grant of freedom of speech, Senn v. Tile Layers Protective Union, (1937) 301 U. S. 468, 57 Sup. Ct. 857, 81 L. Ed. 1229, still this right can be limited by the police power, and it is only necessary that the law enacted have reasonable relationship to the purpose of preventing violence.

\textsuperscript{251}Steffes v. Motion Picture Machine Operators Union, (1917) 136
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this common law rule is protected against infringement with no practical limit being placed on the right despite the fact that the picketing in such situations is limited to one picket. Of course such legislative declaration of the right to picket although no strike exists will be given effect. Although it is obviously the law in Minnesota, nothing in the 1939 Act expressly requires the picketing to be peaceful. Quaere whether picketing can be enjoined if a violation of section 11, subsection (a) or (b), is found, assuming the picketing is otherwise within the limits of subsections (d) and (e)?

It is both an unfair labor practice and an unlawful act to interfere with a vehicle or its operator if neither the owner nor operator is a party to a strike. It is probable that such a result would be reached by the court in the absence of the above provision, yet such an act is properly enjoinable, not only since the remedy is more immediate but also because damages other than physical damages to the operator or to the vehicle would be hard to ascertain.

In section 11 (g), it is provided that no employee or labor organization or officer shall compel or attempt to compel any person to join or not to join a certain labor organization or take part in a strike, by any “unlawful interference” with him, his family, or his property. Such acts are both unfair labor practices and unlawful. This subsection is broader than the previous subsection but the finding of a violation is likewise a question of fact for the particular case. On the basis of both the common

Minn. 200, 161 N. W. 524; Mason’s Minn. Stat., 1940 Supp., sec. 4260-4 (e); also sec. 12 as applied in Lichterman v. Laundry and Dry Cleaning Drivers Union, (1938) 204 Minn. 75, 282 N. W. 689.

See footnote 249.

Minnesota, Laws 1939, ch. 440, sec. 11 (e), Mason’s Minn. Stat., 1940 Supp., sec. 4254-31 (e), provides that it is an unfair labor practice: “For more than one person to picket or cause to be picketed a single entrance to any place of employment where no strike is in progress at the time.”


Minnesota Stove Co. v. Cavanaugh, (1915) 131 Minn. 458, 155 N. W. 638.

Minnesota, Laws 1939, ch. 440, sec. 13, Mason’s Minn. Stat., 1940 Supp., sec. 4254-33, may perhaps be used by the court as a basis so to hold. Compare also footnote 249.


law and previous statutes, the granting of an injunction in such a situation is both valid and justifiable.

A violation of any of these subsections under section 11 with the exception of subsection (a), being an unlawful act, also has certain additional effects.

In section 12 certain unfair labor practices for employers are set out, which also by subsection (g) are declared to be unlawful acts with two specific exceptions. Subsections (a) and (b) correspond to those under section 11 as to the employee or labor organization, and prohibit the institution of a lockout in violation of a collective bargaining agreement or in violation of the provisions set out in sections 6 and 7 of the Act. Under the same reasoning as applied to the employees' unfair labor practices, the validity of these subsections cannot be doubted.

In subsection (c) a familiar provision is found. A further check on the power of the employer to intimidate labor through fear of the loss of jobs is provided for by subsection (d) whereby an injunction is permitted against an employer for discharging or discriminating against an employee because he has signed any affidavit or petition or given testimony under the Act. Spying on activities of employees in the exercise of their legal rights may also be enjoined by subsection (e). A blacklist of any employee because he has exercised any legal right, for the purpose of preventing him from gaining employment is enjoinable as an unfair labor practice, and also subjects the employer to civil damages and criminal prosecution as being an unlawful act.

The result of this provision is to add the remedy of injunction

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263 Minnesota Stove Co. v. Cavanaugh, (1915) 131 Minn. 458, 155 N. W. 638.
266 Minnesota, Laws 1939, ch. 440, secs. 12 (a) and 12 (c), Mason's Minn. Stat., 1940 Supp., sec. 4254-32 (a) and (c) are omitted from sec. 12 (g).
267 This is a ban against yellow dog contracts, and should be connected with State v. Daniels, (1912) 118 Minn. 155, 136 N. W. 584, and with Mason's Minn. Stat., 1940 Supp., sec. 4260-3, which never has been passed on in Minnesota to date.
268 This is enjoinable as an "unfair labor practice" under sec. 14, and by sec. 12 (g) is also an unlawful act.
269 Minnesota, Laws 1939, ch. 440, sec. 12 (f) and (g), Mason's Minn. Stat., 1940 Supp., sec. 4254-32 (f) and (g). See Note, (1940) 24 Minnesota Law Review 217.
where under a previous statute only the remedy of damages was possible.

Section 13 makes it unlawful to (a) "interfere with the free and uninterrupted use of" roads, streets, etc., and (b) "to wrongfully obstruct ingress to and egress from any place of business or employment." Whether an injunction suit can be maintained for a violation of this section as such is uncertain.

The specific sections dealing with injunctions in the Minnesota Labor Relations Act of 1939 are sections 14 and 15. In the first it is provided that where any "unfair labor practice" as defined in sections 11 or 12 is threatened or committed, the district court shall have jurisdiction to issue an injunction and further that in such suits the provisions of the 1917 Act and the 1933 Labor Disputes Injunctions Act shall not apply. The section further provides that as to procedural requirements, no court shall have jurisdiction to issue any temporary or permanent injunction unless (1) a hearing in open court be had with witnesses supporting the allegations in the affidavits and opportunity for cross-examination and testimony in opposition thereto, and unless (2) a finding of fact be made that the acts set out in sections 11 and 12 have been committed or will be committed unless restrained. Where a temporary restraining order is sought, it may not be issued even if otherwise proper, unless upon the testimony of witnesses in open court and upon a record being kept of such testimony.

In section 15, provision for an injunction is specified in those cases where the applicant, whether employer, employee, or labor organization, has violated any of the provisions of the Act "with respect to any labor dispute." Such applicant is not entitled to any of the benefits of the Act respecting this labor dispute, and

270 Mason's 1927 Minn. Stat., sec. 10378. See footnote 13 and text.
271 A violation of section 13 (Minn. Laws 1939, ch. 440, sec. 13), Mason's Minn. Stat., 1940 Supp., sec. 4254-33, is clearly not an unfair labor practice. It would seem that the issuance of an injunction under this section would depend on whether the defendants in the particular case had exceeded the limits allowable in giving "publicity to the facts of a strike" without undue violence or fraud.
272 Compare similar provision in Mason's Minn. Stat., 1940 Supp., sec. 4260-7, paragraph 1.
273 Compare Minnesota, Laws 1939, ch. 440, sec. 7 (a), Mason's Minn. Stat., 1940 Supp., sec. 4254-27 (a), by which the scope of the injunction as to persons who may be enjoined is more narrowly limited.
274 By the 1933 Act (Mason's Minn. Stat., 1940 Supp., sec. 4260-7), it was possible to get a temporary restraining order in certain cases even without notice to the other party if a bond was filed. See supra p. 789.
275 The only one apparent is that of being able to maintain an injunction under section 14 (Minn. Laws 1939, ch. 440, sec. 14), Mason's Minn. Stat.,
further is not entitled to maintain a suit for an injunction for any matters arising out of such labor dispute until he has "in good faith made use of all means available under the laws of the state of Minnesota for the peaceable settlement of the dispute." 276

The effect of these two sections is, upon reflection, not as destructive as first appears. If the applicant is within section 14, his rights are still uncertain when the unfair labor practice complained of is that of picketing, since by section 11 subsections (d) and (e) it seems that picketing probably cannot be enjoined even though the strike is in violation of subsections (a), (b), or (c), as long as there is no violation of subsections (d) or (e). And as pointed out before, an injunction would probably not be issued against the strike as such, since it might involve involuntary servitude. Thus the most effective use of the injunction, viz. to enjoin picketing and thus end the strike seems unavailable in most situations. Without this it seems that the only use which an injunction could have, assuming an unfair labor practice be found, is to enjoin the paying of strike benefits or the giving of organized backing to a strike.

Section 15 would certainly not increase the court's power to grant an injunction, and since the available means of peaceable settlement must first be utilized by the applicant, the time of the granting of the injunction is deferred and with the lapse of time, its effectiveness usually is decreased.

So it would appear that the actual result of the 1939 Act is to set up certain procedural limits on the granting of injunctions in cases involving labor disputes, and not as may at first have been believed, to broaden the situations where the injunction may be resorted to as a check upon the organized activities of labor.

VI. SUMMARY

Before any statutory expression on the subject, it had been the law in Minnesota that labor could organize and pursue its purposes, if legitimate, by peaceful means, 277 including picketing and bannering of an employer as unfair as long as there was no implication of

1940 Supp., sec. 4254-34, since the other provisions are in the form of requirements imposed upon the parties by the law.

276 This amounts to an insertion of the requirement of arbitration which was omitted from the Labor Disputes Injunction Act. See footnote 139. Such a provision is desirable. Where it has not been complied with, at least one court has found that under its anti-injunction act, it had no power to issue an injunction. See supra, p. 783.

277 Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663.
threat or intimidation, and including the right to induce others by peaceful persuasion to cease dealing with an employer with whom a labor controversy existed. But a boycott was unlawful and could be enjoined. Furthermore a union could enforce its rules, if in a peaceful manner and without malice, notwithstanding any consequential injuries to others. All these substantive rights accorded labor prior to the Minnesota Labor Disputes Injunction Act would remain unaffected even if the Act were held invalid, which on the basis of recent decisions, appears unlikely. Neither would the Minnesota Labor Relations Act of 1939 seem to effect any changes in this respect.

Yellow dog contracts are probably unenforceable on the basis of present statutes, although in the only case on the point, the court in an early decision had taken a contrary position. Picketing of a private residence seems prohibited as disorderly conduct, and would not seem to be within the restrictions on injunctions provided by the 1933 Act. What result the 1939 Act would have is uncertain. Whereas picketing could be enjoined prior to the 1933 Act if for the purpose of preventing an owner from

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278Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663; Steffes v. Motion Picture Machine Operators Union, (1917) 136 Minn. 200, 161 N. W. 524.


283Reid v. Independent Union of All Workers, (1937) 200 Minn. 599, 275 N. W. 300, see footnote 189; Lichterman v. Laundry and Dry Cleaning Drivers Union, (1938) 204 Minn. 75, 282 N. W. 689, 283 N. W. 752; (1939) 23 MINNESOTA LAW REVIEW 549; State v. Cooper, (Minn. 1939) 285 N. W. 903, discussed in (1939) 24 MINNESOTA LAW REVIEW 132.


286State v. Zanker, (1930) 179 Minn. 355, 229 N. W. 311.

287State v. Perry, (1936) 196 Minn. 481, 265 N. W. 302; State v. Cooper, (Minn. 1939) 285 N. W. 903.

288Perhaps Minnesota, Laws 1939, ch. 440, sec. 11 (e), Mason's Minn. Stat., 1940 Supp., sec. 4254-31 (e), may be construed to give a different result.
working at his own business, under the 1933 Act a contrary result is reached, which seems substantiated by the 1939 Act.

VII. Conclusion

A labor dispute although nominally involving two parties, viz. a labor organization and an employer, has also an important third party, the general public. Most courts and legislatures have recognized the fundamental conflict of interests between the two competing parties; on the one hand that of the employee or labor organization to make publicly known its quest for better wages, hours, or working conditions in a particular dispute, and that of the employer to be free to operate his own business as he sees fit, and to be accorded both the legal and especially the equitable protection of the laws. But the interest of the most important party, the general public in the community affected, has been for the most part overlooked. The Minnesota legislature by the Minnesota Labor Relations Act of 1939 has taken an important step toward this end in providing machinery for the peaceful settlement of labor controversies. If the purpose of the legislature is given effect by broad-minded cooperation of both labor and capital in the operation of the Act, the labor injunction would properly become that extraordinary form of relief accorded by equity where the situation demands it, rather than a convenient weapon to be used against the activities of organized labor.

Roraback v. Motion Picture Machine Operators Union, (1918) 140 Minn. 481, 168 N. W. 766; Campbell v. Motion Picture Machine Operators Union, (1922) 151 Minn. 220, 186 N. W. 781.


Minnesota, Laws 1939, ch. 440, sec. 11 (e), Mason's Minn. Stat., 1940 Supp., sec. 4254-31 (e); see supra, pp. 798, 799.


The passage by the various state legislatures of anti-injunction acts is based on a recognition of this conflict; see footnote 108.