The Minnesota and National Labor Relations Acts--A Substantive and Procedural Comparison

Gerald W. Heaney

Robert Latz

Follow this and additional works at: https://scholarship.law.umn.edu/mlr

Part of the Law Commons

Recommended Citation


https://scholarship.law.umn.edu/mlr/1376

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.
THE MINNESOTA AND NATIONAL LABOR RELATIONS
ACTS — A SUBSTANTIVE AND PROCEDURAL
COMPARISON

GERALD W. HEANEY* AND ROBERT LATZ**

I. RECENT CONGRESSIONAL PROPOSALS

The message of President Eisenhower1 to Congress with refer-
ence to the jurisdiction of Federal and State governments in Labor-
Management Relations has served once again to focus the national
spotlight on this vexing question.

Pursuant to this message, Senator H. Alexander Smith intro-
duced a bill incorporating this recommendation2 and indicated that
further legislation would be introduced on receipt of a further mes-

sage from the President.

The Presidential message, coming as it did, hard on the heels
of a Supreme Court decision, Garner v. Teamsters,3 which bars
action by state courts to restrain picketing which falls within the
province assigned to the NLRB by the Taft-Hartley Act even
though the court finds the conduct violates state law, gave rise to
extensive Congressional hearings on the problem.4 The points of
view developed in the Congressional hearings, as a result of the
original message, can be briefly stated as follows:

The Secretary of Labor, speaking for the administration, did
not extend the views of the President.5

---

*Member of the Minnesota Bar.
**Senior Law Student—University of Minnesota.
2. S. 2650, 83d Cong., 2d Sess. (1954). The Section relating to Federal-
State jurisdiction is as follows:
4. Hearings before Senate Committee on Labor and Public Welfare on
5. "In one area of this broad field, there is a need for immediate action,
that is to clarify the rights of the States and Territories to deal with
emergencies affecting the health and safety of their citizens notwithstand-
The National Labor Relations Board refused to give its views on the subject. 6

The General Counsel of the National Labor Relations Board expressed no opinion as to the merits of the proposal, but suggested that it is absolutely necessary that Congress not only make its desires crystal clear if conflict is to be avoided, but that it fully understand the implications of any legislation it considers. 7

Although no representatives of Minnesota appeared in the 1954 hearings, Harry Hanson, State Labor Conciliator of Minnesota, made two recommendations during the 1953 Senate hearings. 8

"We submit that the Congress should enact legislation providing for the recognition of, and the adherence to, State laws calling for conciliation or mediation of labor disputes before resorting to strike action. And that is the most important thing, as far as Minnesota is concerned; because the heart of our labor-relations law is conciliation, voluntary conciliation.

ing any conflict, actual or implied, with Federal law. The National Labor Relations Act and the decisions of the courts, have had the apparent effect of leaving the States powerless to deal with emergency strike situations which incidentally affect interstate commerce.

"S. 2650 contains a provision which is intended to clarify the powers of the States and Territories in this area.”

Hearings, supra note 4, at 2976.


7. The General Counsel suggested:

(1) That the states jurisdiction be exclusive.

"That would mean that the National Board would not be empowered to take regulatory action with respect to such labor disputes in these States, even where the national act would not necessarily be inconsistent with the state regulation. This approach has certain obvious advantages in respect to clarity of scope and avoidance of potential conflict, but it also has certain obvious disadvantages, particularly with respect to labor disputes in multi-state industries and employer associations, which would be subject to diverse regulations with respect to a single controversy because of the application of the Federal authority in some States and the application of separate and perhaps mutual inconsistent local authorities in other states.

(2) That the jurisdiction be concurrent.

"... In such event, I suggest it is important that Congress also make clear whether it desires that the National Board shall be bound by the determinations of the State authority. Thus, for example, if a State should punish an employee for engaging in strike activities which it has forbidden under the authority of this section, is the National Board therefore bound to determine in an unfair labor practice case that the employer was free to discriminate against and need not reinstate the employee who engaged in the activities which would otherwise be protected under Federal law? Similarly, may the National Board require the employer, under the Federal act, to bargain with the union which may have disqualified itself under State law? And, how does Congress desire that such concurrent jurisdiction be applied in respect to labor disputes which involve employees in a bargaining unit covering more than one State?”

Hearings, supra note 4, at 3506, 3507.

"We would further suggest that the Congress give the States concurrent jurisdiction in the representation field, providing for the exchange of information between the two agencies, so that if the National Board chooses not to act the State will be free to do so. A state certification would then have the same weight and value as a National Board certification." (pp. 892, 893)

Both in his written statement and in his oral testimony, he went considerably beyond these recommendations, and in substance seemed to advocate that Minnesota courts have concurrent jurisdiction to enforce the federal law and that they be permitted to enforce the state law unless the rights were expressly protected under Section 7.

"I have but one message, and that is that Minnesota stands ready to handle its own labor-management disputes effectively and expeditiously, if they are given a chance to do so." (p. 889)

"The state through its police power can regulate picketing that results in violence or other tortuous acts but the State cannot take any measures to prevent this picketing from taking place. (We must wait until the horse is stolen before locking the door.)" (p. 896)

"The local community bears the direct and immediate impact of labor disputes. Yet they are left powerless to apply preventative remedial measures because the Federal Government has preempted the field, not by an overt act on their part, but because of labor legislation designated to prevent the very situation that is (not) created. (p. 897)

"It is not the intention of this presentation to imply that the State should have a free hand in the control of labor disputes within its borders. If this were so, the right to bargain collectively, to strike, to select the union of their own choosing, could be denied employees by anti-labor legislation of certain States. The rights guaranteed employees under Section 7 of the National Labor Relations Act must be protected on a national level. State laws would have to conform with the broad policy of the Federal act." (p. 898)

Representatives of employers generally took a position in support of the President's recommendations, but indicated that in addition the authority of states to regulate strikes and picketing should be extended. The more important recommendations were those of the United States Chamber of Commerce; the National Association

9. (1) "We are whole-heartedly in favor of what the President said on the subject of Federal State authority."

(2) "We urge an amendment empowering the States to deal adequately with such emergencies along the general lines of the Wisconsin statute which was invalidated in this respect by the United States Supreme Court in AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA v. WISCONSIN EMPLOYMENT RELATIONS BOARD (340 U.S. 383)." 

Hearings, supra note 4, at 3025.
of Manufacturers,\textsuperscript{10} and the Council of State Chambers of Commerce.\textsuperscript{11}

A significant distinction between the position of the Chamber and the NAM is that the Chamber recommended that the states be permitted to impose compulsory arbitration if they desire or to have State Fact Finding Commissions make recommendations for the settlement of disputes. The NAM recommended that the states be given the right to limit, regulate or prohibit strikes but wanted to restrict the rights of the states to impose recommendations for the settlement of disputes.

The National Auto Dealers Association proposed an exemption

\textsuperscript{10} "We feel that legislative action is required to assure to the States and Territories the authority to deal with State Emergencies even though such matters also be subject to federal statutes."

"It is recommended that legislation be enacted establishing the authority of the several States and Territories to regulate or restrict strikes, picketing, or boycotts, in line with their obligation to protect the health and safety of their citizens. It is further recommended that such changes should not result in imposition of, or recommendations for settlement of labor disputes."

\textit{Hearings, supra} note 4, at 3541-3542.

\textsuperscript{11} \textit{Hearings, supra} note 4 at 3380.

\textit{PROPOSED AMENDMENT TO THE LABOR-MANAGEMENT RELATIONS ACT, 1947.}

"After Section 503 insert:

"Sec. 504. Nothing herein shall be construed as limiting the right of any State or Territory to give effect to any statute or to the common law thereof pertaining to:

\textquote{\‘(a) Crime, misdemeanors and other breaches of the peace,}
\textquote{\‘(b) Interruptions by strikes or lockouts, or threats thereof, of services essential to the health or safety of the citizens of such State or Territory,}
\textquote{\‘(c) Enforcement of collective bargaining contracts,}
\textquote{\‘(d) Trespass, duress, coercion, or fraud,}
\textquote{\‘(e) Recognition picketing by a minority union,}
\textquote{\‘(f) Secondary boycotts and jurisdictional disputes,}
\textquote{\‘(g) Strikes by requiring a vote to authorize,}
\textquote{\‘(h) Picketing by non-employees,}
\textquote{\‘(i) Picketing in the absence of a labor dispute,}
\textquote{\‘(j) Picketing in homes.'"}

(p. 3381)

"S. 1161, introduced in the last session by Senator Goldwater, seeks to accomplish the same purposes as the subject amendment. It reads as follows:

"‘Sec. 14(c) Nothing in this act shall be construed to nullify the power of any State or Territory to regulate or qualify the right of employees to strike or picket.'"

Support for this position was also received from the American Mining Congress (p. 3330), from the National Association of Home Builders (p. 3563), the Illinois Manufacturing Association (p. 3609), the Southern Coal Producers Association, the American Trucking Association (p. 3344) and others.
to the Taft-Hartley Act patterned after the retail establishment exemption in the Wage and Hour Law.\textsuperscript{12}

The recommendations of the Pennsylvania Manufacturers Association, with respect to the President's recommendations, while generally paralleling those of other employers, made a very pertinent analysis:\textsuperscript{12}

"What is intended by the proposal isn't too clear. Some have to read into the proposal an intention to restore to the States the power to regulate strikes in public utilities."

"The proposed addition can be interpreted to mean whatever the reader wants it to mean.

"It can be construed as an intent to restore to the States their power to deal with labor disputes in public utilities or other industries where the health or safety of their citizens are concerned."

"On the other hand, it can be construed as nothing more than an acknowledgement (or restatement) of the police powers reserved to the States to deal with labor disputes when they get out of hand (mass picketing, obstructing streets, or highways, picketing homes, etc.). The Supreme Court has always carefully pointed out in its decisions that those police powers continue to be reserved to the States."

"The language employed in the proposal is almost too simple. It raises new questions in a field that is already plagued by too many that are unanswered.

****

"Incidentally, can we consistently oppose compulsion at the national level whether by arbitration or panel recommendation in emergency situations which affect the safety or health of the Nation as a whole but insist that the States be free to substitute such compulsion for the right to strike or boycott in emergency situations which affect the State and health?" (p. 3718)

The labor organizations generally took the point of view that the supremacy of the federal authority to regulate strikes and picketing should not be disturbed; that what was really involved was compulsory arbitration in public utilities, to which they were unequivocally opposed, and that no legislation was needed to protect persons or public property from violence.\textsuperscript{14} The CIO position was stated by Arthur Goldberg, General Counsel of the CIO.

\textsuperscript{12} "Any retail or service establishment, more than 50 per cent of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located. A 'retail or service establishment' shall mean an establishment of 75 per cent of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry." \textit{Hearings}, supra note 4, at 3560.

\textsuperscript{13} \textit{Hearings}, supra note 4, at 3691.

\textsuperscript{14} The CIO, through their general counsel, took the position that what was really involved in the Smith Bill was:

"... whether or not compulsory arbitration should be imposed on a
"THE CHAIRMAN. Does that mean, Mr. Goldberg, that you think we should have a Federal law definitely forbidding compulsory arbitration under all circumstances, irrespective of any situation that might arise in the State?

"Mr. GOLDBERG. I think that when the Taft-Hartley was adopted, Senator Smith, that is exactly what was done. The thing that won this case in the Supreme Court, in my opinion, above all other things — and I speak with a little authority because I argued the Wisconsin Utility Case in the Supreme Court — was the fact that Senator Taft, who led the Taft-Hartley bill on the floor of the Senate, said that as a matter of labor policy it was better to have collective bargaining, including the right to strike, in these types of disputes rather than to have compulsory arbitration, because the evils and dangers of imposing compulsory arbitration were greater than the evils and dangers that were involved in permitting the right to strike in this particular type of situation." (p. 3108)

George Meaney, President of the A. F. of L. stated:

"This is a very dangerous provision which would allow hostile State courts and authorities to exercise jurisdiction over labor disputes in commerce, as long as an 'emergency' could be found. What in an emergency? What are the essentials that must be present to constitute an emergency? Who prescribes it? Is it the governor or may any State court so declare? The amendment does not indicate. Instead the language used is extremely vague and affords opportunity for very grave abuse." (p. 3595)

Beatrice Lampert, representing the Labor Relations Committee of the National Association of Attorneys General, opposed the President's recommendation and requested a provision which would in effect give concurrent jurisdiction to state labor boards as well as state courts. The text of the provision suggested was:

"Nothing herein shall be deemed to deprive States of jurisdiction to enforce laws and regulations not inconsistent with this law..."

"...large segment of American industry as a substitute for collective bargaining in the resolution of labor disputes. "This provision sounds as if its purpose were to enable the States to exercise their traditional and legitimate police powers to protect persons or private property from violence. However, when we examine the present state of the Supreme Court decisions on this subject, we discover that the States possess this power now, that that cannot be the purpose of this proposal. "Its effect, however, is to legalize State laws which under the guise of dealing with local emergencies, prohibit strikes and provide for compulsory arbitration of labor disputes." Hearings, supra note 4, at 3108.

15. "Mrs. Lampert. You are right, Senator. That is exactly the position that the National Association of Attorneys General is taking. They fear that the passage of this particular amendment, or this particular provision, which is in the bill now before our committee, is not enough, and that indeed if it was passed it might be so construed as to express the congressional intent that States could act in no other circumstances excepting the ones described in that provision and that it might be so narrowly construed as to cover such a minute area of labor relations as to be practically useless." Hearings, supra note 4, at 3436.
unless jurisdiction of the same controversy involving the same parties and issues shall have been undertaken by the National Labor Relations Board or other Federal agency designated in the act.” (p. 3420)

She stressed that the purpose of the LMRA could be more effectively accomplished by supplemental regulations of the 48 states because:

“1. The Federal agency, no matter how expert, is too remote from the average community to have knowledge of, or sympathy with, the variables which call for some flexibility in administration.

“2. The Federal agency must cover such a vast field that a certain amount of regimentation in administration is essential to coordinate fieldworkers.

“3. The Federal agency, with the necessary correlation between Washington and the Field, acts far more slowly than local agencies.

“4. No matter how expert the agency, its facilities and resources are not adequate to take every labor question which might arise.” (p. 3421)

The position advocated by the attorneys general was more thoroughly explained in the 1953 Senate hearings by L. E. Gooding, Chairman, Wisconsin Employment Relations Board, Madison:

“We believe that there should be concurrent jurisdiction. Whether or not the activity is prohibited by the Federal law, we believe that if it is prohibited by the State law, the State should have power in the first instance to go in there and attempt to regulate and prevent illegal activities. If, subsequently, the Federal Government comes into the case, no harm has been done anyway.” (p. 902)

The New York State Labor Relations Board took an entirely different approach.16 It proposed:

“The right to decline jurisdiction should be expressly embodied in the act, so that there may be no question as to the propriety of such action by the National Board.

16. The New York view was specifically attacked by Gooding of Wisconsin:

“That, in my opinion, just goes backward. They say first that the national board must decline jurisdiction. Well, if the State waited until the national board declined jurisdiction in the individual case, they might wait 6 or 8 months or a year before the board determined, as a matter of fact, whether or not it did have jurisdiction. On the cession proposition, in those states that have no labor boards, there is nobody to cede to, ‘We think that the proper approach is to let the State assume jurisdiction, and then if the National Labor Relations Board comes in with an assumption of jurisdiction and makes an order contrary to the other made by the Wisconsin Board, or by the local State board, that order unquestionably, in a case where they had jurisdiction, would supersede the order made by the State board.’” Hearings, supra note 8, at 904.
"Second, in order to avoid a 'no-man's land,' the States should be free to act in labor disputes over which the National Board has but declines to assert jurisdiction.

"Third, the National Board should be empowered, in its discretion, to cede jurisdiction over cases, or categories of cases, which it might otherwise process, to appropriate State or Territorial agencies. A broad discretionary power vested in the National Board should be substituted for the present rigid and inflexible requirement of absolute consistency contained in the present section 10(a)." (p. 869)

It stated that the bill introduced by Senator Ives in the 1953 Session, Sen. 1264, would accomplish these objectives.

Judging from the measure passed out of committee a great deal of weight was given to the views of Archibald Cox, Professor of Law at Harvard. He stated:

"The special circumstances arising when a labor dispute threatens an imminent local public emergency justify a narrow exception along the lines recommended in the President's message and embodied in S. 2560.

"There are two respects in which the proposed amendment could be improved. In its present form it leaves open the possibility of a conflict between State and Federal authorities, the former acting pursuant to a State statute and the latter pursuant to sections 206-10 of title II of the Labor-Management Relations Act. Conflict or duplication might well complicate the handling of a dispute. The proposed amendment should therefore be revised to make it plain that upon the President's appointing a board of inquiry under section 206, the authority of a State shall terminate.

"It might also be wise to include a more specific definition of the kind of emergencies in which State intervention is authorized; otherwise there will be the danger of stretching the exception beyond its true intent." (pp. 3402, 3403)

He made it very clear, however, that as a general rule he was not in sympathy with those advocating concurrent jurisdiction.

"The two governments should never exercise concurrent jurisdiction over labor relations ... Congress must decide not only how far employer and union conduct should be regulated but also how far it should be free. Both decisions affect the way collective bargaining works. Conversely, the Taft-Hartley restrictions on strikes and secondary boycotts required drawing a line between the practices to be outlawed and the freedom to be allowed. All these issues are far too delicately balanced to permit the States to impose additional obligations on employers, employees or labor unions." (p. 3403)

The measure, as finally passed out of the Senate Labor Committee by a seven to six vote appears to be substantially in accord
with the views of Professor Cox and the New York Labor Relations Board.

The Committee limited state intervention to emergency disputes which, if permitted to continue, "will constitute a clear and present danger to the health or safety of the people of the state."

The text of the Bill is:

"Section 6 of the National Labor Relations Act is redesignated '6(a)' and a new subsection is added thereto reading as follows:

'(b) (1) The Board, in its discretion, may decline to assert jurisdiction over any labor dispute where, in the opinion of the Board, the effect on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.

'(2) Nothing in this Act shall be deemed to prevent or bar any agency, or the courts of any State or Territory, from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.'

'A new subsection '(c)' is added to section 14, reading as follows:

'(c) Nothing in this Act shall be construed to interfere with the enactment and enforcement by the States of laws to deal in emergencies with labor disputes which, if permitted to occur or continue, will constitute a clear and present danger to the health or safety of the people of the State: Provided, That no State shall be authorized by this subsection to take action in any labor dispute in which the Federal Government is acting pursuant to sections 206 to 210, inclusive, of this Act. As used in this subsection, the term 'State' shall include any Territory of the United States."

Subsequent to the approval of these amendments by the Senate Labor Committee, it was indicated by members of the minority that they were not satisfied with these amendments, and it was indicated by at least one member of the majority that he too was dissatisfied with the amendments and felt that a broader measure permitting the states to regulate the right to strike or picket should be passed by the Senate.  

It now seems quite clear that the problem will not be solved in this session of Congress, since the Senate voted to send the proposed changes back to committee and Republican congressional leaders have indicated an abandonment of any further plans to revise the Federal Act at this session of Congress.

It is the purpose of this article to study the operations of both

laws in Minnesota; to make a close analysis of the Acts; to point out their differences and to re-examine the Minnesota Act\textsuperscript{20} for the purpose of determining which of the provisions of the Minnesota Act can be constitutionally applied to industries in interstate commerce in the light of the recent United States Supreme Court decisions and the decisions of the Minnesota Supreme Court. It is hoped that this article not only will give a clearer understanding of the present status of the Minnesota law, but that it will help in determining the direction in which it is wise to proceed if free collective bargaining is to be encouraged.

II. Differences between the Federal Act and the Minnesota Act

There are a number of basic differences in concept or approach between the Federal Act and the Minnesota Act which should be thoroughly understood before attempting to analyze the differences on a section by section basis:

(1) The concept under the Minnesota Act of considering certain unfair labor practices unlawful acts.

(2) The concept under the Minnesota Act of holding an individual employee, as distinguished from a labor organization, guilty of unfair labor practices and unlawful acts, and liable in suits for damages.

(3) The concept under the Minnesota Act of court handling of unfair labor practices as distinguished from handling by administrative tribunals.

(4) The concept of granting practically unlimited powers to the State Labor Conciliator and permitting extremely broad discretion in their exercise.

(5) The combination under the Minnesota Act of mediation and conciliation functions in the hands of the persons responsible for the administration of the certification and unfair practices sections of the law.

A. Definitions

The definitions contained in the Minnesota Act are substantially the same as those contained in the Federal Act with a few significant exceptions.


Specific section numbers of both acts shall be cited without repetition of their full statutory citations.
1. Employer

The Minnesota Act defines employer as including "... all persons employing others and all persons acting in the interest of an employer. ..." [Emphasis added] The Federal Act defines an employer as "... any person acting as an agent of an employer, directly or indirectly. ...":

Prior to the 1947 amendments to the Federal Act it defined an employer as "... any person acting in the interest of an employer." The purpose behind the amendment was to make the ordinary rules of agency applicable to employers. In view of the fact that this provision remains in the Minnesota Act the scope of the Minnesota Act in this respect would appear to be broader. The absence of the words "directly or indirectly" in the Minnesota Act would not appear to be significant.

2. Employee

Individuals having the status of an independent contractor or a supervisor are not expressly excluded from being considered employees under the Minnesota Act as they are under the Federal Act. In view of the fact that they do not fall within the accepted definition of an employee, however, they are as a matter of practice not considered employees. Supervisory employees are specifically excluded under the Minnesota Act from consideration in the selection of a bargaining agent. The Federal Act provides that supervisors may become members of a union, but also provides that no employer shall be "compelled" to treat such supervisor as an em-

21. § 179.01(3).
22. § 2(2).
23. H. R. Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess. 302 (1947); 93 Cong. Rec. 6858-6859 (1947). This amendment was intended to change the rule in International Association of Machinists v. NLRB, 311 U. S. 72 (1940), that an employer is responsible for the actions of his supervisors and foremen even though he might not be under strict common law rules of agency. H. R. Minority Rep. No. 245 on H. R. 3020, 80th Cong., 1st Sess. 359 (1947). The House Minority Report, supra, feared that the change would make necessary proof of specific authorization by the employer to engage in the unfair labor practice before responsibility would be imputed back to him. But this fear was unfounded, since the NLRB has held, subsequent to the amendment, that an employer is responsible for the unfair labor practices of supervisors whether or not specifically authorized, particularly in the absence of any attempt on the employer's part to halt or disavow such conduct. Jewell, Inc., 99 N. L. R. B. 61, 30 L. R. R. M. 1033 (1952); Edwards Bros., Inc. 95 N. L. R. B. 1451, 28 L. R. R. M. 1458 (1951).
24. § 179.01(4).
25. § 2(3).
27. § 179.16. See Section on Appropriate Unit for discussion of plant guards and professional employees.
ployee for the purpose of any national or local law relating to collective bargaining.\textsuperscript{28}

The use of "compelled" would seem to give the employer the right to treat a supervisor who has joined a union the same as any other employee, for collective bargaining purposes.

As noted, Section 14(a) states that no "local law" can compel an employer to treat a supervisor as an employee. This would serve specifically to prevent employers dealing in interstate commerce from so doing even if the state law included supervisors within its coverage. As we have seen, the question does not arise in Minnesota, since the Minnesota Act does exclude supervisors.


There are a number of material differences between the Minnesota Act and the Federal Act with respect to the various steps and procedures to be followed by the parties to a labor dispute. There are also important differences in consequences resulting from the failure to follow the required steps.

1. Notices to Other Parties.

The State Act\textsuperscript{29} requires a 10 day written notice to the opposing party of intent to change an existing agreement, or to make any change in rates of pay, rules or working conditions. The Federal Act requires that a 60-day notice be given.\textsuperscript{30}

The Minnesota Act also differs from the Federal Act in that it applies whether a change is sought in an existing contract or there is a desire to negotiate a contract for the first time; while the Federal Act requires a notice only where there is present a collective bargaining agreement between the parties.

2. Notices to the State or Federal Conciliation Services.

The Minnesota Act requires that a 10-day notice of strike or lockout be given to the opposing party and to the State Labor Conciliator.\textsuperscript{31}

The Federal Act does not require that a strike notice be given but does require that a 30-day notice of the existence of a dispute be

\textsuperscript{28}§ 14(a).
\textsuperscript{29}§ 179.06(1).
\textsuperscript{30}§ 8(d)(1). A recent decision of the Court of Appeals for the 8th Circuit, United Packinghouse Workers v. NLREB, 210 F. 2d 325, 33 L. R. R. M. 2330 (8th Cir. 1954), 38 Minn. L. Rev. 886, extends the meaning of this section by holding that a union is forbidden to strike during the term of a contract even after expiration of the 60 day notice, though the contract contains neither a no-strike or lockout clause nor an arbitration clause.
\textsuperscript{31}§ 179.06(1).
given the United States Mediation and Conciliation Service and a copy thereof to the State Labor Conciliator.\textsuperscript{22}

Under the Minnesota Act the State Labor Conciliator is not permitted to step into a dispute on his own motion as is the United States Mediation and Conciliation Service under the Federal Act.\textsuperscript{23} Under a recent amendment to the Minnesota Act, however, either party may invoke the services of the State Labor Conciliator by filing an assistance notice.\textsuperscript{24}

3. Consequences of the Failure to Comply with the Provisions Respecting Strike Notices and Notices of Dispute.

Under the Minnesota Act,\textsuperscript{35} it is an unfair labor practice and an unlawful act if a strike or lockout is instituted without complying with its provisions. Under the Federal Act,\textsuperscript{36} it is an unfair labor practice to institute a strike without complying with the notice provisions of the Act. It is not an unlawful act. Individuals who participate in a strike, however, which was instituted without complying with the notice requirements of the Federal Act, lose their status as employees.\textsuperscript{37}

Under the State Act\textsuperscript{38} the jurisdiction of the State Labor Conciliator can be invoked during the existence of a collective bargaining agreement to assist in the adjustment of grievances. Under the Federal Act\textsuperscript{39}, the United States Mediation and Conciliation Service may come into a dispute at any time but they are directed to intervene in the settlement of grievances only as a last resort and in exceptional cases.

Under the terms of both the State and Federal Acts, a duty is created to meet with the respective conciliation services whenever a dispute arises over the terms or application of a collective bargaining agreement and such dispute is not settled by conferences between the parties.\textsuperscript{40} Neither act is clear as to what the consequences are if either of the parties fail to respond to a request for such a conference.\textsuperscript{41}

\textsuperscript{32} § 8(d) (1).
\textsuperscript{33} § 203(b).
\textsuperscript{34} § 179.06(2).
\textsuperscript{35} §§ 179.06(1); 179.11(2), (10); 179.12(2), (7).
\textsuperscript{36} § 8(d).
\textsuperscript{37} § 8(d).
\textsuperscript{38} § 179.06(1).
\textsuperscript{39} § 203(b) (d).
\textsuperscript{40} §§ 179.06(1); 204(a) (3).
\textsuperscript{41} The legal implications of the word “duty” have not been determined. For a discussion of such implications see pp. 749-750 infra.
C. Public Interest Disputes

The provisions of the Minnesota Act with respect to the establishment of Fact-Finding Commissions were intended to accomplish the same purpose that the provisions of the Federal Act attempted to accomplish with respect to national emergency disputes. There are, however, several significant differences.

1. Scope

The Minnesota Act provides that a dispute "affected with a public interest" is present when a temporary suspension of operation would endanger the life, safety, health or well-being "of a substantial number of people in any community." At various times since the enactment of the law, this section of the Act has been both restrictively and liberally applied. At the present time the Conciliator is applying a strict rule and refuses to recommend that a commission be appointed, except where a public utility is involved, where an entire community is dependent on one industry for its livelihood, or where both parties feel that a Fact-Finding Commission would substantially contribute to the solving of their problems. No Fact-Finding Commissions were appointed in 1953.

Under the Federal Act a Board of Inquiry may be appointed by the President to inquire into a dispute when "a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety."

The scope of the Federal Act, being restricted to disputes which affect national health or safety, is infinitely narrower than that of the State Act.

2. Differences in Time Limits.

There is a significant difference between the time limits imposed by the Minnesota Act and the Public Emergency Sections of the Federal Act. The total waiting period under the Minnesota Act is 50 days.

42. §§ 206-210.
43. § 179.07; Annual Reports, Minn. Div. of Conciliation, 1939-1952. See also Note, 24 Minn. L. Rev. 217, 236 (1940).
44. See pp. 772-773 infra.
45. § 206.
46. The 20 day wait imposed by § 179.06, plus the 30 day wait under § 179.07.
In addition to the 60-day notice required by the Federal Act, there may be imposed, if an injunction is issued, an additional 80-day wait.\textsuperscript{47}

3. Differences in Functions and Procedures.

Under the Minnesota Act the Fact Finding Commission appointed by the Governor makes a report on the merits of the respective contentions of the parties.\textsuperscript{48} Under the Federal Act, the Board of Inquiry can only find facts and is specifically prohibited from making recommendations.\textsuperscript{49}

A strike in violation of the public interest section of the Minnesota Act constitutes an unlawful act as well as an unfair labor practice.\textsuperscript{50} Under the specific terms of the Act, the district courts are empowered to restrain such conduct on the request of an individual.\textsuperscript{51} Under the terms of the Federal Act, a strike or lockout is not an unlawful act, and the President is the only person who is permitted to obtain an injunction to prevent the strike or lockout from taking place.\textsuperscript{52}

A difference in the approach of the acts becomes apparent when it is observed that the Federal Act specifically provides that where an injunction is issued it shall be the duty of the parties to make every effort to adjust and settle their differences, with the assistance of the Federal Conciliator. However, neither party is under a duty to accept, in whole or in part, any proposal of settlement made by the Conciliator.\textsuperscript{53}

D. Employees Rights of Self-Organization

The language used in the Federal and Minnesota Acts with respect to the employees' rights of self-organization differs in one material respect. Section 179.10 of the Minnesota Act is substantially the same as Section 7 of the Federal Act, except that it states employees may engage in "lawful" concerted activities. The addition of the word "lawful" in the Minnesota Act is significant, since Minnesota makes some acts unlawful which the Federal Act does not.
not. Therefore, those acts which are unlawful are not protected under the Minnesota Act.\(^4\)

Despite the fact that the word "lawful" is omitted from the Federal Act, the courts have held that certain types of conduct are not protected.\(^5\) The Minnesota Courts have likewise held that certain types of conduct prohibited at common law are not protected activity within the meaning of Section 179.10.\(^6\)

E. Representation and Certification

1. Certification Procedures.

Under the Federal Act a secret ballot must be taken to determine the question of representation.\(^7\) Under the Minnesota Act, the State Conciliator has the right to use alternative methods such as a verification of authorization cards or the individual interview of employees.\(^8\)

Under the Federal Act an existing contract constitutes a bar to an election during the term of the contract.\(^9\) Under the State Act an existing contract does not constitute a bar to an election.\(^10\)

Under the Federal Act supervisory employees and union organizers who are not employees are usually not permitted to act as observers at an election. They are so permitted under the State Act.

Under the Federal Act a petitioning union must usually show that it represents 30 percent of the employees in an appropriate unit.\(^11\) As a matter of practice the State Labor Conciliator generally requires the same showing.

\(^{54}\) Faribault Daily News v. International Typographical Union, 236 Minn. 303, 306, 53 N. W. 2d 35, 39 (1952): "It is apparent that the two statutes are identical in meaning and almost identical in wording, except for the italicized word 'lawful' which is found in the state statute and not found in the federal statute. The words 'concerted activities' used in both statutes include strike action. When the state statute used the words 'lawful, concerted activities' it must refer to lawful concerted action under Minnesota Statutes."


\(^{56}\) State v. Cooper, 205 Minn. 333, 285 N. W. 903 (1939).

\(^{57}\) \$ 9(c)(1).

\(^{58}\) \$ 179.16(2), Warehouse Employees Union v. Forman Ford & Co., 220 Minn. 34, 18 N. W. 2d 767 (1945); State ex rel. American Federation of State, County, and Municipal Employees v. Hanson, 229 Minn. 341, 38 N. W. 2d 845 (1949).

\(^{59}\) Ford Motor Co., 95 N. L. R. B. 932 (1951).

\(^{60}\) J. F. Quest Foundry Co. v. International Molders and Foundry Workers Union, 216 Minn. 436, 13 N. W. 2d 32 (1944). But whether it is a bar to certification has not yet been determined.

\(^{61}\) 22 L. R. R. M. 34 (1948), 21 L. R. R. M. 55 (1947). The 30 percent showing is not a jurisdictional prerequisite. NLRB v. White Construc-
Under the Federal Act, an election may not be required within one year from the holding of a valid election. Under the State Act an election may be held within a year unless the first election resulted in a certification.

The decisions of the NLRB are published, thus providing a permanent record and establishing a body of precedent. The decisions of the State Conciliator are not published, thus permitting the exercise of much wider discretion by him.

Under the Federal Act, if the number of challenged ballots is sufficient to affect the results of an election the challenged ballots are opened and counted. Under the State Act, a new election is ordered.

The Minnesota Act provides that the Conciliator shall not certify any union which is dominated, controlled, or maintained by an employer. A similar policy is evidenced in Section 8(a)(2) of the Federal Act, which makes it an unfair labor practice to dominate or interfere with a labor organization or to contribute financial or other support to it. There is nothing in Section 9, the certification section of the Federal Act, comparable to the Minnesota provision; but the Federal Act has been construed to prevent certification of employer dominated unions. The reasoning behind such a refusal to certify is that such unions are "patently incapable of bargaining at arm's length."

The Federal Act is more restrictive than the Minnesota Act in that it provides that employees on strike who are not entitled to re-instatement shall not be eligible to vote in representation election.

Where an employer has previously been found to have engaged in and failed to remedy unfair labor practices, a smaller showing of representation interest than is ordinarily required will be accepted.


62. § 9(c)(3).

63. § 179.16(2).

64. As to the wide discretion given to the Conciliator in selecting a bargaining agent, see State ex rel. American Federation of State, County, and Municipal Employees v. Hanson, 229 Minn. 341, 38 N. W. 2d 845 (1949); Warehouse Employees Union v. Forman Ford & Co., 220 Minn. 34, 18 N. W. 2d 767 (1945); In re Amalgamated Food Handlers, Local 653 and Egekvist Bakeries, Inc., and Retail Clerks Union, Local 1086, 2d Dist. Minn., Feb. 9, 1954.

65. § 179.16(2).

66. Standard Oil Co. of Ohio, 63 N. L. R. B. 990, 17 L. R. R. M. 43 (1945); Kansas City Light & Power Co. v. NLRB, 111 F. 2d 340, 6 L. R. R. M. 938 (8th Cir. 1940).

tions. The Minnesota Act contains no such restriction. A worker continues to be an "employee" within the Act even though he has ceased work because of any current labor dispute, except where he has obtained other regular and substantially equivalent employment. Thus, the Minnesota Act is the same as the Federal Act was before the Taft-Hartley amendments in 1947.

Both the Federal Act and the State Act give the power to the administrators of the acts to subpoena witnesses and grant jurisdiction to district courts to hold in contempt of court one who fails to appear to testify and produce evidence. But the Federal Act goes further in that it eliminates the privilege against self-incrimination as a defense to the production of evidence or testimony, allows witnesses the same fees as witnesses in court, and provides for fine or imprisonment or both if one wilfully interferes with the performance of duties by the Board or its agents.

2. The Appropriate Unit

There are a number of significant distinctions between the Federal and State Acts as to what constitutes the appropriate unit:

a. Craft Units.

Under the Minnesota Act if a craft unit exists it shall constitute the appropriate unit.

Under the Federal Act it may constitute the appropriate unit.

The Minnesota Act is thus more favorable to the establishment of craft units than is the Federal Act.

68. § 9(c) (3).
69. § 179.01 (4).
70. § 179.16(3) ; § 11(1).
71. § 179.16(4) ; § 11 (2).
72. § 11 (3).
73. § 11 (4).
74. § 12.
75. § 179.16(2).
76. § 9(b) (2).
77. Prior to the N. L. R. B.'s recent decision in American Potash & Chemical Corp., 33 L. R. R. M. 1380 (1954), § 9(b) (2) was construed so that craft units would not be severed in industries involving highly integrated processes and in which the prevailing pattern of bargaining was industrial in character. See National Tube Co., 76 N. L. R. B. 1199, 21 L. R. R. M. 1292 (1948). The Potash decision states that this practice will not be extended to industries other than basic steel, aluminum, lumber and wet milling. It further states that where a true craft group is seeking severance and the union seeking to represent it is one which traditionally represents that craft, or where a departmental group is functionally distinct and separate and where the union seeking to represent it has traditionally devoted itself to serving the special interest of the employees in question, severance will be permitted.

Section 9 (b) (2) of the Federal Act provides that prior determination of a unit by the N. L. R. B. is not to stand in the way of the existence of a craft unit unless a majority of the employees vote against the establishment of the craft unit.
b. One Man Units.

The Minnesota Act specifically permits one person to constitute an appropriate unit. The National Labor Relations Board has ruled that one man units are not appropriate. The National Labor Relations Board has ruled that one man units are not appropriate.

c. The Extent of Organization as a Factor in Determining the Appropriate Unit.

The Federal Act expressly states that the extent of organization shall not be controlling. The Minnesota Act contains no such prohibition. In fact, the extent of organization has been considered to be an important factor in many representation cases.

d. Industry Wide Units.

The Minnesota Act specifically permits industry-wide bargaining units if all of the employers involved consent. The Federal Act contains nothing specific as to the rights of employers to bargain together. However, the legislative history states that an employer association may fall within the definition of employer in Section 2 (2) when it is "acting as an agent of the employer." There is no requirement in the Federal Act that each employer consent to the industry wide unit. The National Labor Relations Board has authorized employers' associations to engage in industry-wide bargaining.

Employers' Associations have also been found guilty of committing unfair labor practices.

e. Professional Employees.

The Federal Act excludes professional employees from being in the same unit with non-professionals, unless a majority of the professionals vote for inclusion. The Minnesota Act contains no such limitation on the inclusion of professional employees.

78. § 179.16(2).
80. § 9(c) (5).
81. § 179.16(2). This section must be considered in conjunction with § 179.10(2), which specifically grants employers the right to associate together for bargaining.
82. H. R. Rep. No. 510, 80th Cong., 1st Sess. 536 (1947). This, the report states, is merely a re-affirmation of the practice of the NLRB already existing under the Wagner Act.
86. § 9(b) (1).
87. § 2(12).
f. Plant Guards.

The Federal Act provides that "guards" cannot be included within the same unit as other employees. It furthermore provides that if the guards seek to be represented, they can be represented only by a union which neither admits other employees nor is affiliated in any manner with an organization that does. The Minnesota Act contains no prohibition against plant guards being members of a union which admits other employees.

F. Duty to Bargain in Good Faith

The Minnesota Act does not specify what constitutes bargaining in good faith. The Federal Act specifically provides that bargaining in good faith requires:

1. That the parties meet at reasonable times.

2. That they confer in good faith.

3. That they incorporate in a written contract any agreement which is actually reached if requested by either party, providing that such obligation does not compel either party to agree to a proposal or require the making of a concession.

4. That the parties give 60 day notice of modification or termination of a contract.

Under the Federal Act the failure to bargain in good faith constitutes an unfair labor practice. The Minnesota Act does not make such a failure either an unfair labor practice or unlawful, but it does raise the "duty" to so bargain. The question therefore arises as to whether the effect of the creation of the duty in Minnesota is mandatory and therefore enforceable or merely directory.

Logical arguments can be made on both sides. The duty can be termed enforceable by drawing an analogy to proceedings under the Railway Labor Act. Here, the U. S. Supreme Court has stated that when an express legal duty has been created, it is enforceable by resort to the usual judicial remedies of injunction. The court reasoned that Congress could not have intended to create a duty without intending that the duty be enforced. The absence of a specific penalty is not controlling. Many rights are enforced for which no statutory penalties are provided. The United States

88. § 9(b)(3).
89. § 8(d).
90. Ibid.
91. Dayton Co. v. Carpet, Linoleum Layers Union, 229 Minn. 87, 39 N. W. 2d 183 (1949).
Supreme Court has also seen fit to hold enforceable by injunction and suit for damages an implied duty arising out of the Railway Labor Act.94

It can also be argued that the duty imposed by the Minnesota Act is not an enforceable one.95 This conclusion can be sustained by reasoning that since failure to comply with the notice provisions of 179.06 is specifically made both an unfair labor practice and an unlawful act, the failure to specifically so provide as to bargaining in good faith evidences a legislative intent not to enforce the duty.

G. Adjustment of Grievances by Employees

Under the Minnesota Act an individual employee has a right to adjust his own grievances.96 He also has the right to have the grievances adjusted by a representative of his own choosing, which could be construed so as to authorize the presentation of the grievance through a rival union when there exists a certified bargaining representative for the unit.97 Under the Federal Act,98 an individual employee may also adjust his own grievances,99 but there is conflict as to whether a rival union can present the grievance for him.100 Under the Federal Act the representative of the employees

95. Note, 24 Minn. L. Rev. 217, 236 (1940).
96. § 179.16(1).
97. The language of this section of the Minnesota Act differs from that of § 9(a) of the federal Act. Subdivision (1) of § 179.16 contains the proviso "... provided that any individual employee or group of employees shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing." [Emphasis added.] The phrase "or through representatives of their own choosing" was contained in the original House and Senate bills relating to the National Labor Relations Act of 1935. The phrase was eliminated in order to avoid the implication that the "individual" or "group" might select any representative it wished, such as the business agent of a rival union. See Federated Telephone & Radio Co., 107 N. L. R. B. No. 146, 33 L. R. R. M. 1203 (1953); Hearings, House Committee on Labor on H. R. 6288, 74th Cong., 1st Sess., 211, 301 (1935); H. Rep. No. 1147, 74th Cong., 1st Sess., 12 (1935); compare S. 2926 (73d Cong.), with S. 1958 (7th Cong.), Senate Committee Print, p. 3 (March 11, 1935). The use of the phrase in the Railway Labor Act had been interpreted as meaning that a rival union could represent employees in a grievance session. Elgin, Joliet & Eastern Ry. v. Burley, 325 U. S. 711, 722, 737, 16 L. R. R. M. 749 (1944). See also 40 Ops. Att'y Gen. 494 (1949).
98. § 9(a).
99. An inexperienced employee may have a more experienced friend aid him in presenting the grievance. Hughes Tool Co. v. NLRB, 147 F. 2d 69 (5th Cir. 1945). The employee may be denied permission to have private counsel at the hearing. NLRB Gen. Coun. Adm. Rul. Case No. 354, 30 L. R. R. M. 1303 (June 27, 1952).
100. The Court of Appeals for the Second Circuit, in Douds v. Retail Store Union, 173 F. 2d 764 (2d Cir.), 23 L. R. R. M. 2424 (1949), held that a rival union may represent the employee. This decision has been widely criticized. See Sherman, The Individual and His Grievance—Whose Grievance Is It?, 11 Pitt. L. Rev. 35, 38, 55 (1949); Dunou, Employee Participation
within the unit to which the employee belongs has a right to be present during the adjustment of the grievance, even though he is not permitted to interfere.

The Federal Act specifically provides that an individual employee is not permitted to adjust grievances in such a way that it would conflict with the terms of the contract between the employer and the union.\(^{104}\) And such provision is contained in the Minnesota Act, but it would be highly illogical if this were not read into the Act.

H. Employee Unfair Labor Practices

The Minnesota Act and the Federal Act differ in several important respects as to employee unfair labor practices.

(1) A breach of a collective bargaining agreement by either employees or employer constitutes an unfair labor practice under the State Act\(^{102}\) but not under the Federal Act.

(2) The Minnesota Act makes a strike or lockout in breach of a collective bargaining agreement an unfair labor practice.\(^{103}\) The Federal Act\(^{104}\) provides that a strike or lockout before the expiration of the 60 days notice of intent to change or modify the contract or the expiration date of the contract, whichever is later, is a refusal to bargain in good faith and therefore an unfair labor practice.\(^{105}\)

(3) The Federal Act has no provisions in it which are comparable to Section 179.11 (3-6, and 9) of the State Act:

"(3) For any person to seize or occupy property unlawfully during the existence of a labor dispute;"

"(4) For any person to picket or cause to be picketed a place of employment of which place the person is not an employee while a strike is in progress affecting the place of employment, unless the majority of persons engaged in picketing the place of employment at these times are employees of the place of employment;"

"(5) 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;"

\(^{101}\) § 9(a).
\(^{102}\) § 179.11(1).
\(^{103}\) Ibid.
\(^{104}\) § 8(d) (1).
\(^{105}\) See note 30 supra.
“(6) For any person to interfere in any manner with the operation of a vehicle or the operator thereof when neither the owner nor operator of the vehicle is at the time a party to a strike;
“(9) Provides in substance that it is an unfair labor practice to hinder or prevent by intimidation, force, coercion or sabotage the production . . . by a producer . . . of agricultural products or to combine . . . to cause loss or injury to any producer. . . ."

Under holdings of the NLRB and the United States Supreme Court, however, much of the activity prohibited by sub-division 3 has been held not protected by the Federal Act.¹⁰⁶

(4) The Federal Act contains no specific provision similar to Section 179.13, which prohibits the interference with the use of public streets, roads and highways, or methods of transportation or conveyance, or the wrongful obstruction of ingress to or egress from any place of business or employment. However, to the extent that this section may be held to prohibit mass picketing, the Federal Act has been held to prohibit the same conduct.¹⁰⁷

(5) The Minnesota Act provides that it is an unfair labor practice for any person or labor organization to take part in a strike unless it had been approved by a majority vote of the employees. There is no comparable provision in the Federal Act at the present time.¹⁰⁸

The Minnesota Act makes it an unfair labor practice to compel or attempt to compel an employee to join a labor organization or a strike against his will by unlawful interference with his person, family or property.¹⁰⁹

The Federal Act contains no similar provision but does contain provisions which are broader than the Minnesota Act. The Minnesota Act appears to prohibit only threats of physical violence, while the Federal Act prohibits all forms of restraint or coercion.¹¹⁰

The Federal Act also prohibits a union from charging discriminatory or excessive fees.¹¹¹

(6) The two most important respects in which the employee

¹¹⁰ § 179.11(7).
¹¹¹ §§8(b)(1); 8(b)(5).
unfair labor practices section of the Minnesota Act are more restrictive than the Federal Act are:

(a) Each of the unfair labor practices on the part of employees with the exception of instituting a strike in violation of a collective bargaining agreement is also an unlawful act and thus a misdemeanor\textsuperscript{112} under the Minnesota Act.

(b) The Minnesota Act with respect to unfair labor practices on the part of employees is directed toward individuals as well as the labor organizations. This is true even though the individual may not have been acting as an agent of the labor organization. The Federal Act is directed only toward acts committed by a labor organization or its agents. It does not regulate the conduct of individuals acting in a private capacity. In this connection it should also be noted that the Minnesota Act, Section 179.11 in Subdivisions 3, 4, 5 and 6 does not make any mention of labor organizations. This may indicate that the legislature intended that only the individuals who personally participate in these activities may be guilty of unfair labor practices or unlawful acts, and that the unions to which they belong cannot be held responsible for violation of these subdivisions.

I. Employer Unfair Labor Practices

The Minnesota Act, with respect to unfair labor practices on the part of employers is less stringent than the Federal Act in two important particulars.

1. It contains nothing comparable to Section 8 (a) (1) of the Federal Act which prohibits interference, restraint, or coercion of employees in the exercise of rights guaranteed by Section 7;

2. It contains nothing comparable to Section 8 (a) (2) which prohibits domination or interference with the formation or administration of any labor organization or the contribution of financial or other support to it, though it does forbid the certification of such a labor organization.\textsuperscript{113}

Although the Minnesota Act appears to go beyond the Federal Act in stating that spying and blacklisting are unfair labor practices, both practices have been held to be violative of Section 8 (a) (1) of the Federal Act.\textsuperscript{114}

\textsuperscript{112} Note, 24 Minn. L. Rev. 217, 233 (1940). A survey of attorneys actively engaged in the practice of labor law indicates that no criminal proceedings have been initiated under the Act.

\textsuperscript{113} § 179.16(2).

\textsuperscript{114} NLRB v. Public Service Co-ordinated Transport, 177 F. 2d 125, 24 L. R. R. M. 2466 (3d Cir. 1949) (spying); Russell Manufacturing Co.,
The Minnesota Act\textsuperscript{115} and the Federal Act\textsuperscript{116} are substantially the same with respect to employer discrimination against employees because of membership in a labor organization.\textsuperscript{117} They are also similar with respect to discrimination against or discharge of an employee because he has filed charges or given testimony under the Acts.\textsuperscript{118}

J. Suits by and Against Persons or Organisations as a Result of the Commission of Unfair Labor Practices.


The Federal Act and the Minnesota Act differ on upon whom process may be served. The Federal Act provides that service of process on a union may be made only by serving an officer or agent of the union in his capacity as such.\textsuperscript{119} The Minnesota Act states that service on any individual union member constitutes proper service on the union.\textsuperscript{120}

The Minnesota Act\textsuperscript{121} provides that the doing of business within the State of Minnesota is deemed an appointment of the Secretary of State to receive process and notices dealing with any actions under the Minnesota Act or other laws of the State of Minnesota, where the union or employer group has officers, agents, members or property outside Minnesota.\textsuperscript{122}


Blacklisting or spying may also be factors indicating an employee was discriminatorily discharged in violation of § 8(a) (3). Russell Mfg. Co., supra; Williams Lumber Co., 93 N. L. R. B. 1672, 27 L.R.R.M. 1629 (1951).

115. § 179.12(3).
116. § 8(a) (3).
117. See Section on Union Security and Membership.
118. §§ 179.12(4) ; 8(a) (4). Subdivisions 1 and 2 of § 179.12 are the same as § 179.11(1) and (2). They have counterparts in the Federal Act and have been discussed in the section dealing with employee unfair labor practices.
119. § 301(d).
120. §§ 540.151.
121. §§ 540.152.
122. Section 303(b) of the Federal Act specifies that in suits for damages under Section 303(a) both the U. S. districts courts and any other court having jurisdiction of the parties shall have jurisdiction to hear such suits. This section therefore allows suits in Minnesota state courts for violation of the Federal Act. If suit is in the state court, the question then arises as to whether the state or federal law applies as to the service of process.

The state policy governs questions of procedure. Missouri ex rel. Southern Railway Co. v. Mayfield, 340 U. S. 1 (1950). (This proposition seems to be assumed by the cases cited infra note 131 dealing with the issue of substantive law.) Therefore, service upon an individual union member pursuant to either § 179.27 or Minn. R. Civ. P. 403(b) would be valid in a suit for damages brought in a Minnesota state court under the Federal Act. A major difficulty with allowing service upon individual members is that notice may not be transmitted to proper officers thus resulting in default.

The right to maintain a suit for damages caused by a violation of one of the provisions of the Minnesota Act rests in the person who has been damaged.\(^{123}\)

Under the Federal Act the exclusive right, unless otherwise expressly provided, to make an injured party whole rests with the NLRB. A suit for damages may be maintained under the Federal Act where violations of the following sections are charged:

301 (a) (b) Breach of contract.\(^{124}\)
303 (a) (1) Secondary Boycott.
303 (a) (2) Strike or concerted refusal to force recognition or bargaining where the union has not been certified.
303 (a) (3) Strike or concerted refusal to force recognition or bargaining where another union has been certified.
303 (a) (4) Jurisdictional strikes.

The Minnesota Act allows recovery in tort if a strike, boycott, or picketing has occurred where another union has been certified by state or federal authorities if the purpose of such action is:

1. To deny the right of the certified union to act as representative;
2. To prevent it from acting as authorized by the certification; or
3. To interfere with the business of the employer in an effort to do either of the above mentioned acts.\(^{125}\)

While the Federal Act\(^{126}\) specifically allows damage suits for breach of contract, the Minnesota Act is silent on this point. However, it seems safe to conclude that such suits in Minnesota would be allowed under the common law right to sue for breach of contract.

---

\(^{123}\) Note, 24 Minn. L. Rev. 217, 235 (1940) suggests that since violation of either §§ 179.11(7) or 179.12(8) is likely to be treated as a misdemeanor and in view of the fact that §§ 179.11 and 179.12 were enacted for the benefit of the employer-farmer group and the employee-labor group respectively, the violation of §§ 179.11(7) or 179.12(8) will subject the violator to civil liability for damages caused thereby.

\(^{124}\) A recent decision of the Circuit Court of Appeals for the Third Circuit construing § 301 has held, four to three, that a refusal by the employer to pay wages allegedly due to employees is not a violation of the collective bargaining contract so as to bring it within § 301 (a) and federal jurisdiction, but that the duty to pay wages arises instead out of the individual contract for hire. Ass'n of Employees v. Westinghouse Corp., 33 L. R. R. M. 2462 (1954). There seems to be some conflict on this question. For a contra view, see AF of L v. Western Union Telegraph Co., 179 F. 2d 535, 25 L. R. R. M. 2327 (6th Cir. 1950).

\(^{125}\) §§ 179.27, 179.28.

\(^{126}\) § 301.
3. Those Subject to Suit—Collectability of Judgments.

The Federal Act provides for actions against unions, but only against them as entities and not against the individual members of the unions as such. In such suits the judgments are collectible from and enforceable against only the union and its assets and not the individual members or their assets. These limitations of Section 301 also apply to suits under Section 303.

The Minnesota Act not only provides that individuals may commit unfair labor practices, but it also provides that a judgment shall "accrue to the joint or common benefit of and bind the joint or common property of the associates, the same as though all had been named party to the action." This may mean that in theory, an employer can sue and collect from the employees involved as individuals or as joint tort feasors with the union or representative of employees. If the union alone were sued, it would seem that recovery would be limited to the union's assets.


While there is nothing specific in the Minnesota Act as to the liability of the union for the acts of its agents, it seems safe to assume that the common law rules of agency would apply.

The Federal Act states that a union or employer is bound by the acts of its agents and that a union may sue or be sued on behalf of the employees it represents.

Section 301 (b) is qualified by Sections 301 (e) and 2(13) which state that actual authorization or subsequent ratification shall not be controlling in imputing the liability of the agent to the union or employer. The legislative history shows that the intent of this pro-

---

127. § 301(b).
128. §§ 179.11(1-9), 179.13, 179.42.
129. §§ 540.151, 179.28.
130. § 540.151.
131. Questions arise as to whether, in a suit for damages brought in a state court pursuant to § 303(b) arising out of a violation of the Federal Act, recourse may be had to the personal assets of an individual employee, or whether money judgments are enforceable only against the union as an entity and its assets, as under the Federal Act. Both of these are questions of substantive law. They may be answered by drawing an analogy to cases under the FELA, 35 Stat. 65 (1908), as amended, 45 U. S. C. 51 et seq. (Supp. 1952), since under FELA, as under the Federal Act, a federal right of action is created allowing suits in the state courts. Jesionowski v. Boston & Maine R. R., 329 U. S. 452 (1947) and Propper v. Chicago, R. I. & Pac. Ry., 237 Minn. 386, 54 N. W. 2d 840 (1952), hold that where a federal right of action is created the federal substantive law governs. Therefore, in suits in Minnesota state courts arising under the Federal Act, only the union can be sued and money judgments resulting are enforceable only against the union and its assets.
132. § 301(b).
vision was to avoid the construction which was placed on Section 6 of the Norris-LaGuardia Act by the Supreme Court in *United Brotherhood of Carpenters and Joiners v. United States* which in effect required proof of actual instigation, participation or ratification before a union (or employer association) could be held responsible. The intent of Sections 301 and 2(13) therefore was to restore the common law rules of agency to this area.

K. Injunctions and Temporary Restraining Orders

Probably the most significant differences between the Minnesota Act and the Federal Act are those directly related to the procedures in the acts to prevent unfair labor practices.

1. Under the Minnesota Act, either an employer or a union may obtain an injunction where an unfair labor practice is threatened or committed.

Under the Federal Act, only the NLRB has power to apply for an injunction.

2. Under the Minnesota Act, *ex parte* restraining orders are obtainable. Under the Federal Act, before an injunction can be obtained by the Board, a preliminary investigation must be made by the Board. Since Minnesota procedure allows *ex parte* orders to be obtained from the courts while the Federal Act requires recourse to the NLRB and its administrative procedures before the Board seeks any relief, it is apparent that the remedy under the Minnesota Act is speedier. This difference in the length of time in which relief is obtainable is recognized by the Supreme Court in the *Garner* case, but the court holds that where the acts complained of fall within federal jurisdiction, recourse to injunctive relief in the state courts is forbidden.

The right to injunctive relief under the State Act is limited by two restrictions.

1. Employers, individuals, or unions violating "any" of the provisions of the Act lose the right to injunctive relief.

2. Neither employers, individuals, nor unions have the right to

---

135. § 179.14.
136. § 310(j). Where a violation of § 8(b)(4) (A), (B) or (C) is charged, the Board must seek an injunction. § 10(1). This requirement would be eliminated if the President's proposal adopted by the Senate Labor Committee becomes law. 33 Lab. Rel. Rep. 426 (1954).
137. § 179.14.
138. § 310(1).
140. § 179.15.
maintain an action for injunctive relief until they have in good faith utilized all means available under Minnesota laws to settle the dispute.141

There is no specific counterpart in the Federal Act to these Minnesota provisions. However, the NLRB has at times enforced a clean hands requirement on both the employer and the union.142

L. Jurisdictional Disputes

Both the Minnesota Act and the Federal Act make extensive efforts to prevent jurisdictional disputes. They differ materially, however, not only in what they consider to be a jurisdictional dispute but also with respect to the type of action which can be taken with regard to the dispute.

The major differences between the State and Federal Acts are:

1. Under the Minnesota Act economic action does not become unlawful until the Governor has appointed a referee or until the dispute has been submitted to another tribunal.143 Under the Federal Act the economic action constitutes an unfair labor practice and an unlawful act from its inception.144

2. The Minnesota Act restricts all picketing even though it

141. It has been suggested, Note, 24 Minn. L. Rev. 217 (1940), that these provisions seek to instill into the Minnesota Act the equitable principle of clean hands.

The Note reasons that one of the principle benefits conferred by the Act, which a failure to conform to § 179.15 would possibly eliminate, is the right to sue in tort for damages for acts in violation of §§ 179.11, .12, .13 and .083, since the designations of certain acts as unlawful creates the possibility of civil liability for the violation of a criminal statute. However, the fact that the person against whom it is committed is guilty of unclean hands would not make the act committed any less unlawful.

Another principle benefit conferred by the Act is the right to receive the notice provided for in §§ 179.06 and .07. It can be argued that one guilty of unclean hands would lose the right to receive these notices.

142. The refusal by a union to bargain in good faith (that is, it's lack of clean hands) may preclude a finding by the Board of the failure of the employer to bargain in good faith. Phelps Dodge Copper Products Co., 101 N. L. R. B. 360, 31 L. R. R. M. 1072 (1952); Times Publishing Co., 72 N. L. R. B. 676, 19 L. R. R. M. 1199 (1947).

Misconduct of a party, such as the dynamiting of an employer's property, may be considered as material by the Board in deciding whether to entertain and proceed upon a charge; though such misconduct, dubious character, evil or unlawful notices, or bad faith would not deprive the Board of jurisdiction to hear the case. The Board is not required to move on every charge, it is merely enabled to do so, and it may decline to be imposed upon where its process is submitted to abuse. NLRB v. Indiana and Michigan Electric Co. 317 U. S. 9, 11 L. R. R. M. 763 (1943); Gaynor News Co., 93 N. L. R. B. 299, 27 L. R. R. M. 1387 (1951).

However, misconduct of a union involving violations of general civil or commercial precepts, such as breaches of the peace, cannot deprive the union or employees of their rights under § 9(c) of the Federal Act. LaFollette Shirt Co., 65 N. L. R. B. 932, 17 L. R. R. M. 248 (1946).

143. § 179.083.
144. §§ 8(b) (4) (D), 303(a) (4).
does not induce or encourage the employees of any employer to engage in a strike or concerted refusal. Thus, picketing directed at influencing non-employees would be unlawful under the State Act, but has been held permissible under the Federal Act.\textsuperscript{146}

3. The Minnesota Act applies to individuals; the Federal Act only applies to a labor organization or its agents.

4. Under the Minnesota Act,\textsuperscript{146} an aggrieved employer may obtain injunctive relief in a state court while under the Federal Act,\textsuperscript{147} injunctive relief can only be obtained by the NLRB.

5. Under the Minnesota Act, a violation may be a criminal offense, while under Federal Act, it is not.\textsuperscript{148}

6. Both the Minnesota Act and the Federal Act provide a means of settling the dispute between the parties.\textsuperscript{149} If, however, the parties

\begin{itemize}
  \item \textsuperscript{146} § 179.14.
  \item \textsuperscript{147} § 10(j).
  \item \textsuperscript{148} Note, 24 Minn. L. Rev. 217, 233 (1940).
  \item \textsuperscript{149} The Federal Act differs in that the proceedings are initiated by an unfair labor practice charge and under § 10(k) are determined by the N. L. R. B., unless within 10 days after notice of the filing of the charge, the parties show that they have adjusted the dispute or agreed upon methods for its voluntary adjustment.
  \item The purpose of § 10(k) is to provide the parties with an opportunity to settle jurisdictional disputes among themselves without government intervention whenever possible. 93 Cong. Rec. 4155 (1947). Various means have been undertaken to achieve this goal:
    \begin{enumerate}
      \item AFL-CIO no raiding pact, 31 L. R. R. M. 100 (1953).
      \item Building and Construction Trades Department, AFL, ban on all picketing in jurisdictional disputes by the 19 unions affiliated with the department, 30 L. R. R. M. 65 (1952).
      \item United Automobile Workers CIO and International Association of Machinists AFL, no raiding pact, 25 L. R. R. M. 44 (1950).
      \item National Joint Board set up by the Association of Building Contractors and the Building and Construction Trades Department of the AFL for the settlement of jurisdictional disputes by arbitration, 21 L. R. M. M. 16 (1948).
      \item Metal Trades Department, AFL, plan for arbitration to prevent jurisdictional strikes—18 L. R. R. M. 68 (1946). An agreement by unions to be bound by the determination of a third party, such agreement being entered into before the dispute arose, precludes the NLRB's jurisdiction over the matter. Carpenters AFL, 96 N. L. R. B. 1045, 29 L. R. R. M. 1002 (1951).
    \end{enumerate}
\end{itemize}
do not agree to submit the dispute to their own tribunal, there is
a substantial difference in practical results, as the NLRB uniformly
holds in favor of the union to whom the employer has made the
work assignment.\textsuperscript{150}

\section*{M. Interference with Certification and Collective Bargaining Agreements.}

The Minnesota Act\textsuperscript{151} provides:

"It is unlawful for any employee, a representative of employees
or a union to conduct a strike or boycott against an employer
or to picket the employer's place of business in order to (1) deny
the right of representation certified by State or Federal au-
thority to act as such representative; or (2) prevent such certi-
fied representatives from acting as such; or (3) interfere with
the business of the employer in an effort to do either (1) or
(2). A cause of action for money damages is granted to an
aggrieved employer."

The Federal Act\textsuperscript{152} provides:

"It is an unfair labor practice to strike or induce the employees
of any employer to strike or withhold their services where an
object is to compel any employer to recognize or bargain with a
particular union as representative of his employees if another
union has been certified by the NLRB as representative. Sec-
tion 303 of the LMRA permits an action for money damages."

The basic difference pointed out in paragraphs 2, 3, 4 and 5 with
reference to jurisdictional disputes are applicable to these sections
as well.

In addition to the general differences, the Minnesota Act is
substantially broader than the Federal Act in that it prohibits
picketing and boycotts as well as a strike or the inducement of a
strike.

The Federal Act contains no provisions similar to Section
179.135 of the Minnesota Act which prohibits an officer, business
agent, or representative of a union from requiring an employer to
negotiate when the employer is already under contract to another
union. No cases have arisen under this section of the Minnesota
Act.

It is not clear, however, whether a union which was damaged as

\begin{footnotesize}
\begin{itemize}
\item[150.] Carpenter's Union, AFL (Ora Collard), 98 N. L. R. B. 346, 29
L. R. R. M. 1333 (1952), Juneau Spruce Corp. 82 N. L. R. B. 650 (1940),
holding that an employer may make work assignments free of strike pressure
by a union, unless he is failing to conform to an order or certification of the
NLRB determining the bargaining agent for the employees performing
such work.
\item[151.] § 179.27.
\item[152.] § 8(b) (4) (C).
\end{itemize}
\end{footnotesize}
a result of this action would be entitled to sue for damages under the State Act, as the right to sue for damages is given expressly to the employer without reference to the aggrieved union.\textsuperscript{153}

Under the Federal Act, however, any aggrieved person can maintain an action for damages.\textsuperscript{154}

\textbf{N. Secondary Boycotts.}

The basic differences between the Minnesota Act and the Federal Act with respect to secondary boycotts are:

1. A violation of the Minnesota Act is:
   (a) An illegal combination in restraint of trade.\textsuperscript{155}
   (b) A violation of public policy.\textsuperscript{156}
   (c) An unfair labor practice.\textsuperscript{157}
   (d) An unlawful act.\textsuperscript{158}

Under the Federal Act a violation is an unfair labor practice\textsuperscript{159} and an unlawful act, but inasmuch as there is no Federal Statute making an unlawful act a crime the connotation is not the same.\textsuperscript{160}

2. Under the Minnesota Act, individual members of a union who are not officers or agents of a union can violate the act.\textsuperscript{161} Under the Federal Act, only a labor organization or its agents can violate the act. It is also probable that an employer could violate the Minnesota Act.\textsuperscript{162}

3. Under the Minnesota Act, injunctive relief can be obtained by the injured party,\textsuperscript{163} while under the Federal Act injunctive relief can only be obtained by the NLRB.\textsuperscript{164}

In addition to the basic differences listed above, there are several substantive differences. Since it is extremely difficult to list all of them because of the vagueness of the Minnesota Act and the absence of reported decisions, only the more important differences in the substantive provisions of the act will be considered.

\begin{itemize}
\item 153. § 179.28.
\item 154. § 303(b).
\item 155. § 179.43.
\item 156. \textit{Ibid.}
\item 157. § 179.44.
\item 158. \textit{Ibid.}
\item 159. § 8(b) (4) (A).
\item 161. § 179.42.
\item 162. No Minnesota cases have arisen involving employees, but the language of the Act clearly conceives such a possibility, e.g., a member of an employer association breaks away from the association during a strike and signs an agreement with the union. Association pressure on neutral employers to refuse to provide goods or services to the dissident member would be a violation.
\item 163. § 179.45.
\item 164. § 10(e).
\end{itemize}
1. **Persons Against Whom Action Is Directed.**

Under the Federal Act, a labor organization or its agents must engage in, induce or encourage the employees of any employer to engage in a strike or concerted refusal to violate the Act.\(^\text{105}\)

Under the State Act it is a secondary boycott to cease performing services for another employer or to cause any employer to cease performing services for another employer.\(^\text{166}\) Thus under the State Act, pressure directed against either an employer or employees is unfair and unlawful. But under the Federal Act, it is not a secondary boycott to induce or encourage an employer directly to cease doing business with a third party, irrespective of the motive, as long as his employees are not in any way induced or encouraged. Likewise, boycotts otherwise illegal are lawful if permissible under collective bargaining contracts.\(^\text{167}\)

2. **Type of Action Taken or Induced.**

The Federal Act specifically requires that employees of the employer either actually engage in or be induced or encouraged to engage in a *strike* or *concerted refusal* in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services to violate the Act.\(^\text{168}\)

The Minnesota Act only mentions two specific types of conduct: (1) *The refusal to handle goods,* or (2) *perform services.*\(^\text{169}\)

3. **Objects Prohibited.**

The Federal Act is directed at prohibiting action where the object thereof is:

(a) (1) Forcing an employer or self employed person to join any labor or employer organization.\(^\text{170}\)

There is no similar provision in the Minnesota Act. The Minnesota Supreme Court has also held that such picketing is permissible.\(^\text{171}\)

\(^\text{105}\) § 8(b) (4) (A).

\(^\text{166}\) § 179.41 (b), (c).


\(^\text{168}\) § 8(b) (4) (A).

\(^\text{169}\) § 179.41(a), (b), (c).

\(^\text{170}\) § 8(b) (4) (A).

LABOR RELATIONS ACTS

(2) Forcing an employer to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. 172

The Minnesota Act, Sections 179.41 (a) (b) and (c), prohibits substantially the same conduct.

(b) Forcing or requiring any other employer to recognize or bargain with a labor organization unless such labor organization has been certified. 173

There is no similar prohibition in the Minnesota Act. Unless the broad language of the Minnesota Act which prohibits the refusal to handle goods or perform services for another employer because of a labor dispute, agreement or failure of agreement could be held to cover this type of situation.

O. Union Security and Membership.

The Minnesota Act 174 is more liberal than the Federal Act 175 in that it permits the union shop, closed shop, compulsory check-off of union dues, and the hiring hall.

Each of these, except the union shop, are prohibited under the Federal Act. 176 The union shop is permitted under certain restrictions. 177

The primary restrictions in the Federal Act not applicable to the Minnesota Act are that an employer cannot discriminate in any way against an employee for non-membership in a labor organization if he has reasonable grounds for believing that membership was not available to the employee on the same terms applicable to other members, or membership was denied or terminated for some

172. See note 171 supra.
173. § 8(b) (4) (B).
175. § 8(a) (3).
176. § 8(a) (3). § 302 (c) (4) specifically prohibits the compulsory check-off of union dues.
177. § 8(a) (3).

The discharge of an employee after the denial of union membership to him for any reason other than his failure to pay dues or initiation fees, even though that reason be non-discriminatory, is an unfair labor practice on the part of both the employer and the union. Union Starch & Refining Co. v. NLRB, 186 F. 2d 1008, 27 L. R. R. M. 2342 (7th Cir.), cert. denied, 342 U. S. 815 (1951).

Section 8(b) (2) makes it an unfair labor practice for a union or its agents to cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a) (3); or to itself discriminate against an employee for any other reason than his failure to pay dues or initiation fee.

See also § 9(e) (1) and (2) which allow recission of a union shop.

Section 14(b) of the Federal Act permits states to forbid the union shop if they so desire.
reason other than the failure to tender the uniformly required periodic dues or initiation fee. 178

The Minnesota Act does not contain any of these restrictions. Thus, in Minnesota the discharge of an employee may be procured for reasons other than his failure to tender dues and initiation fees, if his membership in the union was terminated for other good cause.

A further restriction which is not in the Minnesota Act is found in Section 8 (b) (5) of the Federal Act. This Section prohibits the requirement of excessive or discriminatory initiation fees where a union shop contract is in effect.


The Minnesota Act requires mandatory elections of union officers by secret ballot after reasonable notice to eligible voters. In the absence of any other specification as to a majority in the union constitution or by-laws, the candidate receiving the largest number of votes cast for that office shall be declared elected. The terms of office are limited to four years. 179 The officers must furnish the members with an annual statement of receipts and disbursements. 180 Whenever the Conciliator believes that a union has been derelict in the performance of the duties imposed by this Act, he may certify the matter to the Governor who may appoint a referee to conduct a hearing. 181 If the charges of non-compliance are sustained, the union is disqualified from acting as bargaining representative. 182 The disqualification may be removed by submitting proof of performance to the Conciliator. 183 It is unlawful for a disqualified labor organization to act as bargaining representative. 184

The only sections in the Federal Act which deal with the same problems are Sections 9 (f), (g), and (h). The Federal Act contains no provisions as to the method by which union officers are to be elected or their terms of office. However, it does require that the names, salaries, and manner of election of the officers be filed with the Secretary of Labor. 185 The Federal Act also requires detailed statements of the union’s organizational set-up, 186 including

178. § 8(a) (3) (A), (B).
179. §§ 179.19, 179.20.
180. § 179.21.
181. §§ 179.22, 179.23 (1) (2).
182. § 179.23 (5).
183. § 179.23 (6).
184. § 179.24. See Note, 28 Minn. L. Rev. 64, 67 (1944).
185. § 9 (g).
186. § 9 (f) (A).
financial condition.\textsuperscript{187} The Minnesota Act contains no such requirements, except for the financial statement. The Federal Act requires that both the locals and the internationals furnish these reports.\textsuperscript{188} The Minnesota Act is not clear as to whether it applies only to locals exclusively doing business within the state, or also includes locals doing business in more than one state, or international unions. A further provision which is contained in the Federal Act, but not in Minnesota, is the requirement of the filing of a non-Communist Affidavit.\textsuperscript{189}

The penalty provided for non-compliance with the Federal Act is less severe than that of the Minnesota Act. Under the Federal Act, such failure to comply with Sections 9 (f) and (g) denies the labor organization the right to invoke the processes of the NLRB as to representative questions under Section 9 (c) or unfair labor practice charges under Section 10 (b), but the labor organization may continue to act as bargaining representative.

Q. Arbitration

There are no provisions in the Federal Act relating to arbitration. The Minnesota Act contains a purely voluntary provision allowing the parties to a dispute to arbitrate when the dispute is not settled by conciliation. Upon application of either or both parties or of any arbitration tribunal created by them, the State Labor Conciliator may designate the tribunal as a "temporary arbitration tribunal." Such a tribunal shall possess the power to administer oaths and issue subpoenas. A copy of the tribunal's report is to be filed with the Conciliator.\textsuperscript{190}


The following provisions of the Federal Act have no counterpart in the Minnesota Act:

1. Section 8(c), dealing with the employer's right of free speech, provides that the expression of views, arguments or opinion shall not constitute an unfair labor practice or evidence of an unfair labor practice unless such expression contains a threat of force or reprisal or a promise of benefit.

2. Section 302 makes unlawful the payment by an employer or the receipt by a representative of a labor organization of any money

\begin{itemize}
\item[\textsuperscript{187}] § 9(b) (1) (2).
\item[\textsuperscript{188}] § 9(g).
\item[\textsuperscript{189}] § 9(h).
\item[\textsuperscript{190}] § 179.09.
\end{itemize}
or other thing of value, with the exception of certain payments necessary to the conduct of business such as arbitration awards and dues checked off.

This section also authorizes health and welfare funds and sets up procedures relating to them.\textsuperscript{191}

Willful violation of Section 302 is made a misdemeanor punishable by a fine of not more than $10,000 or imprisonment for not more than one year, or both.

3. Section 304 amends the Federal Corrupt Practices Act so as to make it unlawful for a labor organization to make a political contribution to a candidate to Federal office.

4. Section 8 (b) (6) prohibits some forms of featherbedding and related practices. So far as it relates to featherbedding, the section has been restrictively construed.\textsuperscript{192}

III. THE EXTENT TO WHICH THE MINNESOTA ACT CAN BE APPLIED TO INDUSTRIES SUBJECT TO THE FEDERAL ACT

A. General Principles

The following general principles have been established by the United States Supreme Court.

1. A state may not curtail the right of employees in businesses subject to the jurisdiction of the NLRB to engage in concerted activities within the meaning of Section 7.\textsuperscript{193}

2. States may not apply local laws against strikes or picketing which duplicate the Federal Act in situations where a national remedy is available, nor may they undertake to provide state remedies for violation of the national law pending action by the NLRB. It is immaterial whether the state restriction be statutory or common law, or whether it purports to constitute adjudication of private rights or to enforce public regulation.\textsuperscript{194}

\textsuperscript{191} Both the House Labor Committee, 33 Lab. Rel. Rep. 297 (1954) and the Senate Labor Committee, 33 Lab. Rel. Rep. 423 (1954) have scheduled investigations into the establishment and operation of employee welfare and pension funds for the purpose of ascertaining the necessity for additional legislation.


3. States may not exercise concurrent jurisdiction in representation cases.\footnote{195}

4. States retain the power to prevent violence and physical interference with property.\footnote{106}

5. The opinions leave some uncertainty concerning state power to deal with strikes and picketing not forbidden by the Federal Act but so closely related to activities dealt with in the Federal Act as


In the 1954 hearings before the Senate Labor Committee, at least one management representative raised a question with respect to the right of state courts to hear cases involving violence and mass picketing. In a brief filed on behalf of the Southern Coal Producers Association, the law firm of Gall, Lane and Howe stated:

"In Garner v. Teamsters Union, supra at page 3, the Court noted that: 'Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the State still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local v. Wisconsin Board, (315 U. S. 740, 749).'

"On its surface, this statement might seem to lay to rest any doubts as to the power of the States to restrain breaches of the peace arising out of labor disputes.

"Several factors, however, militate against complete reliance on the quoted statement.

"Initially it should be observed that the Allen-Bradley case on which the court relies was decided in 1952—prior to the enactment of the Taft-Hartley Act. In Bethlehem Steel Co. v. New York Board, supra, also decided under the Wagner Act, the court summarized its holding in Allen-Bradley as follows (330 U. S. at p. 773):

""Today, however, the acts of violence and mass picketing involved in Allen-Bradley would fall within the general proscription of section 8(b)(1)(A) of the amended Federal Act. See, in the Matter of H. N. Thayer Co. (99 NLRB 1122 (1952)). Accordingly, to the extent that the Allen-Bradley decision rests upon the absence of a Federal remedy, its continued vitality is highly questionable. The same infirmity, of course, afflicts the Garner dictum which relies upon Allen-Bradley.

"Moreover, as previously suggested, Mr. Justice Jackson's statement in the Garner case which respect to the power of the States to restrain breaches of the peace, is dictum. And the dictum itself appears to be difficult to reconcile with the principal holding of the case. As we read Garner v. Teamsters Union, the Court there held that where Federal law provides a remedy for specified union misconduct, the States are not free to supplement the Federal remedy by affording the same or different relief through their own procedures." Hearings, supra note 4, at 3152.

This was denied in the statement made to the United States Supreme Court by the NLRB:

"The Board recognizes, of course, as this court recently stated in Garner v. Teamsters, etc., Union, 346 U. S. 435, 438, that under the Act the states 'still may exercise 'their) historic powers over such traditionally local matters as public safety and order and the use of streets and high-
to indicate that Congress decided they should not be forbidden.197

6. In situations where the NLRB has exclusive jurisdiction a federal court, on application of the Board, has the power to enjoin a party from enforcing an injunction previously obtained in a state court.198

7. Where the Federal Act affords a remedy for the conduct which constitutes the basis of the action, the NLRB does not have exclusive jurisdiction over the subject matter so as to preclude the state court from hearing and determining the issues in a common law tort action based on this conduct according to a recent decision by the United States Supreme Court in United Construction Workers v. LaBurnum Construction Co.199

An important question pending before the Supreme Court is: May a state assert jurisdiction in an area in which the dispute affects interstate commerce, where the National Labor Relations Board has declined to assert jurisdiction?

'..." Appearing before the Senate Committee on Labor and Public Welfare in 1953 the Board's then Chairman (Mr. Herzog) stated, 'There are, of course, aspects of labor controversies which the States have traditionally been free to control. Although earlier witnesses have apparently sought to convey a contrary impression, the Labor-Management Relations Act of 1947 has not cut into that freedom. We speak of the inherent police power of each sovereign State to deal with acts of violence or other threats to the peace.' Hearings before Senate Committee on Labor and Public Welfare, Taft-Hartley Act Revisions, 83d Cong., 1st Sess., Part 4, pp. 2123-2124, 2107. This statement continues to represent the Board's present views.

"Although recognizing the States' authority to exercise their traditional police powers in situations arising out of labor disputes, the Board does not, however, regard itself in proceedings before it as bound by the determination which a state court may make as to the legality or purpose of concerted action by employees for mutual aid or protection. H. N. Thayer Co., 99 N. L. R. B. 1122, 112&-1131 (30 LRRM 1184)." 33 Lab. Rel. Rep. 425 (1954).

197. Professor Cox, in his report to the Senate Labor Committee, stated:

"The opinions leave some uncertainty concerning state power to deal with strikes and picketing not forbidden by the Federal Statute, but so closely related to activities dealt with in the N. L. R. A. as to indicate that Congress decided they should not be forbidden, but it seems likely that the court will hold the states powerless to interfere in these areas. Of course, the states retain power to prevent violence and physical interference with property." Hearings, supra note 4, at 3402.

See cases decided since Garner case:


199. 34 L. R. R. No. 11 (June 7, 1954).
This question has been noted but not passed upon by the Supreme Court.\(^{200}\)

With respect to State action in cases where the Board has declined to exercise its jurisdiction, the Board has not formally decided, or otherwise taken a position in cases of litigation in which it has been involved. It has, however, as a matter of practice refrained from intervening in any way in situations where the states, despite the absence of any cession agreement, have taken action with respect to industries over which the Board as a matter of policy declines to take jurisdiction.\(^{201}\)

B. Minnesota Decisions Regarding Conflict of Jurisdiction.

The Minnesota Supreme Court has made two decisions with respect to the problems involved in the conflict of jurisdiction between the Minnesota Labor Relations Act and the National Labor Relations Act.

In the first of these decisions, *Norris Grain Company v. Nordaas*,\(^{203}\) the Minnesota Supreme Court held that a state district court did not have jurisdiction to issue a temporary restraining order where the complaint and record presented to the trial court set forth facts which, on their face, constituted a secondary boycott. It stated:

"Secondary boycotts are within the scope of the Taft-Hartley Act, 29 USCA Sec. 141 et seq., that the National Labor Relations Board has exclusive jurisdiction over such labor disputes and that as a result, the state court had no jurisdiction to issue the restraining order." (p. 115)

In the second decision, *Faribault Daily News v. International Typographical Union*,\(^{204}\) the Minnesota Supreme Court held:


\(^{204}\) 201. 33 Lab. Rel. Rep. 425 (1954). See Almeida Bus Service, 99 N. L. R. B. 498, 500-501, 30 L. R. R. M. 1088 (1952). In addition, the Board's practice in this respect is reflected in its action in NLRB v. New York State Labor Relations Board, 106 F. Supp. 749, 30 L. R. R. M. 2414 (S.D. N. Y. 1952). There the Board sought to enjoin the New York State Labor Relations Board from taking jurisdiction over certain taxicab companies over which the Board had asserted jurisdiction. While the case was pending, the Board reconsidered its jurisdictional policy with respect to taxicab companies and concluded that it would refrain from asserting jurisdiction over the type of companies involved in the action against the New York Board. Following this change of policy, the National Board entered into a stipulation with the State Board dismissing the action in the district court.

\(^{203}\) 203. 232 Minn. 91, 46 N. W. 2d 94 (1950).

\(^{204}\) 204. Faribault Daily News v. International Typographical Union, 236 Minn. 303, 53 N. W. 2d 36 (1952).
"That, when interstate commerce is involved, the provisions of the Minnesota Act which require a ten day notice of intention to strike which is the only provision involved here, is invalid, since it interferes with the rights guaranteed by Congress in Section 7 of the Federal Act." (p. 324)

A third decision interpreting the Minnesota Act was by the United States District Court in the *Linde Air Products* case. The Court held that the office of the State Labor Conciliator did not have concurrent jurisdiction in representation cases, and proceeded to issue a restraining order against the State Labor Conciliator from proceeding in a representation case involving an industry in interstate commerce.

On the basis of the principles laid down by the United States Supreme Court in the cases cited above, together with the decisions of the Minnesota Supreme Court, a section by section analysis of the Minnesota Labor Relations Act will be made for the purpose of determining which portions of the Minnesota Act can still be applied to industries involved in interstate commerce.

C. Extent to which Specific Provisions of the Minnesota Act can be Applied to Industries Subject to the Federal Act.

1. 179.06 Subdivision 1. Collective Bargaining Agreements. Notice of Intent to Strike or Lockout.

The Minnesota Supreme Court has specifically held that the provision of the Minnesota Act which requires a ten-day notice of intention to strike is invalid as applied to industries involved in interstate commerce.

It has not ruled on the validity of the provisions of the Minnesota Law requiring a ten-day notice of intention to make a change in an existing agreement, to negotiate a collective bargaining agreement, or to make changes with respect to rates of pay, rules, or working conditions.

The Supreme Court in the *Faribault News* case was considering only an impediment on the right to strike. It could thus be urged that the provisions requiring that notice be given to the opposing party are valid as applied to industries in interstate commerce. It could also be argued that if one of the parties to a labor dispute sees fit to give a notice to the Conciliator under the provisions of the Minnesota Act that the opposite party would have an obligation to attend meetings called by the Conciliator even though under the specific holding in the *Faribault News* case there

205. 77 F. Supp. 656 (D. Minn. 1948).
would be no limitation on the right to impose a strike or a lockout during the ten-day waiting period. Justification for this reasoning could be found in the Federal Act\textsuperscript{207} which requires that a copy of the notice of dispute which is served on the United States Mediation and Conciliation Service also be served on the State Labor Conciliator.

Despite the fact that most unions and most employers continue to serve ten-day strike notices in the State of Minnesota and despite the desirability of such a holding, it is questionable that either the Minnesota Supreme Court or the United States Supreme Court would sustain the Minnesota Act in these respects. The Minnesota Court has consistently spoken of the right to strike under Section 7 of the Federal Act as being an absolute one provided the provisions of the Federal Act are adhered to. In this connection, the Court said:

"There can be no question that under the federal act, the employees under the facts of our case have an absolute right to strike. The federal act permits peaceful strikes for lawful objectives without qualifications. The state act gives a conditional or qualified right. Both acts cover the same field. Under the decisions, it would seem that the state statute cannot impose a conditional right on employees in interstate commerce where the federal law gives an absolute right. The state act says to the employees: 'You have the right to strike only if,' and then specifies the limitation or condition.

"The ten-day notice of intention to strike may be considered a very salutary provision in connection with the preservation of industrial peace, and therefore very material or something quite so immaterial that the federal act or courts would take no offense; but in either case it must be admitted that it places a restriction on an otherwise unqualified right to strike."

There are a number of additional reasons why the validity of these sections must be considered questionable with respect to industries involved in interstate commerce:

(1) Under the Federal Act, no notices of any type must be given where there is not in effect a collective bargaining agreement.

(2) The Federal Act makes it a refusal to bargain and thus an unfair labor practice if a copy of the notice required to be served on the United States Mediation and Conciliation Service is not served on the State Labor Conciliator.

(3) The notice provisions of the Minnesota Act, insofar as they relate to the requirement to give notice to an opposing party are in

\textsuperscript{207} § 8(d) (3).

\textsuperscript{208} Faribault Daily News v. International Typographical Union, 236 Minn. 303, 322-323, 53 N. W. 2d 36, 47 (1952).
direct conflict with the Federal Act, both with respect to time requirement and circumstances under which the notices must be given.

2. 179.06 Subdivision 2. Assistance Notices.

The Minnesota Act provides that an assistance notice may be filed by either party to a labor dispute with the State Labor Conciliator who is then given jurisdiction of the dispute. No cases have arisen which have questioned the right of the State Labor Conciliator to compel the attendance of a party when an assistance notice has been filed by the opposing party. This section of the Act does not place any restrictions on the right to strike, as either party at any time subsequent to the serving of the assistance notice has a right to institute a strike or a lockout unless it is prohibited under some other section of the state or federal act.

In view of the fact that no limitation on the right to strike is involved and that Congress has evidenced an intention to at least keep state labor conciliators advised as to the progress of labor disputes within their states by requiring the notices referred to above, it may be that the court, when faced with a specific problem, would hold that assistance notices could be validly applied to industries involved in interstate commerce.

3. 179.07 Labor Disputes Affecting Public Interest.

It is clear that under the decisions in the Faribault News case\textsuperscript{209} and Amalgamated Ass'n of Street Ry. Employees v. Wisconsin Employment Relations Board\textsuperscript{210} the entire fact finding procedure under the Minnesota Act is invalid with respect to industries involved in interstate commerce. This is true, not only because this involves a restriction on an otherwise unqualified right to strike, but because the provisions of the Minnesota Act are in direct conflict with the provisions of the Federal Act in so far as they empower fact finding commissions to make recommendations with respect to the terms and conditions under which the dispute should be settled. The Federal Act prohibits recommendations from being made.

Just as it might be argued that under the provisions of Section 179.06 of the Minnesota Act the parties to a labor dispute are under an obligation to meet with the State Labor Conciliator, but are free to institute a strike irrespective of the provisions of the Minnesota Act, it could also be argued that in industries involved in interstate commerce, the parties would be required to submit to

\textsuperscript{209} Ibid.\textsuperscript{210} 340 U. S. 383, 27 L. R. R. M. 2385 (1951).
a fact finding commission even though they could not be prevented from instituting a strike or walkout during the waiting period established by the Minnesota Act.

4. 179.083 Jurisdictional Controversies.

Under the principles enunciated by the United States Supreme Court in the Bethlehem Steel case\(^{211}\) and the Minnesota Supreme Court in the Norris Grain case\(^{212}\) it would appear that inasmuch as the NLRA specifically deals with the problem of jurisdictional disputes this section of the Minnesota Act would be invalid as to industries subject to the Federal Act.

5. 179.09 Arbitration.

Inasmuch as this section of the Minnesota Act is completely voluntary, there is no reason why it cannot be applied to industries involved in interstate commerce.


Under the doctrine enunciated by the United States Supreme Court that a state may not curtail the rights of employees in businesses subject to the jurisdiction of the NLRB to engage in concerted activities within the meaning of Section 7 of the NLRA\(^{213}\) it would appear that Section 179.10, to the extent that it is more restrictive than the Federal Act, could not be applied to industries in interstate commerce. In discussing this section, and the inclusion of the word "lawful," the Minnesota Supreme Court stated:\(^{214}\)

> "It must be conceded that Section 7 of the federal act and Section 179.10, subd. 1, cover generally the same field of labor relations. Both acts provide that employees shall have the right of self-organization, the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . . (p. 40)
>
> "Section 7 of the federal act gives employees the right to strike, without any conditions or strings attached to it, where there is not in effect a collective bargaining contract." (p. 47)

7. 179.10 Subdivision 2. Employer Associations.

It is difficult to imagine how an issue could arise under this subdivision. The rights of an employer association would not be

---


\(^{212}\) Norris Grain Co. v. Nordaas, 232 Minn. 91, 46 N. W. 2d 94 (1950).

\(^{213}\) See note 193 supra.

greater than the rights of an individual employer. Thus, in deter-
mining whether or not this section can be applied with respect to
industries involved in interstate commerce, the same test would
be used as was used in connection with subdivision 1.

8. 179.11 Unfair Labor Practices by Employees.

It has previously been pointed out that there are several gen-
eral features of the Minnesota Act with respect to most unfair
labor practices which go substantially beyond the provisions of the
Federal Act. These are:

1. A number of unfair labor practices are made unlawful acts
under the Minnesota Act. \(^215\) This raises a question which has never
been discussed by the United States or the Minnesota Supreme
Court, that is, does the fact that the penalties established by the
Minnesota Act exceed the penalties established by the Federal Act
in and of itself invalidate certain sections of the Minnesota Act
with respect to industries which are subject to the Federal Act.
And if these sections of the Minnesota Act are invalid for this
reason, do the sections fall, or would the penalty alone be invali-
dated?

The fact that criminal penalties may be imposed under the
state law would probably cause the court to examine the section of
the state law in question more carefully than it would if the penalties
imposed were the same under both laws.

It could not easily be argued that Congress had not considered
the establishment of criminal penalties for violation of the Federal
Act, inasmuch as it did make it a criminal offense for a union to
make contributions to a welfare fund \(^216\) except under certain cir-
cumstances, and also made it a criminal offense to make political
contributions under certain circumstances. \(^217\)

2. The Minnesota Act makes individual employees, as well as
labor organizations and their agents, guilty of unfair labor prac-
tices and unlawful acts, as well as making them liable in suits for
damages. The constitutional problems raised by this vital difference
have never been discussed by the United States or the Minnesota
Supreme Court. It would seem clear, however, that the Supreme
Court would not be likely to permit a state to apply sections of a
state act, which it considered to be invalid as to a union, to the
individual members of the union. By the same token, however, it

\(^{215\text{.}}\) Note, 24 Minn. L. Rev. 217, 233 (1940).
\(^{216\text{.}}\) § 302.
\(^{217\text{.}}\) § 304.
seems unlikely that the Court would find a section of a state law, which was valid as to a union, invalid with respect to its individual members.

3. Under the Minnesota Act, a state court is given the jurisdiction to issue injunctions and temporary restraining orders on the application of private citizens who claim real or threatened injury. This is in contrast to the Federal Act in two respects. First, under the Federal Act, an individual is not permitted to seek a restraining order or a temporary injunction. The NLRB has the exclusive right to seek this relief. Secondly, relief under the Federal Act is obtained in an administrative tribunal which is constituted for the purpose of handling all types of legal procedures.

With the long and bitter history with respect to the abuse of the temporary restraining order by state courts, the right to have a preliminary investigation prior to the issuance of a temporary restraining order by the NLRB may well be one of the most important rights that employees and employers both have.

The abuse of the temporary restraining order and injunction by state courts, even in recent years, caused these conclusions and recommendations to be made by the staff of the sub-committee on Labor and Management Relationships:

"Two principal conclusions may be drawn from the subcommittee's studies of State court labor injunctions: (1) They are too frequently issued without regard to procedural standards which are considered minimal in ordinary litigation, and (2) they too frequently encroach upon activities which are either protected by Federal law or which Congress has decided should be free of regulation—particularly by the extreme and extraordinary remedy of summary prohibition by court decree. (p. 33)

"Three principal remedies suggest themselves.

"(A) The Congress should prescribe procedural rules such as those in the Norris-LaGuardia Act for State court injunction cases involving enterprises affecting interstate commerce. (p. 33)

"(B) Congress should exclude all State court actions in labor disputes affecting interstate commerce. (p. 34)"
"(C) Self-restraint on the part of State courts is the most promising cure for the improper use of labor injunctions." (p. 34)

The United States Supreme Court recognized in the Garner case\(^{223}\) that a difference in procedure might be sufficient in and of itself to sustain a finding that a State Act would be invalid as to industries in interstate commerce when it said:

"A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law. The same reasoning which prohibits federal courts from intervening in such cases except by way of review or on application of the federal board, precludes state courts from doing so, and the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal board also excludes state courts from like action."\(^{224}\)


A strike in violation of a collective bargaining agreement is an unfair labor practice under both the Federal and State Acts; therefore, the Minnesota Act is invalid as applied to industries in interstate commerce.\(^{225}\)

There are no decisions as to whether the section of the Minnesota Act\(^{226}\) making it an unfair labor practice to violate the terms and conditions of the collective bargaining agreement can be applied to industries covered by the Federal Act.

A number of problems are raised by this provision in as much as Section 301 of the Federal Act permits suits in United States District Court for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce. The major problems are:

1. Does the United States District Court have exclusive jurisdiction of actions arising out of breach of collective bargaining agreements?

2. May an individual employee still maintain an action because of the breach of a collective bargaining agreement by the employer, e.g., a suit for back wages? If so, is he permitted to maintain the action in Federal Court or is he limited to an action in state court?

\(^{223}\) 346 U. S. 485, 33 L. R. R. M. 2218 (1953).

\(^{224}\) 74 S. Ct. 161, 166 (1953).


\(^{226}\) §§ 179.11(1), 179.12(1).
3. Insofar as the Minnesota Act makes it an unfair labor practice to violate the terms and conditions of a collective bargaining agreement, can it be applied to industries involved in interstate commerce?

There are no decisions by the Minnesota or United States Supreme Court on any of these questions, and the lower courts are divided.

Thus it has been held that an employer still has a right to maintain an action in a state court against a union for injunctive relief based on an alleged breach of a collective bargaining agreement.\textsuperscript{227}

The court said:

"Congress clearly indicated that it did not regard recourse to the United States Courts for the enforcement of the valid provisions of a collective bargaining agreement as an impingement upon the power of the National Labor Relations Board to prevent unfair labor practices defined in Section 8 of the Act or of any other power or duty with which it clothed it. We have been given no reason for denying to State Courts jurisdiction in the same field. If any implication can be drawn from the provision conferring jurisdiction upon the United States Courts, we think it would be that Congress recognized that the field was appropriate for judicial intervention, and, for that reason, clothed the district courts with jurisdiction so that they would be in a position to share in the added burden. We fail to find any word or combination of words indicating an intent to exclude the state courts or to draw to the United States District Courts the exclusive jurisdiction.

"The language of the Act is permissive and non-exclusionary. We discover no intent to use 'may' in order than its ordinary sense.\textsuperscript{228}

New York Courts have held, however, that one union does not have a right to maintain an action against another union for breach of a collective bargaining agreement, as exclusive jurisdiction of such disputes were given to Federal Courts under Section 301 of the Federal Act.\textsuperscript{229}

\textsuperscript{227} General Electric Co. v. International Union United Auto. Workers, 93 Ohio App. 139, 108 N. E. 2d 211, 30 L. R. R. M. 2607 (1952). See also Shirley-Herman Co. v. Hod Carriers Union, 182 F. 2d 806, 26 L. R. R. M. 2238 (2d Cir. 1950) where the court held that § 301 not only provided a procedural right but actually created a right where one did not previously exist.


A recent 4-3 decision of the Third Circuit Court of Appeals held that the Federal Court did not have jurisdiction under Section 301 of an action by a union for a declaratory judgment of rights under a collective bargaining agreement and for an accounting of salaries wrongfully withheld.

The Court discussed Section 301 in detail:

"In summary, we hold that the employer's duty to pay a certain rate arises out of the collective bargaining contract, plus the sanctions of the labor relations Act. The duty to pay a particular employee wages in the sum resulting from such rate arises out of the individual contract of hire. The latter is the duty alleged here, and, therefore, Section 301(a) is not involved since there is no violation of a contract between an employer and a labor organization. Consequently, we have no jurisdiction over the subject matter. For the same reason the prayer for declaratory relief as to the meaning of this term of the collective contract must meet a like fate." (p. 630)

Footnote 16: "On the question whether Section 301 has made the federal courts the exclusive forum to determine cases involving collective bargaining contracts between employers and labor organizations representing employees in an industry affecting commerce, it is significant that in the tort section of the Labor Management Relations Act, Section 303, in the jurisdictional grant, Congress said that the party injured by the proscribed conduct 'may sue therefor in any district court of the United States * * * or in any other court having jurisdiction of the parties * * *' (Emphasis added). Sec. 303(b). There is no such choice of forums under Section 301, seemingly indicating that Congress intended to preempt to the federal courts litigation on collective bargaining contracts." (p. 629)

A vigorous dissent pointed out:

"The first question is whether Section 301(a) of the Labor-Management-Relations Act, 29 U.S.C. Sec. 185(a) 1946 ed., Supp. V, which confers upon federal district courts jurisdiction of 'suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce * * *' is applicable to this controversy. This action is ex contractu. The adequate involvement of commerce is unquestioned, but the rights asserted as the basis of relief are beneficially the alleged several rights of a great number of defendant's employees to receive a day's pay for a day on which they did not work. The company argues that its refusal to pay these employees, if actionable at all, must be attacked as a breach of the individual contracts of hire, a matter beyond federal cognizance. Cf. Christiansen v. Local 680, 1940, 126 N. J. Eq. 508, 10 A. 2d 168 (5 LRRM 928). This court now accepts that reasoning, treating as decisive the undeniable fact that the obli-

gation to pay any particular workman in accordance with the union contract depends upon his individual hiring as well as the collective bargain. I believe the court does not regard the time sequence of these contracts as consequential. I agree that this dual contracting shows that the individual workman can found a common law action for pay upon the terms of his employment without even attempting to make the matter one of federal cognizance under Section 301(a). But in the present circumstances I think the existence of this individual common law right does not prevent the refusal to pay from also being a violation of the collective bargaining agreement and, as such, within federal jurisdiction as extended by Section 301(a). (p. 630)

"If in this process the union should succeed in winning as it sought here, a judicial determination establishing the alleged right of all employees under the collective bargaining contract to be paid for days of voluntary absence, the question would remain whether any money judgment could properly be rendered without joinder or intervention of individual beneficiaries. Some of the above cited cases go that far, treating the plaintiff maker of a third party beneficiary contract as a fiduciary who may obtain a money award for distribution among the beneficiaries. It is not necessary to pass upon that issue here because the district court rightly concluded that the contract in suit did not create such an obligation as the union asserts in this suit. And since the majority does not reach this point at all, I express no opinion on the matter of necessary parties beyond saying that the union suing alone can obtain an effective declaration of the rights and obligations created by the collective bargaining contract, including any created for the benefit of the workmen as individuals." (p. 632)

It seems quite clear that most of the questions raised will be determined by the United States Supreme Court. Thus, this section of the Minnesota Act must be considered as of doubtful validity, at least insofar as it is made an unfair labor practice to violate the terms of a collective bargaining agreement.


This subdivision making strikes in violation of the ten-day strike notice provisions, or public interest provisions, an unfair labor practice, is clearly invalid with respect to industries in interstate commerce. 231

c. Subdivision 3. The Unlawful Seizure of Property During a Labor Dispute.

This subdivision would probably be valid as an exercise of the police power. This may be true despite the fact that the National

---

Labor Relations Board has indicated that it has the power to prevent the type of conduct declared unfair by this section.\textsuperscript{232} The National Labor Relations Board indicated in the \textit{Thayer} case,\textsuperscript{233} however, it would not necessarily be bound by the decision of the state court that the conduct did amount to an unlawful seizure.

\textbf{d. Subdivision 4. Picketing by Non-Employees While a Strike is in Progress.}

The prohibition against picketing, under this Subdivision, is of doubtful validity.\textsuperscript{234} It would, of course, be argued that this type of prohibition was enacted to help insure peaceful picketing, the argument being that employees would be less prone to commit violence on the picket lines than non-employees. The language used by the Minnesota Supreme Court in the \textit{Faribault News} case indicates that the Minnesota Supreme Court would hold this section to be invalid with respect to industries in interstate commerce. There they quoted with approval the \textit{O'Brien} case\textsuperscript{235} and the \textit{Amalgamated} case.\textsuperscript{236}

"The strike here involved is a peaceful strike for a lawful purpose and affects employers and employees engaged in interstate commerce. It is not a case where the strike or picketing is for an unlawful purpose or where there is violence or threats of violence." (p. 323)

\textbf{e. Subdivision 5. The Use of More than one Picket at an Entrance where No Strike is in Progress.}

The type of limitation contained in this subdivision is similar to the limitation contained in Subdivision 4. The validity of this subdivision with respect to industries involved in interstate commerce rests on substantially the same grounds as that of Subdivision 4. It must, then, be put in the doubtful class as far as validity is concerned.

\textbf{f. Subdivision 6. Interference with the Operation of a Vehicle or the Operator Thereof When the Operator is Not a Party to the Strike.}

If it were not for the fact that this subdivision implies that it is permissible for certain types of interference with the driver or oper-

\begin{itemize}
  \item \textsuperscript{232} Fansteel Metallurgical Corp. v. NLRB, 306 U. S. 240, 4 L. R. R. M. 515 (1939).
  \item \textsuperscript{233} H. N. Thayer Co., 99 N. L. R. B. 1122, 30 L. R. R. M. 1184 (1952).
  \item \textsuperscript{234} See note 197 \textit{supra}.
  \item \textsuperscript{235} Automobile Workers Union v. O'Brien, 339 U. S. 454, 26 L. R. R. M. 2082 (1950).
  \item \textsuperscript{236} Amalgamated Ass'n St. Ry. Employees v. Wisconsin Employment Relations Board, 340 U. S. 383, 27 L. R. R. M. 2385 (1951).
\end{itemize}
ator of a vehicle when they are a party to a strike, this clause would probably be valid under the same theory as Subdivision 3. In view of the fact, however, that a distinction seems to be drawn between the type of interference which is permitted when the operator is a party to the strike and when he is not a party to the strike, it may very well be that this subdivision would be valid or invalid, depending on the construction of the word "interference." To the extent that the interference involved physical interference, it would appear that this subdivision could be applied to industries involved in interstate commerce; but to the extent that it did not involve physical violence of any type and only involved interference of a nature which would be valid under the Federal Act, it would be in the doubtful class.

g. Subdivision 8. Secret Strike Votes.

Under the decision in the O'Brien case, this section of the Minnesota Act is clearly invalid with respect to industries involved in interstate commerce. In the O'Brien case, the court said:

"Congress safeguarded the exercise by employees of 'concerted activities' and expressly recognized the right to strike. It qualified and regulated that right in the 1947 Act. It established certain prerequisites, with which appellants complied, for any strike over contract termination or modification, Sec. 8(d). These include notices to both state and federal mediation authorities; both did participate in the negotiation in this case. In provisions which did not affect appellants, Congress forbade strikes for certain objectives and detailed procedures for strikes which might create a national emergency. Sec. 8(b)(4), 206-210. None of these sections can be read as permitting concurrent state regulation of peaceful strikes for higher wages. Congress occupied this field and closed it to state regulation." (p. 457)

h. Subdivision 9. The Interference with the Production, Transportation, . . . by a Producer of Agricultural Products.

To the extent that this subdivision seeks to prevent physical violence of any type, it could be validly applied to industries in interstate commerce. To the extent, however, that it attempts to outlaw secondary or primary picketing, or other activities, its validity would rest on the same basis as the other employee unfair labor practices which have been previously discussed.

238. See Note 196 supra.
MINNESOTA LAW REVIEW

   a. Subdivisions 1 and 2. Lockouts in Violation of
      a Collective Bargaining Agreement and Breaches of
      Collective Bargaining Agreements.

      The validity of these subdivisions as applied to industries in
      interstate commerce would be determined under the same principles
      discussed with reference to Section 179.11 (1), (2).239

   b. Subdivision 3. To Encourage or Discourage Membership
      in any Labor Organization.

      To the extent that this subdivision permits various forms of
      union security agreements which are permitted by the Federal Act
      it is valid. To the extent, however, that it relates to other forms of
      discrimination, it could not be applied to industries in interstate
      commerce as the Federal Act contains a provision which regulates
      the same type of conduct.240

   c. Subdivision 4. To Discriminate Against an Employee
      for Giving Testimony Under the Act.

      In order for the provisions of this subdivision to be applied, an
      employee would have to give testimony under the Act in connection
      with another section of the Act. Thus, the validity or invalidity of
      this section would depend on whether the original proceeding was
      one in which state could properly exercise jurisdiction.241

   d. Subdivisions 5 and 6. To Spy or to Blacklist.

      The Federal Act does not specifically make it an unfair labor
      practice to spy or blacklist. The Board, however, has held that such
      conduct is an unfair labor practice under Section 8 (a) (1) of the
      Federal Act. In view of the fact that the Federal Act has been held
      to prohibit this specific conduct, these subdivisions could not be
      validly applied to industries in interstate commerce.242

10. 179.13 Interference with Roads, Methods of Transportation,
    and Wrongful Obstruction of Ingress to and Egress
    from Any Place of Business.

    The validity or invalidity of this section rests upon the same

239. Faribault Daily News v. International Typographical Union, 236
      Minn. 303, 53 N. W. 2d 36 (1952).
      (1953); Building Trades Council v. Kinard Construction Co., 346 U. S. 393,
241. See note 240 supra.
242. Ibid.
grounds as Subdivisions 3, 6 and 9 of 179.11. The principles discussed under those sections are equally applicable here.

11. 179.135 Protection of Collective Bargaining Agreements.

This section of the Minnesota Act prohibits an officer, business agent, or representative of a union from requiring an employer to negotiate when the employer is already under contract to another union.

The Federal Act has no provisions which are comparable to this section of the Minnesota Act. The Federal Act, however, does legislate in a closely related field. The question, therefore, is whether Congress attempted to pre-empt the field by legislating with respect to it, even though the legislation is not as comprehensive as that of the Minnesota Act. In view of the fact that this specific problem has not been decided either by the United States Supreme Court or the Minnesota Supreme Court, this section must be considered in the doubtful category.

12. 179.14 and 179.15 Injunctions and Temporary Restraining Orders.

The validity of this section could not, of course, be tested directly. A complete discussion with respect to the problems which are raised by this section is contained elsewhere in this article.

13. 179.16 Representatives for Collective Bargaining.

Concurrent jurisdiction in representation cases is prohibited with respect to industries involved in interstate commerce.

14. 179.18 through 179.25 — The Labor Union Democracy Act.

The Federal Act does not attempt to regulate the internal affairs of local unions or international unions to the extent that is attempted in the Labor Union Democracy Act. The only requirements of the Federal Act are the furnishing of certain financial and other information, and the signing by the officers of the union of non-Communist affidavits.

Two questions are therefore raised with respect to the Labor Union Democracy Act.

1. Do the regulations of the Minnesota Act come within the protected activity of Section 7 of the National Act? In this connec-

---

243. § 8(b) (4) (B), (C).
245. § 9(f), (g), (h).
tion, the only case on the problem which has been decided by the United States Supreme Court is *Hill v. Florida*. There the United States Supreme Court held invalid a provision which required that business agents of unions be licensed. The Supreme Court stated:

"Since the Labor Board has held that an employer must bargain with a properly selected union agent despite his failure to secure a Florida license, it is argued that the state law does not interfere with the collective bargaining process. But here, this agent has been enjoined, and if the Florida law is valid he could be found guilty of a contempt for doing that which the act of Congress permits him to do. Furthermore, he could, under Section 14 of the state law, be convicted of a misdemeanor and subjected to fine and imprisonment. The collective bargaining which Congress has authorized contemplates two parties free to bargain, and cannot thus be frustrated by state legislation. We hold that Section 4 of the Florida Act is repugnant to the National Labor Relations Act." (p. 542)

The Court also said:

"The declared purpose of the Wagner Act, as shown in its first section is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice. To this end Congress made it illegal for an employer to interfere with, restrain or coerce employees in selecting their representatives. Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualifications." (p. 541)

The Florida Act can, of course, be distinguished from the Minnesota Act in that Florida attempted to set itself up as a judge of whether or not a person was fit to represent employees for the purposes of collective bargaining. The Minnesota Act does not attempt to go that far. In one important respect, however, it is similar to the Florida law since under both laws a violation constitutes a misdemeanor.

2. Did Congress pre-empt the field by adopting the Labor-Management Relations Act of 1947?

*Hill v. Florida* was decided prior to the passage of the Labor-Management Relations Act of 1947. Thus, there was no question of Congress having pre-empted the field with respect to the regulation of the affairs of unions. With the passage of the Labor-Management Relations Act of 1947, the problem of pre-emption is also raised.

An additional problem in connection with the Minnesota Act is

whether it applies only to those unions which do business exclusively in the State of Minnesota, or does it apply to local unions and international unions who may have members in more than one state.

If an effort were made to apply the Act to international unions, or to local unions having members in more than one state, it is hard to imagine the basis on which the court could sustain the Act. The problem of regulating the internal affairs of local unions functioning in more than one state is so obviously a national problem that the court either under the doctrine of *Hill v. Florida* or under the theory of preemption would strike the law down.

15. 179.40 to 179.47. Secondary Boycott.

The extent to which the so-called secondary boycott provisions of the Minnesota Act can be applied to industries in interstate commerce has been left somewhat in doubt not only by the United States Supreme Court but also by the Supreme Court of the State of Minnesota.

It is clear from the decision of the Minnesota Supreme Court in the *Norris Grain* case that to the extent the Federal Act covers the field of boycotts which are also prohibited by the State Act the State Act cannot be applied to industries in interstate commerce. It is also clear that in determining whether or not the State Act can be applied, the question is not whether the NLRB has acted in the specific case or what its actions will be, but rather whether Congress has asserted the power to regulate the particular relationship.

The Minnesota Supreme Court made this point very clear in a footnote attached to the original decision on the case.

"Since argument on this case, our attention has been called to the case of Denver Bldg. & Const. Trades Council v. N.L.R.B., D.C. Cir., 186 F.2d 326, CCH, 6 Labor Law Rep. (4 ed.) par. 65, 949. The above case contains a long and comprehensive discussion of the question of secondary and primary boycotts, in which many of the authorities are collected. It is, however, of little help here.

"The question here is not whether we are dealing with a primary or secondary boycott, but whether our state courts or N.L.R.B. has the power to make such decision. There seems to be no doubt that respondent here is engaged in interstate and foreign commerce. The ultimate question then is --- do the facts complained of fall within the field covered by the National Labor Act? If so, our courts have no jurisdiction to act in determining whether such acts are unfair labor practices." (p. 108)
On a petition for a re-argument the Supreme Court again made this point clear.

"In order that our position may be completely clarified, it was and is our holding that the complaint and record presented to the trial court upon which an ex parte restraining order was issued present facts which, on their face, constitute a secondary boycott; that respondent is engaged in interstate commerce; that secondary boycotts are within the scope of the Taft-Hartley Act, 29 U.S.C.A. Sec. 141 et seq.; that the National Labor Relations Board has exclusive jurisdiction over such labor dispute; and that as a result the state court had no jurisdiction to issue the restraining order.” (p. 115)

The Minnesota Supreme Court has, however, indicated that if the picketing is in fact not covered by the Federal Act its decision may not be the same as it was in the Norris Grain case.

"In support of its petition for rehearing, respondent has cited several cases in which the courts have held that picketing which is primary is not covered by the federal act under the circumstances there disclosed, even though such picketing might incidentally affect an innocent employer. We have no quarrel with those decisions. Respondent’s difficulty here is that the court's order is based upon a complaint and record which is entirely inconsistent with any holding of primary picketing. It would serve no useful purpose to review all authorities cited by respondent. Reference to a few should suffice to show how inconsistent respondent's position is.” (p. 114)

In an earlier section of this article, the differences in scope of the Minnesota Secondary Boycott Act and the secondary boycott provisions of the Federal Act have been pointed out.

Whether the sections of the Minnesota Act which purport to regulate activities that are not specifically regulated by the Federal Act can be applied to industries in interstate commerce is highly doubtful. The basic questions to be answered by the courts are whether:

(1) The activities prohibited by the State Act are so closely related to the activities dealt with in the Federal Act as to indicate that Congress decided they should not be forbidden.

(2) The activities which are being carried on by the employees would be considered protected activities under Section 7 of the Federal Act.

IV. JURISDICTIONAL POLICY OF THE NATIONAL LABOR RELATIONS BOARD

It is not within the scope of this analysis to make a detailed examination of the cases in which the Board has exercised its juris-
diction. The purpose is to point out the bases upon which the Board has exercised its jurisdiction, and the practical results of the Board’s policy in Minnesota.

In 1950 the Board set up nine standards which were to govern its exercise of jurisdiction.249

"1. Instrumentalities and channels of interstate and foreign commerce (for example, radio systems)."249

"2. Public utility and transit systems.250

"3. Establishments which operate as integral parts of a multi-state enterprise (for example, chain stores, and branch divisions of national or interstate organizations).251

"4. Enterprises which produce or handle goods destined for out-of-state shipment, or performing services outside a state, if the goods or services are valued at $25,000 a year.252

"5. Enterprises which furnish services or materials necessary to the operation of enterprises falling categories 1, 2 and 4 above, provided such goods or services are valued at $50,000 a year.253

"6. Any other enterprise which has:
(a) a direct inflow of material valued at $500,000 a year254 or
(b) an indirect inflow of material valued at $1,000,000 a year,255 or
(c) a combination inflow or outflow of goods which add up to at least a total of ‘100%’ of the amounts required in items 4, 5, 6 (a) and (b) above.256

" ‘The Board has long been of the opinion that it would better effectuate the purposes of the Act, and promote the prompt handling of major cases, not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress, but to limit that exercise to enterprises whose operations have, or at which labor disputes would have, a pronounced impact upon the flow of interstate commerce. This policy should in our opinion, be maintained.’

The Board thereby reiterated its policy of not exercising jurisdiction, despite its power to do so, over business operations so local in character that a labor dispute would be unlikely to ‘have a sufficient impact upon interstate commerce to justify an already burdened Federal Board in expending time, energy and public funds.’"249

"7. Establishments substantially affecting national defense."[257]

In response to a recent request of the United States Supreme Court for an explanation of its jurisdictional policies, the NLRB stated that it is currently engaged in a "comprehensive re-examination" of the nine jurisdictional standards laid down in 1950.258 This process of re-examination is reflected in a series of recent decisions where the Board has stated that it will not continue to exercise its jurisdiction over all enterprises which under previous Board decisions might have been regarded as falling within categories 2, 5, or 9 of the 1950 standards.259 Thus, the Board has ruled that it will not continue to exercise jurisdiction over such public utilities as rural electric cooperatives which are essentially local in character,260 local transit or transportation systems,261 or enterprises which, although performing services in connection with interstate instrumentalities, or performing services for concerns falling in categories 1, 2 or 4, have a comparatively remote or insubstantial impact upon commerce.262 The Board has also ruled that in exercising jurisdiction over establishments affecting national defense, it will require a showing of a more direct and substantial relationship to the national defense than it had required in earlier cases.263 As to enterprises covered by the other categories, the Board, pending the results of further study, is, in general, continuing to apply those standards, as it has in the past, for the purpose of determining whether to assert jurisdiction.

V. THE EXTENT TO WHICH THE NLRB AND THE STATE LABOR CONCILIATOR HAVE EXERCISED JURISDICTION IN MINNESOTA

Ever since the enactment of the Minnesota Labor Relations Act, the NLRB and the Office of the State Labor Conciliator have both functioned in the State of Minnesota. While statistics with respect to the number of cases handled by the state agency and the federal agency do not in any way determine the advisability of extending or contracting the jurisdiction of either one, the statistics do, in some way, help to indicate that both agencies have been rendering a rather substantial service to both employers and employees in the state.

<table>
<thead>
<tr>
<th>Industry</th>
<th>Representation</th>
<th>Total Number of Employees Involved</th>
<th>Number of Employees in Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Petitions Filed in Minnesota</td>
<td>in Petitions Filed with NLRB in 1953</td>
<td>in 1953</td>
</tr>
<tr>
<td>N.L.R.B. State &amp; Federal</td>
<td>1953</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing</td>
<td>91</td>
<td>74,846</td>
<td>4,416</td>
</tr>
<tr>
<td>Warehouse</td>
<td>15</td>
<td>18,518</td>
<td>257</td>
</tr>
<tr>
<td>Retail</td>
<td>12</td>
<td>7,545</td>
<td>1,921</td>
</tr>
<tr>
<td>Service</td>
<td>11</td>
<td>200</td>
<td>108</td>
</tr>
<tr>
<td>Public Utility</td>
<td>5</td>
<td>738</td>
<td>180</td>
</tr>
<tr>
<td>Food Processing</td>
<td>5</td>
<td>327</td>
<td>251</td>
</tr>
<tr>
<td>Franchised Auto Dealers</td>
<td>7</td>
<td>154</td>
<td>58</td>
</tr>
<tr>
<td>Mining</td>
<td>4</td>
<td>8,341</td>
<td>325</td>
</tr>
<tr>
<td>Distributors</td>
<td>4</td>
<td>215</td>
<td>77</td>
</tr>
<tr>
<td>Engineering &amp; Research</td>
<td>3</td>
<td>34</td>
<td>26</td>
</tr>
<tr>
<td>Printing</td>
<td>3</td>
<td>35</td>
<td>17</td>
</tr>
<tr>
<td>Warehousing</td>
<td>2</td>
<td>832</td>
<td>47</td>
</tr>
<tr>
<td>Radio Station</td>
<td>1</td>
<td>210</td>
<td>36</td>
</tr>
<tr>
<td>Office Building</td>
<td>1</td>
<td>25</td>
<td>15</td>
</tr>
<tr>
<td>Hospitals</td>
<td>7</td>
<td>65</td>
<td>42</td>
</tr>
<tr>
<td>Franchised Beverage Dist.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A review of both the federal and state cases which go to make up the above totals indicates very clearly that in general, the state tends to handle those cases which involve the smaller number of employees. In most instances, where only a small number of employees are involved in a Federal election, a craft severance has been petitioned for.

One fact is extremely clear from these reports, and that is that if the jurisdictional lines are to be substantially changed either way, additional personnel will be required by whichever agency receives the additional jurisdiction.

The figures with respect to the results of the elections are equally enlightening.
**DISPOSITION**

<table>
<thead>
<tr>
<th>Description</th>
<th>Federal</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Consent Election</td>
<td>94</td>
<td>29</td>
</tr>
<tr>
<td>By Board Order</td>
<td>27</td>
<td>10</td>
</tr>
<tr>
<td>By Withdrawal</td>
<td>39</td>
<td>21</td>
</tr>
<tr>
<td>Determination without Election</td>
<td></td>
<td>23</td>
</tr>
<tr>
<td>Pending</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td>166</td>
<td>88</td>
</tr>
<tr>
<td>Positive Certification</td>
<td>98</td>
<td>43</td>
</tr>
<tr>
<td>Negative Certification</td>
<td>20</td>
<td>9</td>
</tr>
</tbody>
</table>

Inasmuch as the Minnesota State Labor Conciliator does not have jurisdiction over employee or employer unfair labor practices, there is no basis for comparing the experience of the NLRB in Minnesota with the state practice. All that can be done is to review the experience of the NLRB in this field.

In 1953, 36 unfair labor practice charges were filed against employers in the State of Minnesota. Of these, 16 were withdrawn, 11 were settled by an agreement between the parties and the Board, and 3 were dismissed. The remainder of the cases were pending at the year's end. In this field, as in the representation cases, the bulk of the charges were filed in the manufacturing industry with only a small number of cases being filed in each of the other industries.

With respect to unfair labor practices involving charges against a union only 7 cases were filed in 1953. Of these 7 cases, 2 were withdrawn and the remainder were settled either by an agreement between the parties or by an agreement between the parties and the Board.

The limitations of space in this article make it impossible to make an extensive analysis of all of the conciliation and mediation cases handled by the State Labor Conciliator's office in 1953 and the cases handled by the United States Mediation and Conciliation Service in the same year.\(^{264}\) In view, however, of the extensive discussions with respect to the President's proposal for permitting

---

\(^{264}\) State statistics:

<table>
<thead>
<tr>
<th>Year</th>
<th>Strike Notices</th>
<th>Assistance Notices</th>
<th>Lockout Notices</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1939-40</td>
<td>553</td>
<td>135</td>
<td>5</td>
<td>693</td>
</tr>
<tr>
<td>1940-41</td>
<td>421</td>
<td>89</td>
<td>3</td>
<td>513</td>
</tr>
</tbody>
</table>
the states to intervene in emergency disputes where the health, welfare or safety of their citizens are involved, it is interesting to review that situation with respect to Fact Finding Commissions under the Minnesota Act.

<table>
<thead>
<tr>
<th>Year</th>
<th>Strike Notices</th>
<th>Assistance Notices</th>
<th>Lockout Notices</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1941-1942</td>
<td>559</td>
<td>124</td>
<td>4</td>
<td>687</td>
</tr>
<tr>
<td>1942-1943</td>
<td>235</td>
<td>115</td>
<td>1</td>
<td>351</td>
</tr>
<tr>
<td>1943-1944</td>
<td>150</td>
<td>106</td>
<td>2</td>
<td>258</td>
</tr>
<tr>
<td>1944-1945</td>
<td>161</td>
<td>75</td>
<td>1</td>
<td>237</td>
</tr>
<tr>
<td>1945-1946</td>
<td>463</td>
<td>122</td>
<td>2</td>
<td>587</td>
</tr>
<tr>
<td>1946-1947</td>
<td>631</td>
<td>144</td>
<td>65</td>
<td>890</td>
</tr>
<tr>
<td>1947-1948</td>
<td>614</td>
<td>210</td>
<td>26</td>
<td>850</td>
</tr>
<tr>
<td>1948-1949</td>
<td>722</td>
<td>202</td>
<td>20</td>
<td>944</td>
</tr>
<tr>
<td>1949-1950</td>
<td>769</td>
<td>204</td>
<td>33</td>
<td>1,006</td>
</tr>
</tbody>
</table>
In 1948, 41 Commissions were appointed, of which 16 were in the construction field and the balance distributed between the service trades, manufacturing and transportation services. In 1949, 32 Fact Finding Commissions were appointed with the industry distribution being approximately the same as 1948 with one exception, and that is, that in that year, three Fact Finding Commissions were appointed in public utilities. In 1950, ten Fact Finding Commissions were appointed, with the industry distribution being substantially the same as they were in the prior two years. In 1951, ten Commissions were again appointed. In 1952, eleven Commissions were named, and in 1953, only three Commissions were named, those being, the Duluth-Superior Transit Company, which operates the local bus transportation system for the City of Duluth; the Federal Cartridge Company, which is a federal defense plant; and the Franklin Heating Station of Rochester.

Since 1948, of the 107 Fact Finding Commissions appointed, fourteen of them have been appointed in manufacturing industries,

<table>
<thead>
<tr>
<th>Period</th>
<th>Number of Strike Notices</th>
<th>Number of Assistance Notices</th>
<th>Number of Lockout Notices</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950-1951</td>
<td>714</td>
<td>165</td>
<td>2</td>
<td>881</td>
</tr>
<tr>
<td>1951-1952</td>
<td>980</td>
<td>167</td>
<td>18</td>
<td>1,165</td>
</tr>
<tr>
<td>1952-1953</td>
<td>999</td>
<td>187</td>
<td>17</td>
<td>1,203</td>
</tr>
</tbody>
</table>

265. Fact finding commissions were appointed in 1948 with respect to the following employers: Graphic Arts Ind.; Rochester Dairy; Ace Transportation Co.; Minneapolis Retail Plumbers Ass'n; Heating and Piping Ass'n; Minneapolis Retail Plumbers; Minneapolis Printing Contr.; 140 Restaurants, Duluth; Cleaners & Launderers Inst., Minneapolis; Launderers & Dry Cleaners, St. Paul; 13 Transfer Cos., Duluth; 23 T. C. Bakeries; A. G. C. St. Paul Bldrs. Div.; 8 Building Material Firms; 3 Concrete Cos.; 9 Sand & Gravel Cos.; Eating Places, Intl. Falls; Heating & Piping Contractors; M. & O. Paper Co., Intl. Falls; 36 Lumber Cos., Minneapolis; Building Material Cos.; Ready Mixed Concrete Cos., Minneapolis; 3 Concrete Block Cos.; 7 Sand & Gravel Cos., Minneapolis; Northern Fruit Jobbers Ass'n, Duluth; Engineering Research Ass'n; 25 Lumber Dealers, Minneapolis; No. Fruit Jobbers Ass'n, Duluth; 24 Major & Indep. Oil Cos., St. Paul; 16 Oil Cos., Minneapolis; A. G. C. Twin Cities Bldrs. Div.; St. Paul Home Bldrs. Div.; Minneapolis Contractors & Bldrs. Ass'n; Whitney's, Duluth; 13 Milling Cos., T. C.; Priority Mills, Minneapolis; Swift & Co., Minneapolis; Morell & Co., Minneapolis; Armour & Co., Minneapolis; Minneapolis Star & Tribune; N. W. Publications, Inc.
three in the food and dairy manufacturing industries, three in the transportation industry, twenty-four in construction, thirty in services industries, five in food manufacturing, twenty-two in trade industries, principally retailers of various commodities, one in the wholesale trade industry, four in public utilities and one involving private utilities.

The present policy of the State Labor Conciliator is to recommend the appointment of Fact Finding Commissions in three types of situations:

1. In utilities;
2. In those situations in which the entire community depends on a particular industry;
3. In those cases in which both parties feel that a Fact Finding Commission would substantially contribute to the solving of their problems. In this category, there is a great reluctance on the part of the Conciliator to appoint a Commission because of his feeling that they can be more effective if only a few are appointed.

The small number of Commissions appointed in the utility industries is probably brought about to a large extent by the fact that a good many utilities in the State of Minnesota have provisions in their contract providing for compulsory arbitration.

VI. CONCLUSION

The basic provisions of the Minnesota Labor Relations Act are no longer applicable to industries which are subject to the Federal Act: Thus the ten-day strike notice provision; the provisions with respect to the appointment of fact finding commissions; the representation sections of the Act; a majority of the unfair labor practices sections; and the secondary boycott provisions are clearly invalid.

Legislation is now being proposed in the Congress of the United States which would have the effect, if passed, of enlarging the jurisdiction of the state with respect to industries involved in interstate commerce.

In seeking to determine the advisability and effect of such legislation with respect to the situation in Minnesota, it is important to keep these factors in mind.

There are a number of basic differences in concept or approach between the Federal Act and the Minnesota Act. The more important differences are:
1. The concept under the Minnesota Act of considering certain unfair labor practices unlawful acts.

2. The concept under the Minnesota Act of holding an individual employee, as distinguished from a labor organization, guilty of unfair labor practices and unlawful acts, and liable in suits for damages.

3. The concept under the Minnesota Act of court handling of unfair labor practices as distinguished from handling by administrative tribunals.

4. The concept of granting practically unlimited powers to the State Labor Conciliator and permitting extremely broad discretion in their exercise.

5. The combination under the Minnesota Act of mediation and conciliation functions in the hands of the persons responsible for the administration of the certification and unfair labor practices sections of the Act.

Not only is there a difference in concept or approach between the acts, but there are a number of extremely important substantive differences between them.

In view of the differences in concept or approach and the differences in the substantive provisions of the Act, it is important that the effect of these differences be thoroughly considered in determining what, if any, legislation is desirable.

Debates in Congress have indicated that many important interests view the suggested amendments on jurisdictional problems as a means of amending the substantive provisions of the Taft-Hartley Act.

The employers appear to be principally interested in three objectives:

1. To make it possible for an individual to obtain injunctive relief for a violation of the provisions of the Federal Act.

2. To permit states to impose such additional restrictions on picketing and strikes as each state may think desirable, and to permit state courts or administrative boards to enjoin violations of such state acts.

3. To permit state laws to operate in the twilight zone of jurisdiction.

The unions' representatives on the other hand generally take the position that the history of labor relations indicates that one of the principle causes of bad labor relations in the past has been
the power of state courts to issue temporary restraining orders and injunctions.

They also take the position that it is extremely unfair to permit states to impose additional restrictions on labor unions which are not contained in the Federal Act. The unions also point out that many difficulties arise if the states courts and boards are permitted to operate in the twilight zone.

As long as both employers and unions approach the problem of the relative jurisdiction of State and Federal Government from the standpoint of the advisability of substantive provisions of the Federal and State Acts, it is extremely difficult to see how much progress can be made in clearly defining the respective fields of jurisdiction. This approach does, however, point out that the basic issue is not "states rights," because as was pointed out by several witnesses in the hearings, if the basic issue was in fact "states rights" it would logically follow that if a state desired to relax some of the restrictions of the federal law it should be permitted to do so.

The problems arising from the conflict in jurisdiction do not seem to be as serious as some would have us believe. This is indicated by the Minnesota experience where Federal and State Boards have been operating simultaneously for many years with no increase in labor difficulties caused by such operation. To the extent that the conflict remains a problem, it is submitted that the following steps should be taken:

1. Within the respective spheres of the Federal and State Governments the jurisdiction of each should be exclusive. Concurrent jurisdiction gives rise to more problems than it solves. To permit the state to operate in a field where the board has jurisdiction but declines to exercise it also gives rise to many problems. From the standpoint of the public it is probably undesirable to leave a twilight zone in which certain industries are entirely unregulated. From the standpoint of both employers and unions, however, who are within the twilight zone, they are never quite sure as to which law is applicable to them. It would, therefore, seem highly desirable for Congress to indicate much more clearly than it has in the past, the area in which it desires that the NLRB exercise jurisdiction.

2. The new jurisdictional policies of the NLRB, in which they have declined to assert jurisdiction with respect to certain industries predominantly local in nature, is a move in the right direction. However, to minimize twilight zone problems jurisdictional
policies should primarily be determined by Congress and not by the NLRB.

3. To the extent that substantive amendments of either federal or state law are desirable, the issues involved in such substantive amendment should be met head on by Congress, and it should be willing to accept the full responsibilities for the effects of such amendments.

4. Every effort should be made to speed up the decisions of the NLRB and to bring the administration of the NLRA a little closer to the people involved in labor matters. Recently, extensive efforts in these directions have been made by streamlining the procedure and by giving additional authority to the regional director in representation cases. In the past, any attempts at decentralization have met with vigorous protests from the National Board itself on two grounds:

1. That decentralization might result in contrary rulings in different districts, and
2. That if authority was decentralized, an appeals procedure would probably have to be established, which would in many cases result in additional delays.

While both of these arguments have merit, the experience in the United States with respect to our court system indicates that there will be no great problem with respect to the variance of rules between various districts which will not be solved by the appeals procedure. With the respect to the possible delay, it is admitted that wherever there is a desire on the part of either employer or union to delay that they will be able to do so. However, means of delay in the Act at the present time are just as serious. Experience has shown that an appeal procedure will not be abused.

The experience in Minnesota indicates that there is only one possible area in which concurrent jurisdiction would be feasible at the present time, and that is with respect to the conciliation features of our act. Most unions and employers who are subject to the Federal Act still continue to use services of the State Labor Conciliator. It would seem that no serious problem would be raised by a simple requirement that after a notice of dispute has been served on the United States Mediation and Conciliation Service pursuant to the provisions of the Federal Act that thereafter both employers and unions shall have a duty to respond to meetings which are called by the Conciliator.