The Minnesota Labor Disputes Injunction Act

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THE MINNESOTA LABOR DISPUTES INJUNCTION ACT

BY H. L. MCCLINTOCK*

The Minnesota statute\(^1\) refusing recognition to contracts binding an employee to refrain from joining a labor union and regulating the issuance of injunctions in cases arising from labor disputes was manifestly based, not on the model state anti-injunction bill,\(^2\) but on the Norris-La Guardia Act\(^3\) adopted by Congress, since it is very largely a literal copy of that act. The federal statute was enacted after long and careful consideration of the problems involved and its legislative history and the decisions under it have been elsewhere discussed.\(^4\) But not so much attention has been given to the consideration of the cases arising under the state statutes or to the special problems which arise because of the provisions of the federal constitution which affect state but not congressional legislation, the special provisions of the state constitutions which may be involved,\(^5\) and the relation of the state statutes to the existing labor law decisions of the particular state.\(^6\) Since labor controversies in Minnesota have recently attracted so much attention and have caused so much disorder and

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5Note (1934) 18 MINNESOTA LAW REVIEW 184.

6One aspect of the relation of the state statutes to the law previously existing in the several states having such enactments is considered in Cooper, The Fiction of Peaceful Picketing, (1936) 35 Mich. L. Rev. 73. The author summarizes in that article the provisions of the statutes of the nineteen states which have enacted similar legislation with reference to injunctions against picketing in labor disputes.
financial loss, it is worth while to consider the extent to which our statute has limited the powers which the courts had previously exercised in these cases.

In adapting the federal statute for adoption as a state law very few changes were made in it except such obvious ones as substituting "State" for "United States." The federal provision that an ex parte temporary restraining order should remain in force only five days⁷ was changed to a provision that such an order should be effective until a hearing and decision on the petition for temporary injunction, which hearing shall be held within ten days unless the defendants ask for additional time.⁸ The provision of the federal act is a drastic one, but in view of the practice of many judges to sign, without careful study of them, temporary restraining orders as drafted by the plaintiff's attorneys, and of the fact that the continuance of an erroneous order in force for even a short time may have a decisive influence on the outcome of the strike, it is not too drastic.⁹ Under the Minnesota provision, the hearing on the petition for temporary injunction, even if begun within the ten day period, may often last for several days, and further time may thereafter elapse before the decision is rendered. In this respect our statute fails to give adequate protection against one of the principal abuses of labor injunction practices.¹⁰

There was omitted from the Minnesota statute the provision of the federal act denying injunctive relief to a complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery.¹¹ In practice this section has furnished one of the most effective sanctions for the policy of recent federal legislation to require collective bargaining and peaceful settlement of labor disputes. Employers have become accustomed to think of an injunction as one of their most effective weapons against strikers, and the fear of its

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loss is a strong inducement to the exertion of all reasonable means
to assure themselves it will be available if a strike comes. As a
general rule the federal courts have given full effect to this
provision, though in one case it was construed so strictly as
to be almost meaningless, and was held not applicable.

No reason is apparent why such a provision would not be as
appropriate in a state statute as in the federal act. If the dispute
is one in which the federal agencies may interfere, the state may
properly refuse to give extraordinary relief to one who fails to
make use of that agency; if no federal machinery is available for
the settlement of the particular dispute, then previous recourse
to negotiation or voluntary arbitration would be the only condition
required by this provision as a prerequisite to injunctive relief.
Though no court of equity would be apt to hold that an employer
who had not complied with these requirements had unclean
hands which prevented his seeking equitable relief, the broad
principle underlying the clean hands maxim sustains this require-
ment if we concede the policy of the law to be, as declared in this
statute, to favor collective bargaining between employers and
employees at the expense of the formers’ right to run their busi-
nesses in any way they choose. A bill was introduced in the 1935
session of the legislature and passed the house, to amend section
8 of the Minnesota statute by adding thereto the provisions of
the federal statute with reference to prior efforts to settle labor
disputes before either party may resort to an injunction.

The last section of the Minnesota statute states that the act
shall not be held to apply to policemen or firemen or any other
public officials charged with duties relating to public safety. No
similar provision is found in the federal act. From its position
in the statute, following even the repealing section, it is evident
that it was added to the bill during the course of its legislative
consideration. It may have value as an expression of policy to
distinguish between other labor disputes and those involving public
officers or employees charged with the protection of public safety,

12Monkemeyer, Five Years of the Norris-LaGuardia Act, (1937) 2
Mo. L. Rev. 1, 18-21.
13United Electric Coal Cos. v. Rice, (C.C.A. 7th Cir. 1935) 80 F. (2d)
1, cert. denied (1936) 297 U. S. 714, 56 Sup. Ct. 590.
14But see Electric Research Products, Inc. v. Vitaphone Corp., (1934)
20 Del. Ch. 417, 171 Atl. 738, which held that one who had breached a
contract for arbitration, valid under the statute of the state where it was
made, but not applicable to a suit in Delaware, had unclean hands so as not to
be entitled to sue in equity for an accounting.
15H. F. No. 87.
but it is not apt to have any practical effect. Policemen and firemen generally can advance their interests better by public and political appeal than by strikes, and even if they do strike, it would rarely happen that an injunction against them would be of any value.

The term "court of the State of Minnesota" as used in the statute is defined to mean: "any court of the State of Minnesota whose jurisdiction has been or may be conferred or defined or limited by Act of Legislature." This provision is taken from the federal statute without change except for the substitution of "State of Minnesota" for "United States" and "Legislature" for "Congress." The purpose of so defining the term "court of the United States" in the federal statute is plain. The basis for the entire enactment is the power of Congress to control the jurisdiction of the lower federal courts and it was wise to avoid any possible invalidity which might result from interference with the original jurisdiction of the United States Supreme Court, conferred by the constitution, since it is practically inconceivable that a suit for injunction in a labor dispute would ever be within that original jurisdiction. But when such a definition is incorporated in the Minnesota statute, its effect is radically different. Our suits for injunction are brought originally in our district courts, and it is difficult to find any legal justification for saying the jurisdiction of those courts "has been or may be conferred, or defined or limited by act of legislature."

Our constitution provides that the district courts shall have original jurisdiction in all civil cases, both in law and equity, where the amount in controversy exceeds one hundred dollars and shall have such appellate jurisdiction as may be prescribed by law. Even if that section does not deprive the legislature of any power to lessen the jurisdiction of the district court, no one would consider that the statutory definition was framed to include such a court. If we assume that the legislature intended the meaning expressed by the definition, we would have to hold that it had rendered the entire statute substantially valueless by excluding from its operation the only court which can grant an injunction in most cases involving a labor dispute. But it is probable that

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17Sec. 12(d), 3 Mason's Minn. Stats. 1936 Supp. sec. 4260-12(d).
18Sec. 13(d), 29 U. S. C. A. sec. 113(d), 2 Mason's U. S. Code, tit. 29, sec. 113(d).
19United States, constitution, art. 3, sec. 1.
20United States, constitution, art. 3, sec. 2 gives original jurisdiction to the Supreme Court in all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party.
21Minnesota, constitution, art. 6, sec. 5.
the court will, as it should, recognize the legislative history of the statute, and conclude that the definition of "court" was copied from the federal act without any consideration of its application to our court system, and that it should be disregarded rather than given an effect, the result of which would be to nullify the entire act.\(^2\)

To remove all uncertainty, the section should be amended by defining the term "court" so as to include any court of the state which has power to issue any injunction.\(^3\)

Although the Norris-La Guardia Act has been in force for five years, its validity has not yet been definitely determined by the United States Supreme Court. Since, however, that court has denied certiorari to review two cases\(^4\) in which the lower courts overruled contentions that the act was invalid, and it has not been held invalid by any court,\(^5\) it is reasonable to assume that it will not be held invalid as a whole. The decisions as to the validity of the state statutes have not been so uniform. Two advisory opinions stated that bills pending in the Massachusetts and New Hampshire legislatures embodying the provisions of the Norris-La Guardia Act would, if enacted into statutes, be unconstitutional.\(^6\) Recently the supreme court of Washington has held that a similar statute was an invalid encroachment upon the jurisdiction of a constitutional court.\(^7\) The courts of last resort of Oregon and Wisconsin have sustained the validity of modern statutes of this sort,\(^8\) and the supreme court of Illinois has upheld an earlier, shorter act which limited the power to issue injunctions

\(^1\)In Dax v. Furniture Workers Local Union No. 1859, (D.C.) Hennepin County (1937) No. 377460, the court, in its memorandum in support of its order sustaining defendant's motion to dismiss the application for a temporary injunction, made no reference to the contention of plaintiffs' counsel that the anti-injunction act did not apply to district courts.

\(^2\)The model state anti-injunction bill, as enacted in Wisconsin, Wisconsin Laws 1931, ch. 376, Wisconsin Stats. secs. 103.51 to 103.63 contains no provision defining the term "court." But since our statute already contains such a definition it would be better to amend that definition than to repeal it.


\(^4\)Monkmeyer, Five Years of the Norris-LaGuardia Act, (1937) 2 Mo. L. Rev. 1.


\(^7\)Starr v. Laundry and Dry Cleaning Workers, etc., Union, (Or. 1936) 63 P. (2d) 1104; American Furniture Co. v. I. B. of T. C. & H. of A., (Wis. 1936) 268 N. W. 250.
against peaceful picketing. Lower courts in Louisiana and New York have applied certain provisions of statutes modeled on the Norris-La Guardia Act without discussing the question of the general validity of such statutes. These decisions are, of course, directly in point on the question whether the Minnesota statute is in conflict with the United States constitution, but their persuasiveness as to its compliance with the state constitution varies with the similarity of the constitutional provisions considered in each of the cases with those of our own constitution.

Two radically different sets of problems of validity under either the federal or state constitutions are presented by different sections of the act, those involving the provisions which deny all legal remedies, either legal or equitable, for breach of, or interference with, the so-called yellow-dog contracts which require an employee to agree either not to join a union, or to withdraw from employment if he does; and the other sections of the act regulating the contents of injunctions in labor disputes and the procedure by which they may be obtained. Even the extreme to which the United States Supreme Court went in disregarding the separability clause of the Guffey Coal Act and holding that the invalidity of the labor provisions of that act invalidated the entire act would not sustain a contention that the yellow-dog contract provisions of these anti-injunction acts were inseparable from the rest of the acts.

In both of the advisory opinions to the effect that acts based on the Norris-La Guardia Act would be unconstitutional, the courts stated without much elaboration that the provisions refusing enforcement to yellow-dog contracts denied due process of law, citing the United States Supreme Court cases which held that an act of Congress and state statute which made it a criminal offense for an employer to exact such a contract from his employees, were invalid as an unwarranted interference with freedom of contract.

Similar statutes from other states were held invalid by the state courts. The Minnesota supreme court has held that the decision that the federal statute violated the due process clause of the fifth amendment was conclusive that a similar Minnesota statute violated the due process clause of the fourteenth amendment.

Since the enactment of the Norris-La Guardia Act and the state statutes based upon it, apparently no court has been called upon to consider the validity of the sections denying protection to contracts intended to prevent employees from joining any unions.

It has been suggested that the decisions invalidating statutes which make the exaction of such contracts by threat of discharge or refusal of employment criminal offenses do not necessarily control the validity of statutes which merely refuse all legal recognition to such agreements, but there is nothing in the reasoning of the cases to lend support to the distinction. The invalidity of the statutes was found to inhere in their interference with the constitutional right of freedom of contract, not in the means by which such interference was effected. Freedom to contract is a meaningless thing if it protects only the privilege of formulating an agreement, and does not require that the state give any legal recognition to it after it is formed. But it is probable that few, if any, courts would today hold that the constitution does guarantee freedom to an employer to exact such contracts. Changes in the public attitude toward union membership and the right of collective bargaining during the past twenty years, and especially during the past five years, have been too great to permit courts now to regard an employer as being constitutionally protected in his privilege of exacting any terms he may choose from those who may be compelled by economic necessity to accept employment from him. The widespread unemployment of recent years has brought home to many who had never before considered it the fact that a workingman may no longer sell his services to whom he chooses, on such terms as he may assent to. It is not probable that the question will often arise; the changing arena and strategy of the labor conflict has rendered, at least for the present, the yellow-dog contract an obsolete weapon. If it does arise it is to be hoped that the courts will sustain the provisions of statutes


Note (1934) 18 MINNESOTA LAW REVIEW 184; Note (1938) 13 N. Y. U. Law Quar. Rev. 92.
denying such contracts legal recognition, on the broad basis that
new conditions have made those statutes a reasonable exercise of
legislative discretion, rather than on any technical distinction
between them and the earlier statutes which were held invalid in
the early years of this century.

If it should be held that denying all remedy for the protection
or enforcement of a contract whose making the state could not
forbid did not deny the freedom of contract protected by the due
process clause, the Minnesota statute would still have to be
reconciled with our constitutional provision that "Every person
is entitled to a certain remedy in the laws for all injuries or
wrongs which he may suffer in his person, property or character." It
would seem clear that only a ruling that the legislature reason-
ably can limit freedom to contract against union membership by
employees can sustain the yellow-dog section of our anti-injunction
statute.

With respect to the provisions regulating the acts which may be
enjoined in cases involving labor disputes, the constitutional
problems raised by our state statute are entirely different from
those raised by the federal statute. The latter applies to courts
created by act of Congress, whose power to diminish their juris-
diction never has been limited, and to courts whose relief is supple-
mentary to that of the state courts, so that it never has been
held that refusal to open them to any group of suitors is a denial
of due process. Whether the limitations imposed on the power
of state courts to issue injunctions in labor disputes violate the
federal constitution, depends on the extent to which the courts
which decide that issue feel bound to follow the broad language
of the United States Supreme Court in \textit{Truax v. Corrigan}, which
held that an Arizona statute modeled after section 20 of the Clay-
ton Act, but given a broader construction by the Arizona supreme
court, was contrary to the fourteenth amendment to the federal
constitution. The holding of the majority was that if the statute
was construed as denying all remedy, legal or equitable, for the
protection of employers from non-violent acts of striking work-
men, it denied due process of law; if it was construed as merely
depriving the employer of the protection of an injunction which
would be given to similar interests threatened by similar injuries

\begin{itemize}
\item \textit{Truax v. Corrigan}, (1918) 20 Ariz. 7, 176 Pac. 570.
\item Minnesota, constitution, art. 1, sec. 8.
\item (1921) 257 U. S. 312, 42 Sup. Ct. 124, 66 L. Ed. 254, 27 A. L. R. 375.
\item Truax v. Corrigan, (1918) 20 Ariz. 7, 176 Pac. 570.
\end{itemize}
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where no labor controversy was involved, it denied equal protection of the laws.

There can be no question that the reasoning underlying that decision, if accepted without qualification, would require a decision that all state statutes modeled after the Norris-La Guardia Act also deny equal protection of the laws, and it was so stated in both of the advisory opinions rendered in Massachusetts and New Hampshire. Among the four justices who dissented from the majority in the Truax Case, was Mr. Justice Pitney, a fact which indicates conclusively that the dissent was not based entirely on the economic predilections of the justices. It is highly probable that this fact, together with the change in public opinion with reference to the use of the injunction in labor disputes, and the recognition of the validity of the federal statute, would lead the United States Supreme Court to-day to recognize that it is reasonable to place labor disputes in a separate classification with respect to the issuance of injunctions, so that the entire state statute would not be held to deny equal protection, even if some of its provisions might be held to do so. The Wisconsin court, in upholding its statute, construed the decision of Truax v. Corrigan as dependent on the fact that the strikers in that case resorted to falsehood and libel in their struggle with the employer, while the later act would permit such conduct to be enjoined. The Oregon court construed its act as merely regulating the procedure for obtaining an injunction, not as denying the right to it, as the Arizona statute had been construed to do. Both state cases can be distinguished on their facts from the Arizona case, but they cannot be reconciled with the reasoning of the United States Supreme Court.

If it should be authoritatively decided that a state anti-injunction statute of the type under consideration did not violate either the due process or the equal protection clauses of the fourteenth amendment, the Minnesota supreme court may be expected to follow that precedent and hold that the statute does not violate the due process clause of the state constitution, but the additional provision of our constitution guaranteeing to every person a certain remedy for all injuries to person or property may still invalidate

44Starr v. Laundry & Dry Cleaners, etc., Union, (Or. 1936) 63 P. (2d) 1104.
45Minnesota, constitution, art. 1, sec. 8.
the restrictions on injunction. A similar clause in the New Hampshire constitution was one of several relied upon by the supreme court of that state to support its advisory opinion that a proposed anti-injunction act would be invalid. There was no reference to any similar clause in either of the opinions which have sustained similar state statutes. Since the guaranty of remedy appears in our constitution in addition to the usual due process clause, it should be construed as adding something to the latter, but it would be contrary to the whole spirit of our remedial system to construe it to require the specific relief developed by chancery, even in those cases where the remedy at law is not adequate. Since equitable relief has always been regarded as extraordinary and supplemental, express language should be required to establish a constitutional right to it in any given case.

In the only decision which has held an enacted statute based on the Norris-La Guardia Act invalid as a violation of a state constitution, the principal objection was found to be its encroachment upon the judicial power by restricting the jurisdiction of the superior court, which was given by the state constitution original jurisdiction in all cases in equity. When the Oregon court sustained a similar statute of that state it pointed out that the Washington decision was not controlling, since the Oregon constitution recognized the power to change the jurisdiction of the courts by statute. The question could not arise under the Wisconsin statute, which operates by declaring lawful certain acts and then prohibiting an injunction to restrain those acts, instead of merely forbidding the issuance of injunctions to restrain certain acts whose unlawful character, of any, is not otherwise affected.

The Massachusetts and New Hampshire advisory opinions men-

40Opinion of the Justices, (1933) 86 N. H. 597, 166 Atl. 640.
47Starr v. Laundry & Dry Cleaners, etc., Union, (Or. 1936) 63 P. (2d) 1104; American Furniture Co. v. I. B. of T. C. & H. of A., (Wis. 1936) 268 N. W. 250. It should be noted that the Wisconsin law, Wisconsin, Stats. 103.53, expressly declares to be lawful the acts which the Minnesota statute, following the Norris-LaGuardia Act, merely protects from injunction. That radical difference in the two acts greatly lessens the value of the Wisconsin opinion as a precedent for sustaining the Minnesota statute.
48It has never been held that the constitution requires the state to provide specific equitable relief to protect private property from a taking by private persons. McClintock, Discretion to Deny Injunction Against Trespass and Nuisance, (1928) 12 MINNESOTA LAW REVIEW 565, 572.
50Washington, constitution, art. 4, sec. 1.
51Starr v. Laundry & Dry Cleaners, etc., Union, (Or. 1936) 63 P. (2d) 1104, 1108.
52Wisconsin, Stats. sec. 103.53.
tioned no encroachment upon the jurisdiction of the courts by the bills proposed in those states except by the section limiting the power to punish for contempt.

The Minnesota constitution conferring jurisdiction upon the district courts is very similar to that of Washington. The persuasive effect of the Washington decision as authority in Minnesota depends upon the previous attitudes of the two courts in construing their respective constitutional provisions. The majority opinion of the Washington court quotes from four earlier Washington cases statements concerning the separation of the powers of the three departments of government, and the independence of the courts from legislative control, without stating in detail the facts or holdings of the cases. In three of the cases the power of the legislature to limit the jurisdiction of courts created by the constitution was not in any way involved, the questions being the validity of a legislative divorce, the conclusiveness of an enrolled statute as proof of its proper enactment, and the delegation by the legislature to a city of its power to create inferior courts. The fourth case raised the question whether the Water Code deprived the superior court of jurisdiction to enjoin the invasion of a private water right. It was held that the statute, properly construed, did not intend to destroy that power, the court adding that the legislature could not have done so if it had intended to do so. The dissenting opinion relied on a case which held that a statute prohibiting the issuance of an injunction to restrain the collection of taxes did not unconstitutionally encroach on the jurisdiction of the superior court in equity, since it provided an alternative remedy at law which was adequate.

The judicial treatment of the Minnesota provision differs from that in Washington principally in that our court has never been called upon to pass directly upon the validity of a statute which was attacked as invalid because it took away from a constitutional court part of the jurisdiction vested in it as a court of equity. In two Minnesota cases not directly involving the point are dicta

64 Minnesota, constitution, art. 6, sec. 5.
67 State ex rel. Reed v. Jones, (1893) 6 Wash. 452, 34 Pac. 201, 23 L. R. A. 240.
68 In re Cloherty, (1891) 2 Wash. 137, 27 Pac. 1064.
70 Casco Co. v. Thurston County, (1931) 163 Wash. 666, 2 P. (2d) 677, 77 A. L. R. 622.
that the legislature cannot enlarge or diminish the jurisdiction of a court created by the constitution. In several cases the court has considered whether a statute has invaded the function of the courts. It has held that a statute which, in effect, gives a new trial in a case already decided by a court is an invasion of the judicial function; as are statutes which attempt to govern the court's decision on questions before it. But in a statute which authorizes the consolidation of trust companies, a provision that the consolidated corporation shall succeed as trustee the constituent corporations is not invalid as an invasion of the judicial power to appoint successors for trustees. A statute authorizing the court to appoint referees in certain cases does not lessen the jurisdiction of the court, since the referee is himself an officer of the court and his acts are an exercise of its jurisdiction.

The legislature can regulate the procedure in the courts, and a statute which denies to the court power to direct a verdict against an objecting party, but permits the court to effectuate the same result in another manner, is merely a regulation of procedure and not an invalid attempt to deprive the court of jurisdiction. Thus there is no precedent in Minnesota to control the decision whether the provisions of the anti-injunction act which prohibit the issuance of injunctions to restrain certain acts not made lawful by the legislature, is an invasion of the constitutional jurisdiction of our district courts over suits in equity. The persuasiveness of the Washington decision that it is invalid is much weakened by the fact that only three judges, out of the eight who participated in the decision, concurred in the opinion which stressed the ground of invalidity now under discussion. Two others concurred in the holding that the statute was invalid, in an opinion relying mainly on its denial of due process. Three judges dissented. Under these authorities, there is nothing to prevent our court from construing these prohibitions as not denying jurisdiction to

61 State v. Dreger, (1906) 97 Minn. 221, 106 N. W. 904; Lading v. City of Duluth, (1922) 153 Minn. 464, 190 N. W. 981.
62 State v. Flint, (1895) 61 Minn. 539, 63 N. W. 1113; Petition of Siblerud, (1921) 148 Minn. 347, 182 N. W. 168.
63 Meyer v. Berlandi, (1888) 39 Minn. 438, 40 N. W. 513, (requiring construction of mechanics lien law in such a way as to give full recovery to lien claimant); In re Tracy, (1936) 197 Minn. 35, 266 N. W. 88, 267 N. W. 142, (limiting the consideration of misconduct in disbarment proceedings to that occurring within two years).
64 First Minneapolis Trust Co. v. Lancaster Corp., (1931) 185 Minn. 121, 240 N. W. 459.
65 Carson v. Smith, (1860) 5 Minn. 78 (Gil. 58).
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the courts, but merely as rendering erroneous the issuance of an injunction against the prohibited acts and, therefore, not an invasion of the court's constitutional jurisdiction.

The only one of the procedural requirements of these acts whose validity has been seriously questioned is the provision that in proceedings for contempt in cases arising under the act, the accused shall enjoy the right to a trial by jury. The decisions of the state courts have been quite uniform in holding that statutes requiring jury trials in contempt proceedings are invalid, but such a requirement in the Clayton Act, which gave a jury trial only in cases where the acts alleged to constitute the contempt were also crimes, was sustained by the United States Supreme Court. There has been no apparent tendency for the state courts to follow this decision.

In none of the state cases sustaining acts similar to the Norris-La Guardia Act had there been any contempt proceedings instituted as yet, so that there was no occasion to consider the validity of the provisions regarding it. In the Massachusetts advisory opinion, the provision was held invalid on the authority of a decision on the earlier provision copied from the Clayton Act. In the New Hampshire opinion, the court stated that the provision raised issues which it had not had time to investigate, and it declined to pass upon them. In the Washington case in which the statute was held invalid there had been a prosecution for contempt in which a demand for a jury trial was denied. The court held that the requirement of a jury trial in contempt proceedings was an invalid encroachment by the legislature upon the judicial department. The United States Supreme Court decision was distinguished on the ground that it

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68See note (1925) 9 MINNESOTA LAW REVIEW 368, 371. In Oklahoma there is a constitutional right to a jury trial on a charge of indirect contempt.
71In Walton Lunch Co. v. Kearney, (1920) 236 Mass. 310, 128 N. E. 429, the court held a provision of a state statute almost identical with that in the Clayton act to be an invalid encroachment on the constitutional jurisdiction of the courts. In Fort v. Farmers Exchange, (1927) 81 Colo. 431, 256 Pac. 319, the court, in refusing defendant's claim of a right to a jury trial on the ground that the statutory provision that he "may, upon demand therefore, be tried by a jury" gave him no right to a jury, stated that a statute requiring the court to grant a jury trial would be invalid. See Rogers, Trial by Jury in Contempt Cases, (1930) 2 Rocky Mt. L. Rev. 115.
73Opinion of the Justices, (1933) 86 N. H. 597, 166 Atl. 640.
dealt with a restriction imposed upon a court created by the legislature and subject to its full control, and its reasoning did not apply where the restriction was imposed upon a constitutional court.

It thus appears that a court which felt bound to follow the weight of the precedents would be obliged to hold the entire anti-injunction act, or at least its most important provisions unconstitutional. The only logical basis upon which the act can be sustained is that the concepts of due process, reasonable classification and jurisdiction of courts are concepts having a changing content so that, even though the constitution be not amended, its effect is modified by changes in the economic and social conditions to which those concepts are to be applied.

In the only case involving this statute which has so far come before our supreme court, no question as to the validity of the statute was raised, and the court contented itself with a brief per curiam opinion to the effect that the statute did not apply to the controversy which gave rise to that case. In a case in the Hennepin county district court in which the act was held to be applicable, the court overruled an objection that it was invalid, principally upon the assumption that it did not prevent the issuance of injunctions against any unlawful acts, but merely regulated the procedure by which such injunctions could be obtained.

If our statute is held to be valid, several problems of construction will have to be considered. The first section deprives the courts of jurisdiction to issue any injunction in a case involving or growing out of a labor dispute except in conformity with the requirements of the act, and prohibits injunctions contrary to the public policy declared in the act. The second section declares the public policy which shall govern the interpretation of the act to be the securing to an employee, though he should be free to decline to associate with his fellows, of full freedom of association, self-organization and designation of representatives of his own choosing, free from interference or coercion by his employers in the designation of such representatives or in self-organization.

76Dax v. Furniture Workers Local Union No. 1859, (D.C. Hennepin County 1937) No. 377460.
77The federal cases involving the construction of the Norris-La Guardia Act are reviewed in Monkmeyer, Five Years of the Norris-La Guardia Act, (1937) 2 Mo. L. Rev. 1. The most recent review of the state cases construing analogous state statutes is in the Note (1937) 46 Yale L. J. 1064, 1066-1070.
The supreme court of Wisconsin has held that a similar declaration of policy in its anti-injunction act authorizes an injunction at the suit of a labor union to restrain an employer from coercing his employees to prevent their joining plaintiff union. This decision has been criticized on the ground that the public policy is declared only for the purpose of interpreting and applying the statute, but it is not logically conceivable that there should be one public policy applicable when the employer sues to enjoin union activities, and a different one applicable when the union sues to enjoin activities of the employer. The declaration of policy was properly treated as a legislative recognition of the right of employees to organize and bargain collectively by representatives of their own choosing in whatever form that right may be asserted.

But this declaration of policy raises one very important question with respect to the rights of labor unions. It has been relied upon by one federal circuit court of appeals to support a holding that it may restrain picketing by a labor union to compel an employer to recognize a union as the sole bargaining agent of all employees, since such a purpose involves coercion of the employees in the selection of their representatives for bargaining. This construction of the statute would make all closed shop agreements contrary to public policy, a result which certainly was not contemplated by the framers of the statute, nor by the labor unions which advocated its enactment. Perhaps the general intent to protect only against coercion by an employer to compel employees to join company unions might be held to limit the general language of the declaration of policy, if it were not for the clause "though he should be free to decline to associate with his fellows." No similar clause is found in the Wisconsin statute, and none was in the original Norris bill introduced in the senate. Its insertion into the declaration of policy before the enactment of the statute requires a construction which gives effect to it, that is a construction that it is against public policy for an employee to be coerced by his employer into joining any union of any kind. The suggestion that the policy is only concerned with coercion by the employer, and only the employee, not the employer, can object to it, does not meet the difficulty. A closed shop agreement between

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80 Lauf v. E. G. Shinner & Co., (C.C.A. 7th Cir. 1936) 82 F. (2d) 68.
81 Frankfurter and Greene, The Labor Injunction Append. IX, p. 280.
an employer and a union whose membership does not include all of the employees certainly requires coercion by the employer upon the non-member employees, since he must discharge them if they exercise their freedom to decline to associate with their fellows. If, then, the statute protects against injunctions which restrain only acts in furtherance of the public policy declared in the section under consideration, it must be held that it makes no change in the existing law regarding injunctions against strikes or picketing in an effort to secure or enforce a closed shop agreement.

The limitations on injunctions by restriction of the acts which may be enjoined,\textsuperscript{83} and the procedural requirements for the issuance of injunctions\textsuperscript{84} are both limited to cases involving or growing out of a labor dispute, and their scope must depend upon the definition of a labor dispute found in the first three subsections to section 12 of the statute.\textsuperscript{85} In these subsections it is first stated that a case involves or grows out of a labor dispute when it involves persons in the same craft, trade or occupation, or who have a common employer or are members of the same or an affiliated organization of employers or employees, or when the case involves any conflicting or competing interests in a labor dispute of persons participating or interested therein. It is manifest that the detailed designation of specified persons or groups of persons in the first part of the subsection is unnecessary unless the definitions later given of "labor dispute" and "person participating or interested" therein are not broad enough to include all persons or disputes so designated. The specific designations were properly included to meet situations in which it had been held the provisions of section 20 of the Clayton Act\textsuperscript{86} were not applicable.

Subsection (b) defines persons participating in a labor dispute so as to include everyone against whom relief is sought and who is engaged in the same craft or industry in which the dispute occurs, or has a direct or indirect interest therein, or is a member or agent of any association composed of employees or employers in such craft or industry. This language seems to be broad enough to include all possible defendants in any suit which in any way involves a controversy arising out of labor relations in the broadest sense. It should be noted that there is no requirement, expressed or implied, that the plaintiff who seeks relief must also be a party to the dispute. Thus the act would seem to apply to

\textsuperscript{83}Mason's 1927 Minn. Stat., 1936 Supp., sec. 4260-4.
\textsuperscript{84}Mason's 1927 Minn. Stat., 1936 Supp., sec. 4260-7.
\textsuperscript{85}Mason's 1927 Minn. Stat., 1936 Supp., sec. 4260-12(a)-(c).
\textsuperscript{86}29 U. S. C. A. sec. 52, 2 Mason's U. S. Code, tit. 29, sec. 52.
suits by the state to enjoin acts of strikers or their pickets as public nuisances, or to suits by persons having no connection with the dispute who may be injured by such acts. So in a case where striking truck drivers picket gasoline filling stations to prevent the sale of gasoline to vehicles used to supplant the trucks, the act should be held to apply to a suit by the filling station proprietors to enjoin the picketing, even though they are in no way interested in the dispute. Subsection (c) gives an equally broad definition of "labor dispute" as including any controversy concerning terms or conditions of employment, or concerning association or representation of persons in seeking to arrange terms or conditions of employment, "regardless of whether or not the disputants stand in the proximate relation of employer and employee."

Notwithstanding the broad language of this statutory definition, the supreme court of Washington has held that there is no labor dispute when a retail clerks' union pickets a store to compel the manager to induce his clerks to join the union.\textsuperscript{87} The court brushed aside all cases cited by counsel and ignored the language of the statute, apparently taking judicial notice that a labor dispute could involve only relations between an employer and his employees, regardless of what the legislature might define it to include. The same result has been reached in some of the lower courts, both federal and state,\textsuperscript{88} but so far there has been no other court of last resort which has so limited the application of the statute. It is true that the United States Supreme Court denied certiorari to review a case which held there was no labor dispute when the controversy was between two unions, neither of which was aided by the employer,\textsuperscript{89} but it also denied certiorari in another case from another circuit where full effect was given to the broad definition found in the act.\textsuperscript{90} The supreme court of Wisconsin has held the statute applicable where the employer was picketed by a union after he had permitted his employees to vote freely on whether they would join the union or not and they had unanimously voted

\textsuperscript{87} Safeway Stores v. Retail Clerks Union No. 148, (1935) 184 Wash. 322, 51 P. (2d) 372.
\textsuperscript{89} United Electric Coal Cos. v. Rice, (C.C.A. 7th Cir. 1935) 80 F. (2d) 1, certiorari denied (1936) 297 U. S. 714, 56 Sup. Ct. 590, 80 L. Ed. 1000.
\textsuperscript{90} Levering v. Morrin, (C.C.A. 2nd Cir. 1934) 71 F. (2d) 284, certiorari denied 293 U. S. 595, 55 Sup. Ct. 110, 79 L. Ed. 688.
in the negative, and also where the union was demanding that a small contractor cease working on the jobs with his employees after refusing his request that he be permitted to join the union.

One case in which the statute has been relied upon has reached the Minnesota supreme court, and it was held that there was no labor dispute involved. The facts were that plaintiffs, who owned a motion picture theatre located in a part of the city where a large number of union men resided, had entered into a contract to employ only union operators until Sept. 1, 1933. On June 26 of that year they discharged their union operators, and undertook to operate the machine themselves. Thereupon the union began to picket the theatre, and also to issue circulars stating that plaintiffs were unfair to organized labor, and were not co-operating in the president's re-employment program. Plaintiffs sued for an injunction. A motion for a temporary injunction was denied, but after the term of the contract had expired, a permanent injunction was issued which restrained not only the picketing but also "making, uttering, communicating, circulating, posting or publishing any statements that plaintiffs or plaintiffs' theatre is unfair, or is unfair to organized labor, or any statement that plaintiffs or their theatre should not be patronized."

The opinion was delivered per curiam and is extremely unsatisfactory. The court stated that it was conceded by appellants that if there had been no contract plaintiffs would be entitled to an injunction. It was on the basis of the contract that appellants argued in their printed brief that, even in the absence of the statute, no injunction should issue, since there was no contract between the parties in the case in which it had been decided that picketing as unfair a theatre in which the owner operated his own machine could be enjoined. But to concede that the injunction was still proper in the absence of any contract was to make the entirely unnecessary concession that the anti-injunction

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92Senn v. Tile Layers Protective Union, (1936) 222 Wis. 383, 268 N. W. 270. This case is now pending in the United States Supreme Court. Note (1937) 46 Yale L. J. 1064, 1065, n. 6.
94Some of the facts here stated, which are not stated in the very brief opinion of the court, are taken from the record in the case.
95Roraback v. Motion Picture Machine Operators' Union, (1918) 140 Minn. 481, 168 N. W. 766.

This assumption may be due in part to the common designation of these statutes as "anti-injunction" acts, a designation which is certainly a misnomer.
statute had made no change in the existing law. That concession proved to be immaterial, for the court, assuming there had been a contract, sustained the injunction for the reason that, after its expiration, the union had at most an action at law for damages for the breach of contract, and that it could not have been the intention of the legislature to permit picketing to enforce a settlement of that cause of action. The lack of attention which the court gave to the terms of the statute is manifest from the statement that section 12 (c) of that act "defines a labor dispute as any controversy concerning terms or conditions of employment." Such a superficial treatment of the act may indicate that the court is unwilling to give heed to the statute, but it is to be hoped it indicates only that the court regarded the particular case before it as not requiring more careful consideration in view of the change in conditions since the suit was started, and that the opinion will not be followed as a precedent for future decisions.

In construing these labor injunction statutes the courts apparently have sometimes assumed that the legislature intended to limit injunctions only in those cases where they would approve the acts against which the injunctions were sought, and have construed the definition of "labor dispute" accordingly; but that assumption is clearly fallacious. In all cases arising out of labor disputes, injunctions may be issued to restrain numerous acts that may be committed or threatened, a fact which the sponsors had to stress repeatedly in their arguments in support of the bill. Even where certain acts, such as picketing to give notice of the facts, are freed from all restraint by injunction, we cannot assume that the legislature intended to limit the restriction on power to enjoin to those cases where the acts were directed toward an end which the legislature or the court might approve. When the Wisconsin court held that no injunction could be issued to restrain from peaceful and truthful picketing, as "unfair," of a tile contractor who worked beside his men, it did not thereby hold that the union had a right to prevent him from so working, but only that it could in that manner make public its position in the controversy without interference by the court in advance. If the public does not sympathize with the position of the union in that matter, the picketing will have little or no effect; if any substantial portion of the public sympathizes with the position of

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86See excerpts quoted in United Electric Coal Cos. v. Rice, (C.C.A. 7th Cir. 1935) 80 F. (2d) 1, 8.
the union to the extent of being willing to cease to patronize the offending employer, the court should not deprive the union of the aid of such support by preventing all effective means of acquainting the public with the facts. There is, therefore, no reason of policy which should lead the courts to restrict the broad language of the statutory definition of a labor dispute, or to hold that they may grant injunctions in support of the declared policy against closed shop contracts without compliance with the provisions of the act.

Section 4 of the Minnesota statute prohibits the issuance, in cases growing out of labor disputes, of restraining orders or injunctions which prohibit any of the acts enumerated in the nine subsections of the act. So far no reported case has dealt with a request for the issuance of injunctions against any of the acts specified in any of these subsections except subsection (e), although instances can be found where almost all, if not all, of the other acts have been enjoined in the absence of statutory restriction. The acts specified in subsection (e), which has caused all the controversy so far over the construction of this section, are "Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence." In many of the comments on the cases involving an application of this section, the old controversy as to whether there can be picketing without intimidation, and whether mass picketing is permissible has been renewed. It seems that such a discussion is not called for by the language of the act. The complete omission from the statute of the word "picketing" after the United States Supreme Court had largely based one of its most widely criticized constructions of the Clayton Act on the omission of the word from that act, ought to be conclusive that the legislature, in passing this act, did not intend to prohibit injunctions against any form of picketing. Even if we should give to the word "patrolling," which is used in the statute, the same meaning as is attached to the more usual term "picketing," the subsection still does not prohibit an injunction against all patrolling, but only against giving publicity to the facts by patrolling.

In other words, this subsection does not purport to affect the

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100American Steel Foundries v. Tri-City Central Trades Council, (1921) 257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A. L. R. 360.
power to enjoin patrolling for any purpose other than to apprise the persons interested and the general public of the nature of the controversy. Certainly it would seem that the power to enjoin the picketing of customers of the adverse party in furtherance of a secondary boycott, if it existed before the enactment of the statute,¹⁰¹ and the power to enjoin the picketing of the residences of strikebreakers to coerce them into leaving their jobs¹⁰² cannot be affected by a statutory restriction on restraint of giving publicity to the facts of the controversy by patrolling. It would also seem that any existing rule authorizing injunctions to limit the number of pickets who may be maintained for the purposes of ascertaining who are working as strikebreakers and of contacting them to persuade them to join the strike, would be unaffected by this prohibition. If the power to enjoin mass picketing for these purposes is affected by the statute, it must be, not by subsection (e) of the section under discussion, but by subsection (f) which prohibits an injunction which restrains "Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute." Even as to this subsection, it would be reasonable for the court to hold that if the legislature had intended to include assembling in the vicinity of the employer's plant for the purpose of thereby influencing the conduct of strikebreakers, it would have used language which more clearly expressed that purpose. It would certainly be unreasonable to hold that the legislature, by the use of such general language, intended to prohibit injunctions against the massing of pickets around an employer's plant in such numbers as to prevent access thereto by strikebreakers, even though no physical violence is used because the numbers make a successful resort to force by the strikebreakers obviously hopeless.

It thus appears that if the court places the proper construction upon the terms of this section of the act, as it was enacted by the legislature, no very great change will result from it in our law governing the use of injunctions in labor disputes. The only decision which would seem to be affected is the decision that picketing a theatre as unfair because the owner ran his own motion picture machine instead of employing a union operator may be

¹⁰¹See Gray v. Building Trades Council, (1903) 91 Minn. 171, 97 N. W. 663, 1118, 63 L. R. A. 753, 103 Am. St. Rep. 477, 1 Ann. Cas. 172.

¹⁰²See State v. Zanker, (1930) 179 Minn. 355, 229 N. W. 311; State v. Perry, (1936) 196 Minn. 481, 265 N. W. 302. The latter case did not construe the 1933 statute governing injunctions in labor disputes, since it, like the earlier case, was a prosecution for violation of a city ordinance.
Such a controversy clearly comes within the broad definition of a labor dispute, and the patrolling is merely to give publicity to the existence of a labor dispute. It should, of course, forestall any development of the tendency manifested by our court in that case to adopt the Massachusetts practice of examining the objectives sought to be attained by a strike and enjoining all activities in the prosecution of a strike not directed toward justifiable objectives, unless it should be held that the declared policy to protect the right of the employee to decline association with his fellows is strong enough to write in an exception from the act of cases where the strike or picketing is to enforce a closed shop.

Probably the most important provisions of the act from a practical point of view are those to be found in sections 7 to 11 inclusive, regulating the procedure in issuing and enforcing injunctions in labor disputes. The unnecessary issuance of the ex parte restraining order, the preliminary injunction issued upon fact findings based on affidavits which are generally drawn by counsel to include as much that is favorable to his case as the witness can be induced to sign by the use of involved and technical language whose full import the witness does not grasp, and the framing of injunctions of all kinds in verbose language, whose implications may be extended to cover many things the court would not intentionally prohibit, are abuses in injunctive procedure not confined to any one class of cases, but which perhaps have more serious consequences in labor suits than in any other class of cases. While many courts have manifested a tendency to disregard these procedural requirements or to be satisfied with only a nominal compliance with them, there can be no justification for such a practice. The requirements of these sections are specific and detailed, permitting only an irreducible minimum opportunity for possible different constructions, and the objective, and many, if not most, of the specific requirements, are in full accord with the principles laid down by the greatest equity judges to govern the use of injunctions to secure to one party the protection essential to the preservation of his rights, without exposing the other to any greater danger of injustice than is unavoidable.

103 Roraback v. Motion Picture Machine Operators Union, (1918) 140 Minn. 481, 168 N. W. 766.


106 See note (1937) 46 Yale L. J. 1064, 1068.
The construction and application of these procedural sections ought not to be influenced by the fact that the purpose of the activity of the defendant employees or their union is to enforce a closed shop contrary to the policy declared in the statute, nor by the fact that they may have previously been guilty of acts of violence, since their purpose is not to protect the defendants against any proper injunction that the situation may call for, but only to provide a procedure by which the injunction may be framed and issued so as to meet the needs of the situation without inflicting upon them any deprivation of the exercise of the privileges which the law has reserved to them.

If the above conclusions are correct, it is evident that the statute will not secure to labor all that it expected to gain from its enactment. Many comments upon it seem to proceed upon the assumption that the courts ought to give full effect to the expectations of those who framed the bill and secured its enactment and condemn all decisions which are found not to accord with that assumption. But, after all, the legislative intent to which the courts ought to give heed, is not the intent of the framers of the bill who, in order to avoid or lessen opposition, used language which expressed less than they would like to achieve, or even accepted amendments which conflicted with their general intent, but the intent of those who approved the language of the bill in its final form. Labor leaders may justly complain that in many cases the courts have failed to give full effect to labor legislation because they felt it conflicted with the judge's conceptions of a wise policy with respect to the problems involved; they cannot now consistently expect the courts to strain the language of a statute as enacted so as to make it accomplish results which they did not dare to ask the legislature to incorporate into the statute in clear language. An amendment of the declaration of public policy so as to exclude its present condemnation of closed shop agreements ought to be enacted. While the law ought not, at present at least, to exert any coercion on employers to enter into such contracts, it should not stigmatize as against public policy contracts to that effect entered into by an employer and a union in those situations where that form of agreement offers the best solution for labor disputes.

But even though the statute does not accomplish all that was expected from it, it ought to result in very substantial gains in labor's struggle to advance from the position it occupied in the
first half of the Nineteenth Century, when any combination of employees to better their working conditions was a criminal conspiracy, to a position where it can meet employers on substantially equal terms in bargaining for the distribution of the profits of industry. Experience with the operation of this statute will undoubtedly be invaluable in pointing out the lines along which future advances may be made.