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Legislation--Labor Law--Minnesota Labor Relations Acts Passed in 1943

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LEGISLATION—LABOR LAW—MINNESOTA LABOR RELATIONS ACTS¹ PASSED IN 1943.—It is common knowledge that the most influential group in the last session of the Minnesota legislature was the “farm bloc” and that it was strongly opposed to labor union activities. The chief basis for this opposition was the fear that District 50 of the United Mine Workers of America would seek to compel individual farmers to join that organization by organizing the employees of the processors of farm products, particularly the creameries, and then refuse to work on any products produced by farmers who refused to join the union. The bloc undertook to eliminate this danger by measures intended to prohibit directly the anticipated conduct, and also to lessen the control exercised over unions by the officers and other leaders. As is usually the case with legislation proposed under such a strong emotional urge, the bills contained a great deal of language appeal-

¹This note does not undertake to discuss all labor legislation enacted at the last session of the Minnesota legislature, but only those relating to controversies with employers. Among the other labor legislation enacted, the most important were Laws 1943, c. 633, amending the Workmen's Compensation laws with respect to compensation for occupational diseases, and Laws 1943, c. 650, making numerous amendments to the unemployment compensation laws. Laws 1943, c. 144, Sec. 6 forbids an employer from selling to his employees, or others, any merchandise except his own products. The context of this provision indicates that it was the legislative intent to protect outside merchants against the competition of the employer, who might sell at wholesale, rather than to protect the employee from coercion to trade at the company store.

ing to the emotions but not susceptible of exact meaning, and would, if enacted, have curbed much activity by labor unions that is ordinarily regarded today as clearly permissible. At the insistence of Governor Stassen, there were substituted for these bills, others of much more limited scope, which were eventually enacted into two statutes,² one of which amended the existing Minnesota Labor Relations Act, and the other became a new statute to be known as the Minnesota Labor Union Democracy Act.

The title to Minnesota Laws of 1943, c. 624, which amended the Labor Relations Act, included the clause "prohibiting strikes by employees against the state or any governmental subdivision thereof," but the provisions to that effect were omitted from the enacted statute. The statute did amend the definition of employer in the existing statute which expressly excluded therefrom "the state or any political or governmental subdivision thereof," by adding thereto "except when used in Mason's Supplement, 1940, Section 4254-33 as amended."³ The section referred to did not, as originally enacted or as amended, refer to any employer. It formerly made it unlawful for any person to interfere with the free use of highways, and was amended to provide that any violation by an employee or labor organization should also be an unfair labor practice.

The chief purpose of the farm bloc was effectuated by amendments to the Labor Relations Act which added new definitions of "agricultural products," "processor," and "marketing organization,"⁴ and which made it an unfair labor practice to hinder or prevent by intimidation or sabotage, or by threats thereof, the production, transportation, processing or marketing by a processor or marketing organization, or to combine or conspire to injure any processor, producer or marketing organization by a boycott to induce a processor or marketing organization, against his will, to coerce or inflict damage on a producer; with a proviso guarding against any interpretation of the amendment which would prohibit a strike by the employees of the processor or marketing organization for the bona fide purpose of improving their own working conditions or protecting their own rights of organization and col-

²Laws 1943, c. 624, and Laws 1943, c. 625. Laws 1943, c. 658, also amended the State Labor Relations Act, Laws 1941, c. 179, Sec. 14, by reducing to seven days the time during which a temporary restraining order may remain in effect without a hearing and decision on a motion for a temporary injunction.

³Laws 1943, c. 624, Sec. 5, amending Laws 1941, 179.14(b).

⁴Laws 1943, c. 624, Sec. 1, amending Laws 1941, 179.01.

lective bargaining.⁵ It is doubtful whether this statute makes any change in the substantive law as to secondary labor boycotts in Minnesota,⁶ but the declaration that the conduct amounts to an unfair labor practice has the effect of freeing suits to enjoin such activity from the restrictions placed on labor injunctions by the Minnesota labor disputes injunction act.⁷

The amendment of 1943 also makes it an unfair labor practice for any "person or labor organization to co-operate in engaging in, promoting or inducing a strike" unless the strike has been approved by a majority vote of the voting employees in a collective bargaining unit of the employees of an employer or association of employers against whom the strike is primarily directed.⁸ This provision is evidently based on the assumption that in many cases strikes are called by the unions or their officers against the desires of the employees. It would be extremely difficult to verify that assumption, it may be supposed that it is not true in many cases even where the employer is told by his employees that they are compelled to strike, for they may be only seeking to preserve his good will toward them for the period after the strike. Even where the assumption is true, the requirement of a majority vote at a time not specified, without any stipulation as to the issues presented, or provision for impartial supervision of the casting and counting of the votes, will not prevent strikes in a large number of the cases. Many unions now require a vote of the unions affected before a strike can be called, and such vote is frequently taken at the beginning of negotiations for a new contract so as to strengthen the bargaining power of the union negotiators. This practice will undoubtedly continue. In those cases where the union is dominated by officers who would call a strike in defiance of the wishes of the members, generally for racketeering purposes, it cannot be expected that they will not find some means by which they can secure a favorable strike vote by either coercion or fraud. The administration of this provision will prove extremely difficult in view of the

⁵Laws 1943, c. 624, Sec. 2(b), amending Laws 1941, 179.11.

⁶In *Steffes v. Motion Picture Machine Operators' Union* (1917) 136 Minn. 200, 161 N. W. 524, the court, in affirming the refusal of an injunction against picketing plaintiff's theatre, said. "If it (the picketing) be accompanied by acts that constitute obstruction of the street or of access to plaintiff's place of business, or if accompanied by any words or acts which constitute intimidation or threats, the whole transaction is unlawful and should be enjoined." It is probable that the threat of a strike would be held to be sufficient intimidation. See, also, Chernov, *The Labor Injunction in Minnesota* (1940) 24 Minn. L. Rev. 757, 765.

⁷Laws 1941, 179.14.

⁸Laws 1943, c. 624, Sec. 2(a), amending Laws 1941, 179.11.

provision of our labor relations act that wherever a craft exists, that craft shall constitute a separate collective bargaining unit.⁹ It will not be safe for any union to call a strike, even if all of the employees of the plant belong to one union and the strike has been voted by a large majority, unless it first obtains a determination by the conciliator of what separate crafts exist in the plant and counts separately the votes of each craft.

The last section of the chapter containing these amendments enacts a new provision which is not specifically made a part of the Labor Relations Law.¹⁰ It attempts to provide the forum for which we have been told jurisdictional disputes are searching.¹¹ It provides that where such dispute is made the ground for picketing an employer, or declaring a strike or boycott against him, the labor conciliator shall certify that fact to the governor, and the latter shall appoint a labor referee to hear and determine the dispute, after which the strike, boycott or picketing shall be unlawful. The unions involved are expressly given the option of settling the dispute by reference to a union tribunal, or by arbitration, but if they fail to do so, and seek to coerce the employer to settle it for them, thereby generally inflicting an injury which he has no means of avoiding, the state will intervene and require the submission of that dispute to an officer appointed by it. In view of some comments by outside commentators on the fact that Minnesota has disregarded the generally accepted principle that the conciliator should not be given the duty to decide controversies, it is interesting to note that the legislature did not impose the duty of making these decisions on the conciliator, but created a new officer to deal with them.

The Labor Union Democracy Act¹² recognizes in its preamble that most unions are democratically controlled, but the act makes specific provisions for such control so as to bring all into line. The principal substantive requirements of the statute are that the officers of the union shall be elected for terms not exceeding four years, by a plurality vote cast at such election unless the union shall provide for some system for obtaining a majority vote,¹³ and that a financial accounting to the members of the union shall be

⁹Laws 1941, 179.16(2).

¹⁰Laws 1943, c. 624, Sec. 6.

¹¹See Jaffe, *Inter-Union Disputes in Search of a Forum* (1940) 49 *Yale Law Journ.* 424.

¹²Laws 1943, c. 625.

¹³Laws 1943, c. 625, Secs. 2, 3.

made at least once a year.¹⁴ When it appears to the labor conciliator that a labor organization is not complying with the act, he shall certify that fact to the governor who may then appoint a labor referee to hear and determine the issue of non-compliance. If the referee finds that the union is not complying with the requirements of the act, the labor organization is thereupon disqualified from acting as the bargaining agent for its members until, after a subsequent hearing, it is found that there is compliance.¹⁵ No machinery is provided for obtaining impartial supervision of the conduct of elections, or a count of the votes, nor for obtaining an audit of the financial report. It is probable that it will be held that the referee can find non-compliance with the act if the election is not fairly held, or if the report is not correct. It is problematical how effective the sanction of depriving the union of its privilege of representation under the Labor Relations Act will be. It will not be able to insist that the employer negotiate with it, nor can it have the services of the conciliator in obtaining a collective bargaining agreement. A closed shop contract cannot be made with it while it is disqualified,¹⁶ and perhaps an existing contract will become invalid. But if the members of the union who are employees in a particular plant elect to remain loyal to the union notwithstanding its disqualification, and refuse to work except on terms agreed to by the union, it appears that the employer will have no option except to bargain with the union or submit to a strike. It is probable, however, that the fear of adverse public opinion will induce every union to make at least a formal compliance with the statute.

So far no issues under any of these statutes have come before the conciliator,¹⁷ or have otherwise arisen so far as is known. Their test will probably come with the termination of the control of the War Labor Board, and the economic uncertainty that will prevail at that time.

H. L. M.

¹⁴Laws 1943, c. 625, Sec. 4.

¹⁵Laws 1943, c. 625, Sec. 5(5).

¹⁶The Minnesota Labor Relations Act, Laws 1941, 179.12(3), excepts from the prohibition against coercion of the employees by the employer, closed shop contracts only if they are entered into voluntarily between the employer and his employees or a labor organization representing the employees as a bargaining agent.

¹⁷Letter from the Deputy Conciliator, dated November 10, 1943.