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STATE ANTI-STRIKE LEGISLATION

in the

PUBLIC UTILITY INDUSTRY

by

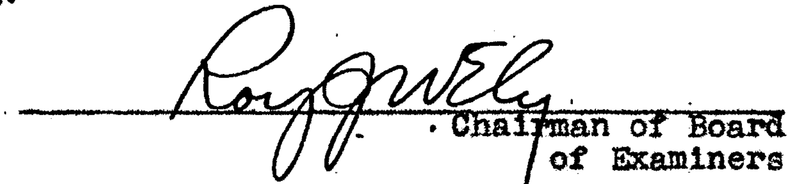
Martin T. Farris
B.A., Montana State University, 1949

Presented in partial fulfillment of the
requirement for the degree of
Master of Arts

Montana State University

1950

Approved:



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CHAPTER I

INTRODUCTION

The purpose of this thesis is to make an investigation into the nature of a type of recent legislation affecting public utility labor. The legislation, which is relatively new, has one outstanding characteristic: the prohibition of strikes. An apparent reaction to post World War II service stoppages, the legislation is an attempt to provide continuity of public utility services by regulating labor relations.

Information about this type of legislation is limited. There have been no books published about these laws, although the statutes themselves are available in the statute books of the various states having this type of laws. Since the Law Library at Montana State University does not have the more recent statute books, it was necessary to send away for the statutes. In addition, there is a scarcity of articles concerning these laws and their application.

The main source of information, aside from the statutes themselves, has been the magazine, the Public Utilities Fortnightly, published by Public Utility Reports, Inc., Washington, D. C. This source furnished most of the background material as well as short articles that were in the nature of reports on public utility labor legislation. In order to ascertain the opinion and effects of this type of

legislation, questionnaires were sent to a selected list of organizations and persons. Dr. Lois MacDonald's recent booklet, Compulsory Arbitration in New Jersey, gave much information of a specialized nature.

The paper is divided into eight chapters. Chapter I, the introduction, gives some idea of the scope and purpose of the paper. Chapter II defines and outlines the characteristics of a public utility. Chapter III introduces the problem of continuity of service and gives some idea of how the problem arose. Chapter IV sets down the possible ways to approach the problem and gives some background of each approach. Chapter V, the main body of the thesis, is concerned with anti-strike legislation. The statutes are outlined and discussed and the type of legislation described in detail. Chapter VI records the application of the legislation with special note being taken of the court action that has arisen from the use of these laws. Chapter VII gives some idea of the effects of the legislation on the public, labor and management, utilizing the results of the questionnaires. Chapter VIII is an evaluation of the legislation, pointing out some of the weaknesses and flaws of the statutes and a preliminary conclusion as to the value of the legislation.

CHAPTER II

DEFINITION AND CHARACTERISTICS OF PUBLIC UTILITIES

That kind of economic enterprise called a "public utility" is a strange and peculiar institution within our economic system. The term "public utility" is difficult to define for it carries with it no self-explanatory definition.[1] The only thing that is common to all public utilities is that all have been declared by our courts to be "affected with the public interest".

"Affected with the public interest" is a purely legal concept that has grown up with our courts, the final arbitrator of such questions being the Supreme Court of the United States. Because the concept is legal and has a tendency to be broadened or restricted as the thoughts of the courts change, a public utility, for the purpose of this paper, will be defined in terms of industries. That is, those industries that produce, distribute and sell heat, electric light and power, gas, water, communications and transportation (excluding interstate carriers)[2] will be considered public utilities.

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1 Emery Troxel, Economics of Public Utilities, (New York: Rhinehart and Company, Inc., 1947), p. 3.

2 Interstate carriers are very broad in scope and have been regulated by the federal government for many years. Since this paper is primarily concerned with state regulation, interstate carriers will not be considered here.

Because public utilities are declared to be "affected with the public interest", they are regulated by our state, federal, and occasionally, local governments. Among other things, they are regulated as to service, as to earnings, as to charges they may make for their product and as to competition in serving certain sections of any locality. Regulation, therefore, is a natural consequence of the legal declaration of a public utility.

The two dominant characteristics of this legally declared and regulated type of enterprise, the public utility, are "natural monopoly" and essential products, with certain distinct demand features.[3]

First, it is doubtful that there is such a thing as a "natural" monopoly in the sense that monopoly is the product of nature or that it is natural to our economic system. Nevertheless, it is one of the determining factors in the question of why an industry is "affected with the public interest".

The type of industry that tends "naturally" toward monopoly is characterized by high fixed costs and increasing returns which combine in such a way as to limit naturally the number of firms in a given field.

"High fixed costs" includes the costs of procuring

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3 The following sections, discussing the characteristics of public utilities, are based on Emery Troxel, _Economics of Public Utilities_, _op. cit._, pp. 8-12.

necessary equipment and capital of either a fixed or specialized variety. An example would be the investment in specialized equipment of the production plant and distribution lines of the electric power industry. This necessity of heavy fixed cost type of investment in original plant tends to limit the number of firms that can profitably enter this field.

The characteristic of "increasing returns" is actually a result of large fixed costs. That is, because of the large fixed cost investment, any additional return in the form of income means a greater return on the investment. Since the fixed costs on the investment continue whether the utility is producing a large or a small amount of the product, any income from the sale of additional product will mean that the fixed costs per unit of product will be smaller because they have been spread over a greater amount of output. Therefore, after a certain point has been reached, each addition to output will reduce the fixed costs per unit of output and the result will be that the addition in output returns a larger and larger return on investment.

Increasing returns tends to promote what is known as "cut-throat" competition. Because of the necessity of covering the high fixed costs and because each addition to output will make for more return, competition may become disastrous in its effects on these industries.

During this highly competitive situation, the object of the producer is increased income from increased output. The rates or prices of service are cut by the producer in an attempt to increase his share of the market. Retaliatory cuts follow. Eventually the price of the service sold falls below the costs of production. However, as long as the price covers the variable costs and applies some revenue to fixed costs, production will continue. The outcome of this type of competition is that one of the competing firms loses out and is forced to sell its interests to the remaining firm or leave the market.

Before this type of competition comes about, two events take place that are considered socially undesirable by public utility economists. First, a duplicate plant must be established. A large investment is made in duplicating facilities and much capital and labor are wasted. This duplication is definitely an economic waste unless it improves the product offered in some way. It is generally felt, however, that the product is rarely improved in such a situation.

Second, service may suffer. The duplication tends toward poorer service because the customer is required to install duplicate sets of equipment in order to get full and efficient service. This is true only for telephone communication where it would be necessary to have duplicate receiving sets in order to obtain adequate service.

In addition, during the active competitive period, the service will suffer because the price of the service is being cut to the point where the income received just covers variable costs. As a consequence, repairs to equipment and capital as well as maintenance of customer services cannot properly be provided. This is true for all the public utilities.

Theoretically, the eventual outcome of "cut-throat" competition is that one of the competing firms forces the other out of business. This leaves the remaining firm in a monopoly position.

Actually, price agreement between the two competing firms is more likely to take place. Unless such agreement is prevented by regulatory commissions, a duopoly results. This leaves both firms in a monopolistic position.

Second, the products of a public utility are services and have certain characteristics that set them apart from those of other industries: they are non-storable and are essential.

Because the products of utilities are services, they cannot be stored. On the other hand, the raw materials used to produce the services may be stored. That is, the coal to turn steam turbines or manufacture gas, the water to turn hydro-electric generators or to provide water in the water mains, and the diesel oil to run buses all may be stored.

Yet it is impossible for the utility to produce the service itself for inventory. The services are perishable and must be used up as they are produced.

This tends to complicate the production of utility service because the production plant must be constructed and maintained so that it will be prepared to meet the greatest demand that could possibly be placed upon it. That is, the plant must be able to serve the "peak load" or maximum demand that could conceivably come about. Therefore, excess plant must be built and maintained even though it is used only on rare occasions. The rates for the service must be so arranged that this necessary excess is paid for even though it is not used.

More important, the services of a utility are considered to be socially essential to the welfare of the people. Great inconvenience results when the service is not available. Continuous service, therefore, is required of all public utilities.

In addition to the factors of essentiality and non-storability, the products have certain distinctive demand factors. Generally the demand for the services of a public utility is relatively stable, when compared to other industries. This stability of demand, coupled with the peculiar characteristic of income inelasticity of demand, results in steadiness of income over a given period of time.

Inelasticity of income demand means that as the income of the consumers of these services increases or decreases, the amount of service also increases or decreases but not in the same proportion as the change in income. That is, a 10 per cent increase or decrease in income of a consumer will not cause a 10 per cent increase or decrease in the consumption of the power, as an example. Rather, it will cause a less than 10 per cent increase or decrease. This is merely another way of stating Engels' second law of income.[4]

The significance of inelasticity of income demand is that the income of the utility remains fairly constant over a given period of time even if great changes in economic conditions of the users or the economic conditions of the country as a whole takes place.

Therefore, public utilities are businesses vested with the public interest. That is, because of their peculiar position in the economy, they are considered "affected with the public interest" and are subject to governmental regulation.

Regulation of utilities by governments has many aspects. A full discussion of governmental regulation of utilities will not be given here. Rather, this paper will

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4 Charles S. Wyand, Economics of Consumption (New York: The Macmillan Company, 1938), p. 219.

be limited to one aspect of regulation, namely, regulation of service.

Within the scope of regulation of service are such matters as extentions and abandonments, type and quality of service, interconnections, discriminatory actions and continuity of service, among others. As indicated in the title, this paper will be concerned with one facet of service regulation; the problem of continuity of service.

CHAPTER III

THE PROBLEM OF CONTINUED SERVICE

Because of the essentiality of the service rendered by public utilities, it has been recognized for some time that the utilities have a responsibility to hold themselves out to serve all who demand their product. This responsibility of "holding out to serve" has been an integral part of our regulatory policy in the past.

In past years, it was usually the utility itself that was guilty of violating this responsibility of service. Within recent years, this responsibility of service has been threatened by a new force, namely, the stoppage of service due to strikes or other weapons of industrial warfare. This new force has given rise to a new service problem, one that concerns the health and welfare of the nation.

In the past there have been few strikes in the public services. Where strikes have occurred, such as the Boston Police Strike of 1919, they have merely served to emphasize the contention that the right to strike against agencies providing essential services is doubtful. These infrequent strikes of the past seem to "have brought nothing but chaos to the innocent victims who bear the costs, the public".[1]

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1 Walter E. Edge, "Labor-Management Relations in Public Utilities," Public Utilities Fortnightly, 38:70, July 18, 1946.

Between 1919 and 1946 strikes in the utility industry rarely occurred. There had been numerous threats of strikes but the implications of stoppage of utility service were considered to be so intensely anti-social that all parties to disputes had always been induced to make some peaceful settlement of their differences so that the strikes never materialized. This was especially true in the electric power industry where strikes were practically "taboo".[2]

Shortly following World War II the country was faced with a series of strikes in the telephone industry, the power industry and the transportation industry. The reasons for these strikes varied widely. It was a period of general industrial unrest. Individual workers were tired and many were financially able to take time off. Wartime restrictions had taxed their physical resources and hampered their traditional means of settling grievances. During the emergency, management had been willing to concede to the demands of labor because public opinion was against work stoppages. The post-war efforts of the government to maintain price ceilings collided with union attempts to maintain wartime wage levels by boosting pay. But perhaps more important, both labor and management had forgotten much of the art of

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2 "Pittsburgh Looks to Lewis," Business Week, p. 104, October 12, 1946. However, immediately following World War I, there were several strikes in the power industry - Joseph C. McIntosh, "Shall We Arbitrate?" Public Utilities Fortnightly, 39:80, January 16, 1947.

collective bargaining.

In addition, society had given labor its protection, if not its blessing, in the Wagner Act passed by Congress in 1935. Following its passage, organized labor has tripled in numbers and raised its effectiveness in bargaining strength. Wartime restrictions had held back this power. The end of hostilities, coupled with the general unrest of the times, called forth this potential force.[3]

In rapid succession during the month of February 1946, strikes in industries providing essential services to the public were called in New York, Philadelphia and Pittsburgh. It has been estimated that the lives of 12,500,000 persons in these cities were disrupted by these three strikes involving 16,500 union members.[4]

New York City was completely paralyzed for eighteen hours on February 18th, and Mayor O'Dwyer ordered the world's largest metropolis shut down. Barge-borne supplies of fuel oil, coal and coke were dwindling dangerously as the American Federation of Labor crews of the tugboats walked out. New Yorkers learned quickly that their city, surrounded by rivers, was dependent on barge-drawn supplies of fuel to keep life

3 "Public Service Strikes," Fortune, 32:114, November 1945.

4 "Local strikes throttle trade, Ordeal in three cities," Business Week, p. 16, February 16, 1946.

in the metropolis moving at high speed.[5]

All business except that involving the public health and safety was suspended by the New York municipal government. Subway service was curtailed, causing thousands of commuters to spend endless hours in Grand Central and Pennsylvania stations. Crowds gathered in front of closed stores, elevator service was suspended, and business came to a complete halt.[6]

During the same week in February, Philadelphia was in the midst of a transit strike. For forty-eight hours transit system operators and maintenance men completely crippled the city's transportation service. All trolleys, buses, subways and elevated trains were stopped. As cars moved bumper to bumper and car pools were formed, Philadelphia learned that there was no easy substitute for a service that normally carried 3,000,000 riders a day.[7]

But more drastic in its results than the New York and Philadelphia strikes was the power stoppage in Pittsburgh where 3,500 employees of the Duquesne Power Company walked off the job. For nineteen hours most of Pittsburgh was without lights. Supervisory employees generated enough

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5 "Disaster," Time, 47:20, February 25, 1946.

6 "Local strikes . . . .," loc. cit.

7 "Disaster," loc. cit.

power for emergency uses only. Two million residents of the immediate area were affected. Elevator service ceased, business was suspended, and emergency crews stood by in Children's Hospital to operate an iron lung should the power cease completely. Even automobile traffic was affected because the huge fans that ventilated the Liberty Tubes were power driven.[8]

Later in 1946, the independent union at Duquesne Power struck again. In late September the power was again stopped. The strike lasted for four weeks with commercial and industrial life practically closed down. One hundred thousand workers were laid off as all but two of 131 companies in one industrial association reported that they were forced to cease business. The loss in business and payrolls was estimated at $15,000,000 a day.[9]

The inconvenience of this twenty-eight day strike was terrific. _Time_ magazine gives this description of conditions during the fourth week of the strike:

> Pittsburgh's downtown "Golden Triangle" was festooned with big smoke-gushing boilers, supplying heat to office buildings. Motors chugged in the streets to turn power generators for lights. Railroad locomotives fed steam into three large trackside buildings. Hundreds of businesses were closed; about 50,000 people were still out of work.

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8 "Local Strikes . . .," _loc. cit._

9 "Unions Power to Cripple a City," _U. S. News & World Report_, 21:37, October 11, 1946.

> Pittsburghers hitchhiked to work, waited in line for elevators or skipped up and down stairs, brought their lunch (few restaurants were open), shivered through a shortened work day, then bummed rides home at night.[10]

For eighteen days of the four week strike, the Duquesne Power Union, an independent, was supported by several other affiliated unions in the city. This support merely added to the inconvenience of the power shut-off.

The union was demanding a 20 per cent wage increase and thirty-one other demands, including a share in company profits. Settlement finally came when the union accepted the company's repeated offer of arbitration only after being warned by United States Secretary of Labor Schellenbach to accept arbitration before the government took steps to settle the strike.[11]

After the Duquesne Power strikes, several others followed and many were threatened. By this time the public had begun to realize more than ever before the essential nature of these services. Inconvenience and suffering had served to impress upon the American people how greatly their lives and industry depended on the efforts of public utility workers and the services produced. It was not long until a reaction took place.

Attempts to avert more strikes and stoppages of

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10 "Ghost Town," _Time_, 48:25, October 28, 1946.

11 _Loc. cit._

service were begun at the 1946 annual Governors' Conference which adopted a resolution urging Congress and each state legislature "to enact legislation which will require capital and labor to maintain the uninterrupted service of utilities essential to the life and health of the people".[12]

After the record Duquesne Power strike late in 1946, labor and management began to propose solutions to the problem of continued service. Three states, New Jersey, Virginia and Indiana, enacted legislation prohibiting strikes. And, when the nation's telephones were tied up early in 1947, proposals to prevent discontinuance of service because of strikes came from many additional sources. Legislative committees began to work out solutions, articles appeared in trade and popular magazines, and students of labor relations began to propose methods of dealing with the problem of continuity of service.[13]

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12 Bethune Jones, "State Laws on Utility Strikes," Public Utilities Fortnightly, 39:34, January 2, 1947.

13 "State Rights? Curb on strikes in public utilities," Business Week, April 6, 1946, p. 98; "Public favors law to prohibit utility strikes," Iron Age, 157:109, April 25, 1946; L. H. Hill, "Should strikes in the electric utilities be outlawed?" Electrical World, 126:68-9, October 26, 1946; Joseph C. McIntosh, "Shall We Arbitrate?" Public Utilities Fortnightly, 39:80-84, January 16, 1947; Roscoe Ames, "Should State Commissions Regulate Utility Labor Relations?" Public Utilities Fortnightly, 39:352-6, March 31, 1947; H. B. Dorau, "Regulatory Licensing to curb utility strikes," Bus Transportation, 26:37-52, March 1947; "Labor 'Magna Charta' Released--The Slichter Report," Public Utilities Fortnightly, 39:518, April 10, 1947; Roscoe Ames, "No Strikes for Utilities, A review of the report of the labor committee of the Twentieth Century Fund," Public Utilities Fortnightly, 39:687-91, May 22, 1947.

A good example of the legislative attitude towards the necessity of continued service is contained in the report of the Virginia Advisory Legislative Council which stated in 1947 that:

> In the field of public service, it is unthinkable that the people of any community might be deprived of the electric current which lights their homes, powers their furnaces, refrigerates and cooks their food, because of a dispute between employees and employers, regardless of which is in the wrong. The people also should not be deprived of telephone and transportation services upon which the highly integrated society of today depends . . .[14]

The public was now awake to the essentiality of utility service. Some solution had to be worked out. The inconvenience of the past strikes in utilities forced a call for some plan of action to insure continued service. Apparently, public sentiment would no longer allow service stoppages such as those of 1946 and 1947 to disrupt their lives and cause emergencies.

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14 James J. Kilpatrick, "Virginia Keeps its Public Utilities Running," Public Utilities Fortnightly, 44:844, December 22, 1949.

CHAPTER IV

APPROACHES TO THE PROBLEM OF CONTINUED SERVICE

Two basic approaches to the problem of continued service are possible: the ownership approach and the legislative approach.

The ownership approach to the problem means that solution to the problem of continued service would come about through the ownership of the utilities. The ownership approach immediately suggests two types of ownership and two ways of dealing with the problem of continuity of service. That is, the problem can be dealt with through government ownership of some type or it can be dealt with through private ownership.

Government ownership means that some form of government would take over and operate the utilities involved in the problem. This might be municipal government or the federal government.[1]

Municipal ownership exists in many parts of the country today. Where it exists, the employees of the municipal-owned utility are considered the same as other municipal workers. To a great degree, this eliminates the

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1 Theoretically, state governments could be a third form. However, ownership today exists either on the local (municipal level) or the regional level under federal control.

threat of work stoppages since municipal governmental strikes are rare and practically unknown. Not only is it considered anti-social for government employees to strike, but it is questionable whether municipal governmental workers have the legal right to strike or even to organize for bargaining purposes.[2] It is generally felt that strikes against all governments are illegal.

In addition to the purely legal aspects, strikes against governmental units are anti-social. When a municipality owns and operates a utility, the people who make up the municipality own and operate the utility. A strike by workers against a municipally-owned utility would be a strike against the people of the municipality. In other words, to go on strike against a municipally-owned utility would be the same as striking against yourself.[3]

This solution to the problem of continued service might prove ineffective since it is merely a shift of emphasis. It will be recalled that there had been no strikes in the power industry prior to World War II because strikes

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2 Where a contract is involved in collective bargaining between a municipality and its employees, the legal status of that contract is in doubt. The state courts have held that a municipality cannot enter such contracts. Isadore Vogel, "What about the Rights of Public Employees?" Labor Law Journal, May 1950, 1:607 ff.; also see City of Springfield v. Clouse, 206 S.W. 2nd, 539, (1947).

3 The reasoning here is highly theoretical. It is very possible that it would make very little difference who owned the utility as far as the workers were concerned.

were considered anti-social. Nevertheless, the precedent was broken by the Duquesne Power strikes, and the public learned that custom alone was not sufficient insurance against service stoppages. It is possible that the precedent could be broken in connection with strikes against municipalities also, thus making this type of ownership approach ineffective.

Federal ownership is the other type of governmental ownership which could be used to deal with the problem of continued service. Federal ownership of utilities, as in municipalities, exists in many sections of the country. The employees of federally owned utilities are considered federal employees, and work stoppages are practically unknown in this field. Under federal ownership, the federal government possesses the utilities and operates them. The workers are considered federal employees and the right to strike is denied them legally and socially.

The right to strike against the federal government or any corporation owned by the federal government is specifically prohibited in the Taft-Hartley Act.[4] The illegality of such strikes is certain.

Socially, the same reasoning applies here as in the case of municipal ownership. The government is the people. To strike against the government is to strike against

4 Labor Management Relations Act, 29 USCA 141, Section 305.

yourself. However, again there is serious doubt that the application of this reasoning would be too effective. How far social custom and social thinking can go to stop strikes against the government is questionable, especially when the ownership is in the hands of a remote federal government.

Therefore, because of the legal and social aspects of federal governmental ownership, this ownership suggests an approach to the problem of public utility work stoppages.

Under governmental ownership (either municipal or federal), some sort of procedure would have to be established to care for the labor problems which would arise. The right to strike would be prohibited but some agency would be necessary to deal with the major and minor grievances that naturally come about. Because the right to strike would be taken away, presumably a compulsory arbitration procedure would be established. This would mean that all major grievances and questions would be settled by some form of arbitration under a board, agreed upon by both parties, with the award or decision of the board binding on both parties.

Any ownership approach by government presents a number of problems. The problem of how to acquire the ownership itself is basic. What method should be used when these utilities are taken over? What compensation, if any, should be given to the former owners? What would be the political implications of such a move? As noted above, what would be

the government's policy toward labor? What method of settling grievances would be set up? What other benefits would come from government ownership and operation? These are but a few of the many problems that would come about with governmental ownership. All of these would have to be solved to the satisfaction of the three parties concerned: labor, management and the public.

The second ownership approach to the problem, private ownership, is utilized in the present attempts to solve the problem of continuity of service. The possibility exists that governmental ownership may be attempted in the future should the methods utilizing private ownership fail. But for the present at least, the methods used to deal with the problem have all continued the ownership of the utilities affected in private hands.

The second major approach to the problem, besides ownership, is the legislative approach or method. If the ownership is to remain at its present status, then the problem must be approached by imposing legal rules and methods to industrial relations in the industries affected by the problem. This is the type of approach which has been used to date.

To be effective, the legislative approach to the problem would of necessity include legal action to prohibit service stoppage and set up some procedure to be followed

in settling the grievances that naturally come about. Certain rules and procedures could be set up which would have to be adhered to before a strike was allowed in hopes of voluntary settlement. Actual service stoppages could be prevented by a compulsory settlement provision in the procedure or by some variation of governmental ownership and operation.

If legal rules and methods are to be applied to industrial relations in the public utilities, there are two possible agencies that could lay down these rules: the federal government and the state government.[5]

Legal procedures by the federal government are established by the United States Congress. It would be possible for the Congress to set up laws and procedures that would prohibit strikes and lay down certain steps that would have to be followed in settling a labor dispute in the public utilities.

Federal legislation could be patterned after the Railway Labor Act of 1926 which has been used to deal with labor problems in the railway industry for many years. This Act sets up a procedure designed to promote settlement of

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5 Regulation by local governments is a third theoretical possibility. However, since public utilities, as defined in Chapter II, often operate on a larger scale than the municipality and since utility management is frequently on a wider base, it seems impractical to include municipal governments as a possible source of this type of regulation.

labor disputes without the use of strikes, if possible, in a vital industry. The procedure consisted basically of four steps or conditions that must be fulfilled before a strike can be executed. These four steps are: conferences, mediation, arbitration (on a voluntary basis) and finally, an emergency fact finding board investigation of the issues involved.[6]

The primary purpose of the Railway Labor Act is to delay the strike or work stoppage while using all available means to encourage a settlement. A similar procedure might be used in connection with utility disputes. However, since the purpose of such method would be to prevent service stoppages, some form of compulsion would be necessary somewhere in the steps of the procedure when applied to utilities.

Another example of federal regulation of labor disputes that might be used as a base for federal legislation is the Labor Management Relations Act of 1947, better known as the Taft-Hartley Act. A part of this act gives the President of the United States power to seize and operate an industry whenever a strike in that industry shall be so serious as to create a "national emergency".[7]

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6 D. Philip Locklin, Economics of Transportation, (Chicago: Richard D. Irwin, Inc., 1949), 3rd Edition, pp. 255-7.

7 Labor Management Relations Act, 29 USCA 141, Sec. 206.

In fact, there was speculation late in 1947 that the Taft-Hartley Act might be applicable to utility labor disputes. At that time the second Duquesne Power strike had just ended. It was felt by several students of labor relations that a service stoppage that had such serious repercussions on the economy of a great industrial area constituted a national emergency.[8]

However, all utilities are not situated in such an important industrial area. Service stoppages in a large number of the utilities in the United States would not have such serious repercussions on the national economy as that of the Duquesne Power strikes. This fact provides a barrier to the use of the national emergency clause to regulate utility labor disputes. Likewise, the Railway Labor Act was designed for railroad employees. It is based largely on the power of Congress to regulate matters concerning interstate commerce. Even amending the Act to include utility labor might not be enough, for it is possible that the power to regulate interstate commerce could not be made to extend to the majority of public utilities.

Although these two statutes do not apply to public utilities, they still suggest a basis for federal regulation. That is, the Railway Labor Act suggests a possible solution in a procedural way and the Taft-Hartley Act points to an

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8 I. Bowen, "Will the Taft-Hartley Act stop utility strikes?" Public Utilities Fortnightly, 40:631-5, November 6, 1947.

alternative device. A similar procedure to that of the Railway Labor Act could be set up with the arbitration awards binding on both parties, or governmental seizure, similar to the Taft-Hartley emergency clause, could be used.

At the present time, the federal legislative approach has not been attempted. This may be due to the fact that the majority of the present regulations regarding the public utilities are on a state governmental level. Furthermore, service stoppages may not be important enough to warrant regulation on the federal level. That is, service stoppages in one utility may not affect the national picture to such a degree as to call for congressional action.

Even though the federal legislative approach is not being used at present, it is still a possible solution to the problem of continued service. Should the problem become wide enough in scope or should attempts to solve the problem on other levels fail, the federal type of regulation might be a possible solution.

The state government is the second possible agency which could be utilized in the regulation of utility labor relations. It is through this source that the most recent attempts have been made to solve the problem.

State legislation affecting labor relations is not particularly new in the United States. For example, "Workmen's Compensation" laws were passed by the states as

early as the turn of the century to regulate the payments made to injured workers, and to regulate industry in an attempt to prevent accidents.

Throughout this long period of regulation there have been few laws that have been directed toward utility labor relations. Most of our attempts to regulate labor relations in the public services have been in the railroad field, which does not come under the definition of utilities for the purposes of this study.

It is true that the State of Kansas set up a Court of Industrial Relations in 1920 which had the power to regulate all matters concerning public utilities. This court had the power to regulate wages, hours, working conditions and even strikes and other methods of industrial warfare. In addition, the court had the power to regulate the services of a great many other industries.[9] Although this law remains on the statute books of the State of Kansas today, it was declared unconstitutional by the Supreme Court in 1923.[10] It was, however, the first attempt by any state to regulate utility labor relations and, as such, has played a large part in laying the groundwork for more recent legislation.

The bulk of the state legislation to regulate utility

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9 Laws of Kansas, 1920, c. 29.

10 Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, (1923); 267 U. S. 552, (1925).

labor relations has come in the past few years. When the public became aware of the essentiality of utility service and the inconvenience that service stoppage imposed, state regulation of many types was enacted.

In a special report on labor legislation affecting utilities before the American Bar Association in September, 1947, it was found that all states except four (Mississippi, Nevada, Vermont, and West Virginia) had some sort of regulation that affected utility labor relations. Of these laws, some affected utilities only (such as anti-strike laws) while others affected all labor relations including utilities (such as prohibition of secondary boycotts).[11]

This study shows that in 1947 nine states prohibited strikes, eight states provided for cooling off periods, ten states required secret ballots before a strike could be called, twenty-eight states had provisions for fact-finding boards to investigate the strikes, eight states required compulsory arbitration, five states had state seizure provisions, fourteen states prohibited closed shops, four states required a vote before closed shop would be allowed, thirteen states forbade an automatic check-off, twelve states required the union to file certain reports, twenty-three states allowed suits against unions, and sixteen states prohibited

11 Report of Special Committee on Labor Legislation in Public Utility Field, 1946-1947, presented at annual meeting, September 22-23, 1947, Cleveland, Ohio, American Bar Association.

secondary boycotts.[12]

Of the laws referred to above, the most important ones for the purposes of this paper are those statutes which deal directly with public utility labor relations: the anti-strike type of legislation, compulsory arbitration procedure and the state seizure provisions.

12 Report of Special Committee . . ., *loc. cit.*

CHAPTER V

STATE ANTI-STRIKE LEGISLATION

Anti-strike legislation is found in the statutes of ten of our states. These laws are aimed directly at the problem of continuity of service and have incorporated all those provisions considered necessary in order to bring about continued service, namely, prohibition of strikes and some method of dealing with grievances either through compulsory arbitration or governmental seizure and operation. (See Table I).

All of these statutes are a direct reaction to a specific problem which occurred in the utility field in 1946 and 1947, that of continuity of service.

Consideration of anti-strike laws is broken down into two main parts: policy provisions and procedural provisions.

Since the aim of the ten laws is basically the same, it is to be expected that the policy laid down in all the statutes would be similar. Generally, it is found that all the statutes have a declaration of policy, a section that has to do with definitions and specific industries covered, a portion listing certain exemptions to the act, a collective bargaining provision, a guarantee of the rights of individuals to quit their jobs, and some provisions for the rights of appeal or review of the action of the laws.

TABLE I

STATE LEGISLATION AFFECTING PUBLIC UTILITY LABOR[1]

State	Strikes Prohibited	Compulsory Arbitration	State Seizure
Florida	x	x	
Indiana	x	x	
Massachusetts	x		x
Michigan	x	x	
Missouri	x	x	x
Nebraska	x	x	
New Jersey	x	x	x
Pennsylvania	x	x	
Virginia			x
Wisconsin	x	x	

The declaration of policy usually states the essentiality of the services provided and sets down the policy of the state in cases where interruption is threatened or actually occurs. The declaration of policy in the Indiana statutes is typical:

1 Laws of Florida, 1947, c. 23911, (H. B. 954); Laws of Indiana, 1947, c. 341; Laws of Massachusetts, 1947, c. 596; Public Act No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264; Laws of Missouri, 1947, H. B. 180; Laws of Nebraska, 1947, c. 178, (L. B. 537); Laws of New Jersey, 1946, c. 38; Laws of New Jersey, 1947, c. 47; Laws of Pennsylvania, 1947, c. 485, (S. B. 801); Acts of Assembly (Virginia), 1947, c. 9; Laws of Wisconsin, 1947, c. 414, (S. B. 91).

It is hereby declared to be the public policy of the State of Indiana that it is necessary and essential in the public interest to facilitate the prompt, peaceful and just settlement of labor disputes between public utility employers and their employees which cause or threaten to cause an interruption in the supply of services necessary to the health, safety and well-being of the citizens of Indiana, and to that end to encourage the making and maintaining of agreements concerning wages, hours and other conditions of employment through collective bargaining between public utility employers and their employees, and to provide settlement procedures for labor disputes between public utility employers and their employees in cases where the collective bargaining process has reached an impasse and stalemate and as a result thereof, the parties are unable to effect such agreement and which labor disputes, if not settled, are likely to cause an interruption of the supply of the public utility service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service.[2]

Nine of the laws have declarations of policy aimed directly at public utilities. In the Michigan statute, the portion of the act directed at public utilities has been added as an amendment to an earlier law dealing with all labor relations in the state. Therefore, the declaration of policy of the Michigan statute is extremely broad and considers all labor disputes to be contrary to the public interest.[3]

After setting out the public policy and declaring the continuity of service of public utilities to be "clothed

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2 Laws of Indiana, 1947, c. 341, sec. 1.

3 Public Act No. 176, Laws of 1939 as amended Laws of 1947, S.B. 264, sec. 1.

with the public interest", the statutes generally define the terms as used in the law. The most important definition of terms is the definition of those industries that are considered public utilities under the act. Generally, those utilities providing heat, electric light and power, gas, water, communications and transportation are covered by the acts.

In all cases except Michigan, the statutes carefully define the industries to be covered. Since the portion of the Michigan act covering utilities is an amendment to an over-all labor relations act, there is no definition of the term "public utility".[4]

When it is recalled that the Philadelphia transit strike was one of the major incidents that called attention to the necessity for anti-strike laws, it is interesting to note that the Pennsylvania statute does not cover transportation. Likewise, the nation-wide telephone strike of 1947 called attention to the essentiality of service, and yet the Pennsylvania statute excludes communications from its coverage also.[5] The Massachusetts statute also excludes transportation and communications.[6]

However, whereas the Massachusetts definition of

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4 Public Act No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264, sec. 1.

5 Laws of Pennsylvania, 1947, c. 485, sec. 2.

6 Laws of Massachusetts, 1947, c. 596, sec. 1.

covered industries excludes these two basic types, it includes several which are not considered in the other states. Thus, Massachusetts includes food, fuel (rather than heat), hospital and medical service, as well as the basic water, electric light and power, and gas classifications.[7]

The New Jersey and Missouri statutes, which are more comprehensive and exacting in their definitions of utilities, include sanitation as well as the standard coverages enumerated in the preceding paragraph.[8]

Railway labor or labor regulated by the federal government are specifically exempt from the law. This is done by a flat statement that the act does not apply where the National Railway Labor Act is applicable such as in the Florida statute,[9] or it is done by some other device such as in the Pennsylvania act which limits the jurisdiction of the statute to those industries subject to the jurisdiction and control of the Pennsylvania Public Utility Commission.[10]

The statutes generally continue on with definitions of other terms that are used in each act. In some of the statutes, these definitions of terms are long and comprehensive

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7 Laws of Massachusetts, 1947, c. 596, sec. 2.

8 Laws of New Jersey, 1946, c. 38, sec. 1; Laws of Missouri, 1947, H. B. 180, sec. 2.

9 Laws of Florida, 1947, c. 23911, sec. 15.

10 Laws of Pennsylvania, 1947, c. 485, sec. 2.

such as the Nebraska act with its nine long definitions of terms,[11] while in others, such as Indiana, merely define the industries covered and the term collective bargaining.[12]

All but three (Missouri, Massachusetts and Nebraska) of the ten statutes specifically protect and encourage collective bargaining as a device to settle industrial disputes. In four of the statutes, Florida, Indiana, Pennsylvania and Wisconsin, collective bargaining is required as the first step of the procedural settlement of disputes. The wording of this section of the statutes is exactly the same in all four. It reads:

> It shall be the duty of public utility employers and their employees in public utility operations to exert every reasonable effort to settle such labor disputes by making agreement through collective bargaining between the parties, and by maintaining thereof when made, and to prevent, if possible, the collective bargaining process from reaching a state of impasse and stalemate.[13]

The New Jersey and Virginia statutes reaffirm the right to bargain collectively. Both state that collective bargaining is basic to industrial peace and is to be

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11 Laws of Nebraska, 1947, c. 178, sec. 1.

12 Even here the term "collective bargaining" is defined simply. The act states that the term is defined as meaning the same as the term used in the National Labor Relations Act. Laws of Indiana, 1947, c. 341, sec. 2.

13 Laws of Florida, 1947, c. 23911, sec. 1; Laws of Indiana, 1947, c. 341, sec. 1; Laws of Pennsylvania, 1947, c. 485, sec. 1; and Laws of Wisconsin, 1947, c. 414, sec. 1.

retained.[14] The Michigan act has a general guarantee of the right to bargain collectively for all types of employees.[15]

Although the Missouri statute does not specifically guarantee collective bargaining, it tacitly upholds this right in that it requires all agreements arising out of collective bargaining to be in written form and have a life of one year.[16] In addition, the Missouri statute further upholds the necessity of collective bargaining in that it requires that: "upon receipt of notice of any labor dispute between parties subject to this act, the board shall require such parties to keep it advised as to the *progress of negotiations therein*".[17] Likewise, the Massachusetts statute does not specifically guarantee collective bargaining rights although it states that collective bargaining is to be encouraged and that the law takes effect "in the event that the commissioner of labor and industries finds that a labor dispute has not been settled by collective bargaining".[18]

The third statute which does not specifically guarantee collective bargaining rights is that of Nebraska.

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14 Laws of New Jersey, 1946, c. 38, sec. 2; Acts of Assembly (Virginia), 1947, c. 9, sec. 2.

15 Public Act of Michigan No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264.

16 Laws of Missouri, 1947, H. B. 180, sec. 10.

17 *Ibid.*, sec. 8, (italics mine).

18 Laws of Massachusetts, 1947, c. 596, sec. 3.

In fact, nowhere in the whole act does the term "collective bargaining" appear. This seems to be due primarily to the fact that the Nebraska statute sets up a Court of Industrial Relations to deal with matters concerning governmental service (primarily where the government operates public utilities in its proprietary capacity) and public utilities. The whole act is aimed at providing some procedure to settle grievances that arise under governmental ownership and the portion relating to the privately owned utilities of relatively small importance.[19]

Even though the Nebraska act does not mention collective bargaining as such, a portion of section 16 of the act, which lays down the procedure to be followed by the Court, seems to require bargaining by utilities not controlled by the state government. This portion of the section reads:

> . . . in the event of an industrial dispute between employer and employee of a public utility not operated by the government in its proprietary capacity, where such employer and employee have failed or refused to bargain in good faith concerning the matters in dispute, the court may order bargaining to be begun or resumed . . .[20]

It is important that the acts encourage and protect collective bargaining. Should this basic step in the settlement of industrial disputes be overlooked, the procedure laid down would tend to be by-passed and free bargaining

19 Laws of Nebraska, 1947, c. 178.

20 *Ibid.*, sec. 16.

across the bargaining table would be lost. When compulsory arbitration is substituted for bargaining, the freedom of action and flexibility of form and procedure of the latter is lost to the static procedure and compulsion of the former.

The fifth type of policy provision found in the statutes is that dealing with the right of an individual to quit his job. Nine of the ten statutes specifically guarantee the right to quit or state that the acts in no way can be construed to force "involuntary servitude". The wording of the New Jersey statute typifies this type of provision:

> No employee shall be required to render labor or service without his consent; nor shall this act be construed to make the quitting of his labor and service by the individual employee an illegal act; nor shall any court issue any process to compel the performance by any individual of such labor or service without his consent.[21]

The one statute which does not guarantee this important right of individuals to quit their jobs is that of Virginia.[22] The reason for this is the peculiar procedure of the Virginia act. The Virginia act does not prohibit strikes as such, but it does have state seizure provisions, (see Table I, page 32). Since strikes are allowable, whether on the job or actual strikes, the Virginia legislature apparently felt that there is no necessity to guarantee the

21 Laws of New Jersey, 1946, c. 38, sec. 15.

22 Acts of Assembly (Virginia), 1947, c. 9.

right to quit the job. More shall be said about this peculiar procedure later.[23]

The last major policy provision is procedure for appeals and rights of review. In three of the statutes, Indiana, Florida and Wisconsin, the wording of the acts in regard to appeal are very similar. These acts lay down the possible grounds for appeal and the procedure to be used. The wording of the Indiana statute is typical:

> Either party to the dispute may, within fifteen days from the date such order is filed with the clerk of the court, petition the circuit court of any county in which the employer operates or has an office or place of business, for a review of such order on the ground (a) that the parties were not given reasonable opportunity to be heard, or (b) that the board of arbitration exceeded its powers, or (c) that the order is unreasonable in that it is not supported by the evidence, or (d) that the order was procured by fraud, collusion or other unlawful means or methods. A summons to the other party to the dispute shall be issued as provided by law in other civil cases; and either party shall have the same rights to a change of venue from the county, or to a change of judge as provided by law for other civil cases . . . The decisions of the judge of the circuit court shall be final . . .[24]

The Pennsylvania statute has a similar type of appeal provision in that it also sets down the possible grounds for appeal. However, it provides a rather complicated procedure for appeal to the Court of Common Pleas, then to the Superior

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23 See pp. 66 ff.

24 Laws of Indiana, 1947, c. 341, sec. 12. The Florida statute allows appeal to the Supreme Court.

Court and finally to the Supreme Court. Each appeal procedure is laid down in the law and the decision of the Supreme Court is final and binding for one year.[25]

Although the Nebraska statute does not set down the grounds for appeal, it likewise has provisions for review of the decisions of the Court of Industrial Relations to the district court and finally to the Supreme Court.[26]

The Missouri act, being a combination of both compulsory arbitration and government seizure (see Table I, page 32), provides that: "the courts of this state shall have the power to enforce by injunction or other legal or equitable remedies, any provisions of this act or rule or regulation prescribed by the Governor".[27] In so doing, it presumably gives the courts the power to rule on the legality of such action.

Since Massachusetts and Virginia provide for seizure only, each statute provides for the right to appeal of such action. The Supreme Judicial Court or the Superior Court has jurisdiction in Massachusetts,[28] and the General Chancery Court and Supreme Court of Appeals has jurisdiction in the case of Virginia.[29]

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25 Laws of Pennsylvania, 1947, c. 485, sec. 13.

26 Laws of Nebraska, 1947, c. 178, sec. 12.

27 Laws of Missouri, 1947, H. B. 180, sec. 21, (6).

28 Laws of Massachusetts, 1947, c. 596, sec. 4, (c).

29 Acts of Assembly (Virginia), 1947, c. 9, secs. 12,13.

The Michigan act, which includes all labor disputes, has a general clause allowing "proper legal or equitable remedy or relief in any court of competent jurisdiction".[30]

It is interesting to note that the New Jersey act, the first to be passed and to some extent copied by many other states, has no right of appeal written in the statute. The only mention of court action is in connection with recovery of fines levied by the law.[31] Ironically enough, it is under the New Jersey act that most of the rulings of the courts affecting this type of legislation have arisen, as will be noted later.

These six major policy provisions, as noted above, lay a groundwork within which these statutes operate. However, the more important and more interesting provisions of this type of legislative approach to the problem of continued service are found in the procedural provisions. It is in the procedural provisions that the actual approach to the problem is attempted. It is in these provisions that the ten laws differ most drastically and show the many possible roads open under the legislative approach to the problem.

Procedural provisions seem to fall into three patterns or categories. The Kansas pattern, setting up a

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30 Public Acts of Michigan No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264, sec. 22a.

31 Laws of New Jersey, 1946, c. 38, sec. 8.

Court of Industrial Relations similar to the defunct 1920 Kansas Court, is followed by the statute in Nebraska. The Indiana pattern, utilizing compulsory arbitration, is followed by the statutes of Florida, Indiana, Michigan, Pennsylvania and Wisconsin. The New Jersey pattern, ending in state seizure of the utility as well as using compulsory arbitration in some cases, is followed by the statutes of New Jersey, Missouri, Massachusetts and Virginia.

As noted above,[32] the Nebraska statute sets up a Court of Industrial Relations that is charged with jurisdiction over industrial disputes involving governmental service in a proprietary capacity or service of a public utility.[33] Thus the aim of the Nebraska statute is double-barreled: to regulate labor disputes in the public utilities and to set up a procedure to regulate labor disputes in the governmental service where strikes are absolutely forbidden.

Although the Nebraska statute is quite long and exacting in setting up the Court of Industrial Relations, the procedure for settlement of disputes that fall within the jurisdiction of the court is relatively simple. After jurisdiction has been established in a case, the court merely hears both sides of the case and sets down its findings in the form of an order which is entered as a matter of

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32 See page 37 ff.

33 Laws of Nebraska, 1947, c. 178, sec. 10.

the court's records.[34] The orders of the court, "whether temporary or final, are binding on all parties involved and have the same effect as like orders entered by a district court of the state and are enforceable in the regular courts of the state."[35]

What the statute does, in effect, is to establish a legal body somewhat like a district court and somewhat like a regulatory commission charged with the handling of labor disputes. As evidence of this point, the Governor, with consent of the legislature, appoints the three judges of the court for six years with the terms of office expiring every two years; the judges are chosen on the basis of their experience and knowledge of legal, financial, labor and industrial matters only; the compensation of the judges is provided from state funds; the office of the court is in the Capitol building in Lincoln; the Clerk of the Supreme Court of Nebraska is ex-officio clerk of the Court of Industrial Relations and as part of his duties he transmits copies of testimony before the Court of Industrial Relations to the Supreme Court; the court has full powers to make its own rules to govern its proceedings, issue process, subpoena witnesses, administer oaths and compel testimony. Jurisdiction of the court may be invoked by either party, the

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34 Laws of Nebraska, 1947, c. 178, sec. 17.

35 Ibid., sec. 19.

Attorney General of Nebraska, the Governor of Nebraska or the court itself; the court uses the Code of Civil Procedure used in district courts of Nebraska unless modified by its own order; all appeals shall be taken to the Supreme Court in the same manner as appeals from district courts; and the court has powers similar to any other legal court in regard to a seal, publishing summons in newspapers and employment of experts to assist the court.[36]

In making its arbitration awards, the Court is governed in establishing rates of pay and other conditions of employment by the statute. The standard established in the statute reads:

> . . . the Court of Industrial Relations shall establish rates of pay and conditions of employment which are comparable to the prevalent wage rates paid and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions, in the same labor market area and, if none, in adjoining labor market areas within the state . . . The court shall determine in each case what constitutes "the same labor market area" or "adjoining labor market areas . . .[37]

In order to make the establishment of the Court of Industrial Relations of even greater benefit to the people of Nebraska, the statute provides that the Court may be used as an arbitration board for any industrial dispute even

36 Laws of Nebraska, 1947, c. 178, sec. 4 through 9 and sec. 11 through 15.

37 *Ibid.*, sec. 18.

though the dispute is outside the Court's jurisdiction. The Court must consent to arbitrate the dispute and the award becomes binding as if it came under the Court's jurisdiction.[38]

The statute absolutely forbids any strike, lockout or work stoppage. It makes it an illegal act for any person to encourage such acts or to assist such acts. It further provides fines of from $10 to $5,000 and imprisonment of from five days to one year for violations of the section that prohibits strikes and lockouts.[39]

The Nebraska act is aimed, in part, at labor disputes in the governmental service. The wording of the statute is such that all types of governmental service and all sorts of possible labor difficulties in the governmental service are covered. The words "or public utilities" seem to have been attached to the phraseology as an after-thought. Nevertheless, the Nebraska act does provide one method of dealing with the problem of continued service.

The second pattern or type of procedural provision follows the Indiana statute closely. The distinguishing feature of this pattern, followed by five states, is that it relies on compulsory arbitration as a device to solve the problem of continuity of service.

The Indiana statute is one of the earliest of the ten

38 Laws of Nebraska, 1947, c. 178, sec. 20.

39 *Ibid.*, sec. 21.

acts in point of adoption, being preceded only by the first New Jersey act and the Virginia act. It was based, to a great degree, on a plan proposed by Lee H. Hill, former member of the National War Labor Board and now a member of Roger & Slade, Management Consultants, in an editorial in the Electrical World.[40]

The Indiana statute provides for the appointment by the Governor of a panel of persons to serve as conciliators under the act and another panel to serve as arbitrators. No person may serve on both panels; the members of the panels must be citizens of the state who, in the judgment of the Governor, qualify to the requisite of experience and capability; appointments are to be without consideration of political affiliation; each member must take an oath to perform his duties honestly and to the best of his ability. Compensation for the members' activities is provided.[41]

Statutes of other states which fall in this pattern differ in only minor respects. For instance, the Wisconsin Employment Relations Board makes the appointments in the case of Wisconsin.[42] In Pennsylvania the members are chosen by the Governor from a list of recommendations submitted by the

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40 "Arbitration Law," Business Week, April 5, 1947, p. 99.

41 Laws of Indiana, 1947, c. 341, sec. 4.

42 Laws of Wisconsin, 1947, c. 414, sec. 3.

Labor-Management Advisory Committee.[43] In the case of Florida, the Governor appoints a separate conciliator for each dispute on petition by either party to a dispute.[44] The statutes also vary somewhat on the number of members on these panels.

The Michigan statute, designed to regulate all labor relations, provides for a permanent Labor Mediation Board that has jurisdiction over all labor disputes including public utility labor matters.[45]

Each of the laws provides that the conciliators are called into a dispute only after collective bargaining has reached an "impasse and stalemate" and on petition of either party to a dispute to the Governor or Board, depending on who administers the act. The Governor or Board is to consider the petition and "if, in his opinion, the dispute, if not settled, will cause or is likely to cause the interruption of the supply of the service on which the community so affected is so dependent that severe hardship would be inflicted on a substantial number of persons by a cessation of such service . . .", the Governor or Board is to appoint

43 Laws of Pennsylvania, 1947, c. 485, sec. 4.

44 Laws of Florida, 1947, c. 23911, sec. 4.

45 Public Acts of Michigan No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264, sec. 3.

a conciliator from the previously established panel.[46]

Under the Pennsylvania statute, the Pennsylvania Labor Relations Board may also initiate petition to the Governor for appointment of a conciliator.[47]

The duties of the conciliator are to meet with the disputing parties and make every effort possible to bring about a settlement of the dispute. During the period in which the conciliator is attempting voluntary settlement, any service stoppage, strike or lockout is forbidden and illegal.

Should conciliation fail, the next step is arbitration. The conciliator is given thirty days to effect a settlement of the dispute (fifteen days in the case of Wisconsin and no limit in the case of Michigan[48]). At the end of that time, the Governor or Board appoints a board from the previously established panel to arbitrate the dispute.

The Governor appoints three arbitrators with the exceptions of Wisconsin, where both parties choose the members from a list submitted by the Wisconsin Employment Relations Board, and Florida, where the Governor selects a public member while each of the parties provides its own

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46 Laws of Indiana, 1947, c. 341, sec. 5.

47 Laws of Pennsylvania, 1947, c. 485, sec. 5.

48 Laws of Wisconsin, c. 414, sec. 5; Public Act of Michigan No. 176, Laws of 1939 as amended, Laws of 1947, S. B. 264, sec. 9a.

members.[49]

In the Pennsylvania act another step is inserted before arbitration which is not found in the other acts that follow this pattern. The Governor requires the Pennsylvania Labor Relations Board to hold an election among the employees on the question, "Shall the employer's offer be accepted?" If the majority voting favor acceptance, the offer becomes effective; if not, arbitration is the next step.[50]

The Michigan statute differs from the others in that it requires the appointment, as arbitration board chairman, of a circuit judge by the presiding circuit judge of the state. The other members on the board are direct representatives of each party to the dispute.[51]

In the arbitration procedure of the Indiana and Pennsylvania acts, each side of the dispute is allowed to designate one representative to sit with the board in an advisory capacity only. No vote is allowed these representatives.[52]

In all of the statutes, the Board of Arbitration holds

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49 Laws of Wisconsin, c. 414, sec. 5; Laws of Florida, 1947, c. 23911, sec. 6.

50 Laws of Pennsylvania, 1947, c. 485, sec. 7.

51 Public Act of Michigan No. 176, Laws of 1939 as amended by Laws of 1947, S. B. 264, sec. 13.

52 Laws of Indiana, 1947, c. 341, sec. 7; Laws of Pennsylvania, 1947, c. 485, sec. 9.

hearings and gives both parties adequate opportunity to be heard. These boards have the power to compel attendance and subpoena evidence as well as administer oaths. The findings of the boards are to be written, and the board's decisions, or orders, are to be based only on the issues of the dispute and the evidence presented.

Where a valid contract exists, the decisions of the boards are limited to interpretation and application of the contract involved. Where there is no contract, where a new contract is being negotiated, or where amendments to an existing contract are under question, the boards have the power to establish rates of pay and conditions of employment.

The standard to be used by the boards in determining wages and conditions is very similar to that required under the above mentioned Nebraska statute. The Florida statute is typical:

> . . . the board shall establish rates of pay and conditions of employment which are comparable to the prevailing wage rates paid and conditions of employment maintained by the same or similar public utility employers, if any, in the same labor market area, and if none, in adjoining labor market areas within the State of Florida, and if none, in adjoining labor market areas in states bordering on the State of Florida . . . The board shall determine in each case . . . what constitutes "the same labor market area" or "adjoining labor market areas". . .[53]

The board is governed in deciding wages and conditions by the above standards as well as the value of

53 Laws of Florida, 1947, c. 23911, sec. 8.

service to the consumer in the Wisconsin statute. In addition, the Wisconsin board is allowed to establish separate wage rates and separate conditions of employment where separate plants of the employer are located in different areas.[54]

Most of the Boards of Arbitration must hand down their orders within sixty days after their appointment, (thirty days in Wisconsin and Michigan[55]), unless the Governor extends the time period. The decision of any two of the arbitrators constitutes the order of the board. Each party of the dispute is furnished a copy of the decision, and a certified copy is filed with the clerk of the circuit court where the employer operates. In Wisconsin, the Public Service Commission also receives a copy of the decision.[56]

The order of the board is binding on both parties and is effective for a period of one year from date of the order unless changed by appeal.

Appeal to the order of the board was considered under policy provisions above.[57] It is sufficient to say that

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54 Laws of Wisconsin, 1947, c. 414, sec. 7.

55 Ibid., sec. 9; Public Act of Michigan No. 176, Laws of 1939 as amended Laws of 1947, S. B. 264, sec. 3.

56 Laws of Wisconsin, 1947, c. 414, sec. 7.

57 See p. 40 ff.

each of the acts provides the right of review as well as the possible grounds for appeal.

In order to insure continuity of service, the statutes make it unlawful for any group to call a strike; any employer to lock out his employees; any groups or persons to encourage a strike, lockout or work stoppage; or any groups to assist any of these acts. Violations of the statutes are to be considered misdemeanors and punishable by fines or imprisonment or both.

The fines vary according to the states. Wisconsin specifies none within the act but charges the courts of the state with enforcement. Whereas Florida imposes a $1,000 fine or six months imprisonment for each individual who violates the act, and a $10,000 a day fine for each day of service stoppage on the organization that violates the act.[58]

Indiana, Florida and Pennsylvania allow injured persons to secure an injunction to restrain and enjoin the violation of the act that has adversely affected them.[59]

From the discussion of the laws which follow the Indiana pattern of policy provisions, two major steps can be noted: conciliation and compulsory arbitration. The basic

58 Laws of Wisconsin, 1947, c. 414, sec. 12; Laws of Florida, 1947, c. 23911, sec. 11, 12.

59 Laws of Indiana, 1947, c. 341, sec. 14; Laws of Florida, 1947, c. 23911, sec. 13; and Laws of Pennsylvania, 1947, c. 485, sec. 15.

idea of this pattern, compulsory arbitration, has also been incorporated into some of the statutes falling within the New Jersey pattern, which will be considered next.

New Jersey was the first to attempt solution to the problem of continuity of service. Early in 1946, following the first important service stoppages of the post-war period, the legislature of New Jersey passed an act designed to deal with this problem. The New Jersey act was in use for over a year and had been amended once before other states followed the lead and passed legislation aimed at the problem. In other words, it was this early New Jersey act that pointed the way to one method of dealing with the problem of continuity of service. The distinguishing characteristic of this early act was that it provided for state seizure and operation of the struck plant, a variation of the governmental ownership approach.[60]

All of these procedures begin with an affirmation of collective bargaining. It is only after the collective bargaining procedure has broken down that these patterns or other attempts to deal with the problem are used. The New Jersey pattern is no exception to this procedure.

The New Jersey and the Missouri statutes provide for a State Board of Mediation to handle utility labor matters. In the case of New Jersey, the Board was already in existence

60 Laws of New Jersey, 1946, c. 38.

and needed only to have its powers broadened, while in the case of Missouri, the law sets up the State Board of Mediation.

In New Jersey, the State Board of Mediation is given the power to determine who shall be the representatives of the employees and certain duties pertaining to contracts and mediation in public utilities labor disputes.[61]

The Missouri State Board of Mediation is composed of five members, two of whom are employers of labor and two are bona fide members of some trade union. The fifth member, appointed by the Governor, is the Chairman of the Board.[62] The chairman, a full-time employee of the state, maintains the Board's offices in Jefferson City.[63] Other members of the Board are on a per deim basis and receive expenses.[64]

The Massachusetts and Virginia acts are administered by the Governors of each of these states rather than by a state board as in New Jersey and Missouri.[65]

The statutes of New Jersey and Missouri require that all present and future labor contracts be reduced to a

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61 Laws of New Jersey, 1946, sec. 3.

62 Laws of Missouri, 1947, H. B. 180, sec. 3.

63 *Ibid.*, sec. 4.

64 *Ibid.*, secs. 5, 6.

65 Laws of Massachusetts, 1947, c. 596; Acts of Assembly (Virginia), 1947, c. 9.

written form and have a life of at least one year. All proposed changes in these contracts must be filed with the board of mediation in each state at least sixty days before termination of the contract.[66] The Virginia statute also requires notice of proposed changes to be filed. This notice must be filed with the Governor. It specifies the proposed change, time, and place of a meeting to discuss the proposal within sixty days of the filing.[67]

Through this process of making all contracts written and causing all proposed changes to be in writing and filed with the board of mediation or Governor, the state agency which is charged with carrying out the procedure is notified of the possibility of future action. This gives the agency time to prepare for possible action should negotiations between the parties fail.

The Missouri State Board of Mediation requires that the parties to a dispute keep it advised as to the progress of the negotiations. Further, upon application by either party or the Board itself, the State Board may fix a place and time for a conference and may require attendance by both parties.[68] This conference method is designed to supplement

66 Laws of New Jersey, 1946, c. 38, secs. 4, 5, 6; Laws of Missouri, 1947, H. B. 180, sec. 10 - 13.

67 Acts of Assembly (Virginia), 1947, c. 9, sec. 4.

68 Laws of Missouri, 1947, H. B. 180, sec. 8.

the regular bargaining process and attempts to bring the parties together before any compulsory procedures are forced on either party.

The New Jersey and Missouri acts specify that collective bargaining is to continue until the termination of the contract, that is, for the full sixty days after notice of change in the contract has been filed. If, at the end of that period no solution has been worked out, a Public Hearing Panel is set up to hear the case.

The Public Hearing Panel is made up of three persons. Each of the parties to the dispute designates a person to represent them and these two designate a "third disinterested and impartial person". The Panel has fifteen days within which to hold public hearings on the specific changes requested in the contract. This time limit of fifteen days may be extended on agreement of both parties. Both parties are to be represented at the hearings and the panel is to file its findings with the Governor within five days after the closing of its hearings.[69]

In case the two representatives of the parties to the dispute cannot agree on a third person as the impartial member, the Board makes the appointment. In case either party or both parties fail to designate their own

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69 Laws of New Jersey, 1946, c. 38, secs. 8, 9, 10,11; Laws of Missouri, 1947, H. B. 180, secs. 14, 15, 16, 17.

representatives within the specified time, the Board again makes the appointment but allows the party concerned to select a preference from a list of five persons suggested by the Board.[70]

Under the New Jersey and Missouri acts, should either party to the dispute refuse to accept the recommendation of the Public Hearing Panel, the Governor is to review the dispute and, if in his opinion "the failure of continued operation of the public utility threatens the public interest, health and welfare", he may seize the utility in the name of the State.[71] Thus, the recommendation of the Panel is binding unless either party wishes state seizure.

The Governor is empowered to make rules and regulations to keep the utility in operation. He may put the operation of the utility in the hands of any state agency or department he may designate. The utility is to be returned to the owners "as soon thereafter as possible after settlement of the dispute".[72]

In April, 1947, after a series of cases and disputes that invoked the New Jersey act, the New Jersey Legislature amended the earlier law so that one additional step was

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70 Laws of New Jersey, 1946, c. 38, sec. 12; Laws of Missouri, 1947, H. B. 180, sec. 18.

71 Laws of New Jersey, 1946, c. 38, sec. 13; Laws of Missouri, 1947, H. B. 180, sec. 19.

72 _Loc_. _cit_.

imposed after state seizure. Should no settlement have come about within ten days after the Governor has taken possession of the plant, the dispute is submitted to a Board of Arbitration.[73]

The Board of Arbitration is composed of five members. The method of choosing these members is similar to the method used in choosing the Public Hearing Panel in that each party to the dispute designates a member to be its representative and these two designate three disinterested and impartial persons. The same procedure is used in case of failure to agree on the impartial members or in case either party or both parties fail to designate a person to represent them.[74]

Within thirty days, the Board holds hearings, gathers all the facts about the dispute, makes written findings of fact and hands down its decision. The findings and decision of the Board of Arbitration are filed with the Board of Mediation, the Governor, and a copy is sent to each party. The decision is binding on all parties.[75]

The insertion of the Board of Arbitration into the procedure was designed to prevent a stalemate in negotiations after seizure. This provision, like the others of the

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73 Laws of New Jersey, 1946, c. 38 as amended Laws of 1947, c. 47, sec. 4.

74 Loc. cit.

75 Loc. cit.

amendment, was aimed directly at certain defects in the act which became apparent after the procedure had been in operation for a year.

The amendment to the earlier New Jersey act also provided for a system of fines and penalties which were lacking in the original statute. Any organization which violates the act is subject to a fine of $10,000 per day for each day of service stoppage.[76] Any individual who violates the act or aids or gives guidance to violations of the act, is guilty of a misdemeanor and subject to a fine of not less than $250 nor more than $500 or imprisonment for thirty days or both.[77] The New Jersey statute was further amended at a later date and the provisions for imprisonment taken out of the law.[78]

The Missouri statute also imposes fines and penalties for violation of the act. The penalties imposed upon labor for violation of the statute are more severe than those under the New Jersey statute. Any employee who strikes against the utility in violation of the act loses all rights as an employee of the utility and can be rehired only as a new employee. Any labor organization that violates the act is fined $10,000 a day for each day of work stoppage, payable to the State Public School Fund. Any officer of a

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76 Laws of New Jersey, 1946, c. 38, as amended Laws of 1947, c. 47, sec. 8.

77 *Ibid.*, sec. 9.

78 Laws of New Jersey, 1946, c. 38, as amended Laws of 1947, c. 47, as amended c. 75, sec. 8.

labor union who participates in calling, inciting or supporting a strike is fined $1,000 payable to the Public School Fund.

Likewise, the penalties on management for violation of the statute are also more severe than those found in the New Jersey act. A utility which engages in a lockout is fined $10,000 a day for each day of the lockout, payable to the Public School Fund. Further, should the State Board of Mediation find that the utility has failed to bargain in good faith, the State Board certifies such finding, along with the record of any proceedings that support it, to the Public Service Commission of the state. If the Public Service Commission sustains the contention that the utility has failed to bargain in good faith, it may revoke the certificate of convenience and necessity of the utility or impose any other penalties on the utility that are provided by law.[79]

The large fines plus the possible loss of employee rights for labor and the possible loss of the certificate of convenience and necessity for the utility are the strongest penalties found in any of the ten laws.

The Massachusetts and Virginia statutes, which follow the New Jersey pattern, vary somewhat from the New Jersey - Missouri provisions. They both end in state seizure but require no compulsory arbitration. They are a distinct and

79 Laws of Missouri, 1947, H. B. 180, sec. 21.

separate application of the state seizure pattern of approach.

Whenever the Commissioner of Labor and Industries of Massachusetts finds that a labor dispute has not been settled by collective bargaining and may threaten an interruption of service, he "certifies" such dispute to the Governor. The Governor then investigates and, if he finds an interruption of service may be threatened, proclaims that such interruption would endanger the health or safety of the community. After the proclamation, the Governor is authorized to invoke several steps in an effort to settle the dispute.[80]

The Governor may require the parties to the dispute to appear before a moderator and show cause why they should not submit the dispute to voluntary arbitration. If no agreement on arbitration has been reached after a period of fifteen days, the findings of the moderator are published, in the hope that the pressure of public opinion would bring a settlement to the dispute.[81]

As an alternative to the procedure described in the preceding paragraph, the Governor may "request" the parties to arbitrate the dispute before a three-man Emergency Board of Arbitration. One of these three is to represent industry, one to represent labor and the third to represent the general public. The Emergency Board is required to hold its hearings,

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80 Laws of Massachusetts, 1947, c. 596, sec. 3.

81 *Ibid.*, sec. 3(A).

make and file a report with the Governor within thirty days. During this time there shall be no change in the conditions of labor nor any interruption of service.[82] It is well to note that the Governor has the power only to "request" that the parties arbitrate the dispute before this Board.

Should either of these attempts fail to secure a settlement of the dispute, or should the dispute be of such nature that the above procedures cannot apply, the Governor, if he finds that interruption of service would endanger the health or safety of the community, is empowered to declare that an emergency exists.[83] During the emergency the Governor is authorized to use one of two procedures to protect the people of the commonwealth.

First, the Governor may enter into arrangements with either or both parties to the dispute for continuing the production and distribution of the goods or services in question. The Governor has the power to prescribe rules and regulations to put these arrangements into force and to see that there is no interference with the arrangements.[84] In other words, the Governor may attempt to get either side to the dispute to give up its idea of a strike or lockout in favor of continued operation of the plant for the public good.

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82 Laws of Massachusetts, 1947, c. 596, sec. 3(B).

83 Ibid., sec. 4,(a).

84 Ibid., sec. 4,(a)(A).

The other alternative to this voluntary agreement procedure is for the Governor to seize the plant. The Governor may designate any agency or department of the commonwealth to operate the plant and may lay down any rules and regulations necessary for state operation. The plant or facility may be operated for the account of the persons operating it immediately prior to seizure or such persons may waive all claims to the proceeds of the operation in favor of a court-determined compensatory payment for the use of the property. If the owners of the seized plant wish to waive any claim to the proceeds of state operation, they must file written notice with the Governor within ten days after seizure.[85]

During seizure the rates of pay and conditions of labor remain the same unless the Governor wishes to make the changes that were recommended by the Emergency Board of Arbitration. If no Emergency Board had been appointed in the procedure before seizure, the Governor may appoint such a Board to make recommendations on wage rates and conditions of labor for the period of state operation. These recommendations may be put into effect at the discretion of the Governor.[86]

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85 Laws of Massachusetts, 1947, c. 596, sec. 4, (a)(B)(1).

86 *Ibid.*, sec. 4,(a)(B)(2).

During the emergency it is unlawful for any person or persons to engage in a cessation of work or to interfere with the operation of the plant when operated by the commonwealth. This applies to direction or guidance of work stoppages as well.[87]

The seizure is ended whenever the parties to the dispute jointly notify the Governor that they have executed an agreement or whenever the Governor deems that intervention is no longer necessary to safeguard the public, even though no settlement has been reached.[88]

The Massachusetts statute does not lay down fines or penalties for violation of the act. Rather, it grants the commonwealth the power to go to court and secure injunctions against illegal action and it gives the courts the responsibility of enforcing the provisions of the statute.[89]

It is interesting to note that the Massachusetts act does not provide for compulsion in any of its provisions. Neither does it provide any procedure for settlement after the commonwealth has seized the plant in order to prevent service stoppages.

The other statute that follows the New Jersey pattern of state seizure but which does not provide for compulsory

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87 Laws of Massachusetts, 1947, c. 596, sec. 4,(b).

88 *Ibid.*, sec. 4,(c)(d).

89 *Ibid.*, sec. 5.

arbitration is that of Virginia. The Virginia statute is peculiar in that it does not prohibit strikes as such. It is distinct in its approach to the problem in this respect. In the place of any prohibition of strikes, a procedure based on voluntary action and ending in governmental seizure is provided.

Before either party can engage in a strike or lockout, it must comply to the four basic steps of the procedure. The first of the four steps has been noted above.[90] That is, whenever either party desires a change in contract it must file written notice with the other party and the Governor. The notice must give specific details of the proposed change, set a time within sixty days and a place at which representatives of both parties will meet and hold a conference to negotiate the changes in the contract. The so-called "first conference" continues until both parties agree that there is no further use in bargaining. At the adjournment of the first conference, a date for the second conference is set and the Governor notified of the continued disagreement.[91]

The next step is the "second conference" which must take place within ten days of the adjournment of the first conference. It is recognized that the second conference is of a more serious nature than the first. The Governor may

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90 See p. 56 ff.

91 Acts of Assembly (Virginia), 1947, c. 9, sec. 4,(a).

attend the second conference or he may send a personal representative in an attempt to exert effort in behalf of settlement.

The second conference continues until either party feels that further negotiation would be fruitless. Upon notification of the other party and the Governor that one party is unwilling to continue negotiations, the conference is adjourned.[92]

The third step comes when the Governor receives notice that the conference has ended. Upon receipt of such notice, it is his duty to request both parties to submit the dispute to arbitration.[93] This is a purely voluntary arbitration and the Governor can only "request" both parties to arbitrate.

Should the parties refuse the request of voluntary arbitration, then a strike or lockout is permitted. However, the party that decides to engage in strike or lockout must, by law, file a copy of its intentions, naming a date not less than five weeks in the future that such strike or lockout will take place.[94] This provides a "cooling off" period as well as time for the Governor to investigate and take action as prescribed by the act.

After the declaration of intent and naming of a date

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92 Acts of Assembly (Virginia), 1947, c. 9, sec. 4(b).

93 Ibid., sec. 4(c).

94 Ibid., sec. 4(b).

for the strike or lockout to take place, the Governor then investigates the proposed work stoppage. If he concludes that the stoppage will "constitute a serious threat to the public health, safety or welfare" he may issue a proclamation declaring that he will take possession of the plant or facility at the time of such stoppage.[95]

After the proclamation of intent to seize the plant or facility, the Governor's next step is to decide which employees or positions of employment are essential to the continuity of service. Deciding this, he is to poll the workers on these jobs to see if they will work for the state. Any persons wishing to stay at their jobs may do so. Management is required to furnish the Governor information as to which positions are essential and the names of the persons holding these positions.[96] The status of the employee is not to be affected by either his acceptance or refusal to work for the state.[97]

If the workers, collectively or individually, decide not to work for the state, then the Governor must institute measures to secure and train persons to fill the vacancies. The Governor and/or his agents have the power to enter the property of the utility, familiarize themselves with the

95 Acts of Assembly (Virginia), 1947, c. 9, sec. 4(b).

96 *Ibid.*, sec. 7.

97 *Ibid.*, sec. 11.

nature of the work and bring the prospective replacements onto the property for training.[98] It is absolutely unlawful for any person or organization to interfere with this training process in any manner. Picketing is especially forbidden.[99]

The expenses of such training are to be paid from state funds and are to be recouped from operation of the utility by the state. In case of a settlement of the dispute while the training is going on and before the Governor takes possession of the plant, the utility must reimburse the state treasury for the expenses of training.[100]

If the dispute has not been settled by the end of the five-weeks period, the strike or lockout occurs. The two conferences and the five weeks allowed for training and preparation for seizure set up an extended cooling off period. The minimum time that a strike could occur from the time of the filing of the proposed changes is forty-five days; that is, there must be ten days between conferences and a thirty-five day cooling off period. The law was designed with the hope that this long cooling off period would promote voluntary settlement of the dispute.

When the strike or lockout occurs, the Governor takes over the plant or facility. While the plant is under

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98 Acts of Assembly (Virginia), 1947, c. 9, sec. 8.

99 *Ibid.*, sec. 9.

100 *Ibid.*, secs. 10, 12-a.

governmental operation there is to be no change in the rates of pay or working conditions of the employees.[101]

A novel provision in the Virginia statute is that the state imposes a 15 per cent service charge on the utility during state operation. That is, during the period of state operation, the Governor collects the gross revenue and pays all expenses; however, he remits only 85 per cent of the net income to the utility. The remaining 15 per cent is used to cover state expenses of operation and to train replacements for the workers who left their jobs.[102]

The apparent intent of these last two items is to speed settlement of the dispute after state seizure. That is, during seizure no change can be made in wages or conditions of employment, thus labor is stalemated in its hopes for wage increases or changed conditions. Likewise, management loses a share of the profits of the operation, thus providing it with an incentive to settle the dispute.

The property is restored to its owners when the representatives of the owners notify the Governor in writing that the utility is in a position to resume normal operations. The Governor or his agent ascertains the correctness of such notification and, upon confirmation of the position of the

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101 Acts of Assembly (Virginia), 1947, c. 9, sec. 11.

102 *Ibid.*, sec. 12.

utility, restores it to its proper owners.[103]

The Virginia statute sets up heavy fines and penalties for violation of the act. Any individual who violates the statute is guilty of a misdemeanor and is fined not less than $10 nor more than $1,000 and imprisonment up to one year. Any organization that violates the statute is liable to a fine not to exceed $10,000 a day for each day of work stoppage.[104]

The New Jersey and Missouri statutes are similar to the Virginia and Massachusetts statutes only in their end result, that of state seizure. Virginia and Massachusetts attempt to solve the problem of continuity of service without resort to compulsion, which is used in the other two patterns and the New Jersey-Missouri type of approach.

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103 Acts of Assembly (Virginia), 1947, c. 9, sec. 13.

104 *Ibid.*, secs. 14, 15.

CHAPTER VI

APPLICATION OF ANTI-STRIKE LEGISLATION

Although these ten anti-strike laws have been on the statute books of the various states for several years, they have been used infrequently. However, cases where the laws have been used present an interesting picture of attempts to deal with a specific problem, through the medium of state legislation.

Since the New Jersey statute is oldest in point of time, most of the significant cases of application have arisen under it. It is here that the whole type of legislation, generally, has stood the tests of court action and the tests of practical application. That is not to say, however, that the other acts have not been applied and in many cases brought interesting results from their application. But since it is under the New Jersey act that most of the experience with the application of this type of legislation has occurred, it is in this area that the discussion of application of these statutes shall be centered.

In writing of the original New Jersey 1946 act, Dr. Lois MacDonald of New York University observed:

> . . . the statute was not so rigorous as had been proposed originally in the Senate bill. Neither was it so comprehensive as might have been expected in the light of the broad recommendations made by the Governor . . .[1]

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1 Lois MacDonald, Compulsory Arbitration in New Jersey (New York University: New York, 1949), p. 13.

There was no penalty for refusal to abide by the terms of the act. Striking as such was not made illegal, even after state seizure. The statute relied upon the force of public opinion to induce the parties to the dispute to accept the recommendations of the Public Hearing Panel and to refrain from striking while the utility was being operated by the state.

Between April 6, 1946, when the original act became effective, and April 7, 1947, when the first amendment was added, there were seven labor disputes that came before the New Jersey State Board of Mediation. Four of these involved local transportation but the lines were not seized on the grounds that competing facilities were available to the consumers. These disputes were all settled in a short time with a Public Hearing Panel being established in one case only. The other three labor disputes in that early period were in gas plants. Seizure took place in all three cases and settlement came about through the use of the Public Hearing Panel.[2]

Seizure was carried on under the provision of the act that allowed the Governor to take immediate possession of the plant whenever a strike or lockout took place that would

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2 MacDonald, Compulsory Arbitration . . . ., op. cit., pp. 16-17, citing Allen Weisenfeld, "Arbitrating Labor Disputes in New Jersey," (unpublished manuscript), Mr. Weisenfeld served as Secretary of the State Board of Mediation during this period.

threaten the public interest, health or welfare whether notice of proposed changes in contract or other procedural steps had been taken or not.[3]

The labor difficulties in 1946 came to a climax on Christmas Eve when gas plant workers walked off their jobs in the Jersey City and Piscataway area. Within a short time these workers were joined by gas workers in the other plants of the Public Service Electric and Gas Company who felt they were being used as strike-breakers since all the plants were interconnected.[4] The state officials seem to have been caught unprepared by these quick strikes. Seizure was effected after the walkout and supervisory employees kept the gas in the lines. An agreement was finally reached and the plants released from state seizure.[5]

The flaws in the law became apparent. There was speculation that the action of these three gas strikes had proved the New Jersey act ineffective as a method of dealing with service stoppages.[6] The lesson learned from these strikes was that the state must be ready to seize the plants

3 Laws of New Jersey, 1946, c. 38, sec. 13.

4 "Gas Strike," Public Utilities Fortnightly, 39:125, January 16, 1947.

5 "Orders Gas Plants Returned," Public Utilities Fortnightly, 39:257, February 13, 1947.

6 "The Law That Failed," Business Week, January 4, 1947, p. 58.

before the strike date and that striking after seizure must be prohibited. The amendments in April attempted to correct these weaknesses in the law.

As Governor Walter E. Edge retired from office in January, 1947, he recommended that the New Jersey anti-strike law be re-written. He asked that "teeth" be put into the law; specifically, compulsory arbitration after seizure and prohibition of strikes against the state after seizure. Governor Driscoll, his successor, also requested "sanctions".[7] Although the requests of the Governors began legislative committee action investigating the workings of the act, it took more than a speech or a "request" to start revision of the law.

The telephone strike in April, 1947, started action for the revision of the act. The Christmas gas strikes had pointed out the weaknesses of the law but it was the April telephone strikes that stirred the New Jersey legislature into action. The dispute, between the Independent Traffic Telephone Workers Federation of New Jersey and the New Jersey Bell Telephone Company, was part of the nationwide telephone strike of 1947. Prior to the expiration of the contract between the parties on March 31, 1947, negotiations had failed to produce any agreement on new wages, hours and

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7 John Hassett, "Utility Labor Bills in State Capitols," _Public Utilities Fortnightly_, 39:277, February 27, 1947.

conditions of employment. On April 7 the union called a strike. The hurried action that followed has been described in this manner:

> . . . On April 7, 1947, the Union called a strike and engaged in peaceful picketing of the buildings of the company. Later that same day, Governor Driscoll seized the facilities in accordance with the terms of the statute, which at that date did not proscribe strikes or picketing of struck plants.
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> On the following day, April 8, the state legislature enacted an amended bill within a few hours after the introduction. There were no public hearings and apparently there was little debate on the measure. The Governor signed the bill on April 9, and the new law became effective as of that date. . .[8]

The amended statute made it unlawful for persons to engage in any strike or work stoppage against the state after seizure or to refuse to work for the state. In addition, compulsory arbitration within ten days after state seizure and penalties for violation of the act were provided.[9]

The new terms of the statute were immediately applied. Token arrests were made and the Attorney General of New Jersey entered suit against the union to recover the $10,000 fine for the single day of violation. A court battle to stop enforcement and to test the constitutionality of the statute was begun.[10]

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8 MacDonald, Compulsory Arbitration . . ., op. cit., pp. 17-18.

9 See pp. 58 ff.

10 "Strike Laws Tested," Business Week, April 19, 1947, p. 103.

On April 22, 1947, the day before the hearing in federal court on an injunction to stop the enforcement of the penalties, the legislature again amended the statute. The criminal penalties and imprisonment for violation of the act were removed and fines were substituted instead.[11]

A long legal battle followed. The Attorney General of New Jersey appeared before the Court of Chancery and sought an injunction restraining his office from enforcing the statute pending a decision on its constitutionality. On the basis of this petition, appeal before the Federal Court was dissolved,[12] and the issue of constitutionality of the statute went into the state courts. In addition, further appeal by the union to the Supreme Court of the United States was denied.[13]

The case was argued before the Court of Chancery with both the company and the union challenging the validity of the statute. Dr. MacDonald, quoting from the briefs filed with the Chancery Court, summarizes the arguments presented by both sides:

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11 Laws of New Jersey, 1946, c. 38, as amended Laws of 1947, c. 47 as amended c. 75, sec. 8.

12 Traffic Telephone Workers Federation v. Driscoll, 72 F. Supp. 499, (1947).

13 Traffic Telephone Workers Federation v. Driscoll, 332 U. S. 833; 68 Sup. Ct. 212 (1947).

> . . . The Company based its arguments on two main contentions: (1) seizure is unconstitutional because it provides no compensation; and (2) the compulsory arbitration sections are unconstitutional because they delegate legislative power to an administrative agency without providing adequate standards.
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> The union's chief arguments were: (1) compulsory arbitration deprives members of the equal protection of the laws, impairs liberty of contract, and imposes involuntary servitude; (2) the strike prohibition, with its consequent effect on picketing is a deprivate of constitutional rights, creating a type of second-class citizenship for public utility workers; and (3) the statute forbids employees acting in concert in a manner lawful for an individual . . .[14]

On September 10, 1948, the court sustained the constitutionality of the statute[15] and appeal was taken to the New Jersey Supreme Court on substantially the same grounds as noted above.

The New Jersey Supreme Court set down its decision on May 26, 1949, over two years after the legal action was started. The Supreme Court sustained the statute on all grounds except the lack of standards for the guidance of the Board of Arbitration. In the absence of such provisions, the power to set wages and working conditions was held to be an unconstitutional delegation of legislative authority.

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14 MacDonald, Compulsory Arbitration . . ., op. cit., pp. 22-23, quoting from briefs filed in State v. Traffic Telephone Workers Federation of New Jersey. In Chancery of New Jersey, Docket 158, April 15, 1948.

15 State v. Traffic Telephone Workers Federation of New Jersey, 61 Atl (2nd) 570 (1948).

Discussing this issue, Chief Justice Vanderbilt stated in part:

> . . . Delegation of legislative authority must always prescribe standards that are to govern the administrative agency in the exercise of the powers thus delegated to it.
>
> If no standards are set up to guide the administrative agency, the legislation is void as passing beyond the legitimate bounds of delegation of legislative power as constituting the surrender and abdication to an alien body of a power which the constitution confers on the Senate and the General Assembly alone . . .
>
> The personnel of the board of arbitration under the statute will vary with each strike. There is no permanence or continuity in the various boards of arbitration which may be constituted in successive cases. There is, thus, an even greater need for specific standards than there would be in the case of a continuous administrative body which might gather experience as it went along . . . Unless standards are set up in any submission to arbitration the tendency to compromise and be guided in part by expediency as distinguished from objective consideration and real right is inevitable . . .[16]

With this criticism in mind, the New Jersey legislature again undertook to change the basic 1946 statute. The legislature set up standards for the arbitration board to follow and restricted its decisions to certain matters. No other part of the act was revised. Under the revision:

> . . . the board shall not render findings of fact, decision or order upon any issue or issues which are not proper subjects for collective bargaining for the reason that they do not pertain to wages, hours, or conditions of employment.

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16 New Jersey v. Traffic Telephone Workers Federation, 66 Atl (2nd) 616 (1949).

Where there is no contract between the parties, or where there is a contract but the parties are negotiating a new contract or amendments to the existing contract, and issues arise which are the subject of dispute between the parties to such negotiations, the board shall make a just and reasonable determination of the dispute, and in determining such issues, base its findings of fact, decision and order upon the following factors:

(1) The interest and welfare of the public.

(2) Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceedings, and the wages, hours, and conditions of employment of employees doing the same, similar or comparable work or work requiring the same, similar or comparable skills and expenditures of energy and effort, giving consideration to such factors as are peculiar to the industry involved.

(3) Comparison of wages, hours and conditions of employment as reflected in industries in general and in public utilities in particular throughout the nation and the State of New Jersey.

(4) The security and tenure of employment with due regard for the effect of technological changes thereon as well as the effect of any unique skills and attributes developed in the industry.

(5) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, arbitration or otherwise between the parties or in the industry.[17]

The revision was enacted June 16, 1949, and the legislature hoped that by this final amendment the basic law of 1946 had now been changed in such a way as to stand the test of constitutionality and still remain a workable solution to the problem. It is readily seen that sufficient standards were set up by the 1949 amendment.

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17 Laws of New Jersey, 1946, c. 38; Laws of 1947, c. 47; c. 75; as amended Laws of 1949, c. 308, sec. 1.

Although the law has been in the process of development since 1946, the usage of the statute has been extensive. Dr. MacDonald has compiled the following statistics on usage of the law for the period from 1946 until March 1949: 176 notices of change of contract have been received by the State Board of Mediation; 106 of these were settled without use of the law; of these seventy cases where the Board took jurisdiction, nearly half involved transportation, a quarter of the cases involved disputes in the gas industry, and the remaining 25 per cent being composed of telephone, commercial offices of public utilities, electric power and water companies in that order. Seventeen Public Hearing Panels were set up, five of these Panels being successful in closing the cases; and eighteen Boards of Arbitration were appointed, eight as a result of state seizure and ten by voluntary stipulation, final awards were made by fourteen of these boards, the other cases being settled prior to the decisions of the arbitrators.[18]

The formal action of the statute was used in about 40 per cent of the total number of notices filed. Of the cases where the procedure was used, about 11 per cent went the full course of the procedure to compulsory arbitration.

New Jersey has acted in the capacity of a "pioneer" in

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18 MacDonald, Compulsory Arbitration . . ., op. cit., pp. 26-27.

this field and it is here that this type of legislative approach has been tested. It is here that the weaknesses of the acts have also appeared.

Having a different approach to the problem in that it has no compulsory features, the Virginia statute also has an interesting background and application.

The 1946 Chesapeake Ferry strike was significant because it laid the precedent for future legislation. On February 8, 1946, the ferry crews, members of the Seafarers International Union (AFL), struck for higher wages. At this time, there was no anti-strike law on the Virginia statute books. A special act of the legislature was passed allowing state seizure by the Highway Commission.[19]

The Ferry Company refused to surrender the property and took the case to court. The Court ruled that seizure was legal provided that "reasonable compensation be paid and the property be maintained in a similar order and condition".[20]

This was only the beginning of the Virginia troubles. In the spring of 1946, the International Brotherhood of Electrical Workers Union and the Virginia Electric and Power Company had been negotiating several months for a new contract. The bargaining appeared stalemated and the Union served a strike notice in April, 1946. There was no legal tool to

19 Acts of Assembly (Virginia), 1946, c. 39.

20 Anderson v. Chesapeake Ferry Company, 43 SE (2d) 10.

prevent the strike and the two million people in sixty-three Virginia counties that would have been affected waited apprehensively for their lights to go out.[21]

At this point, Governor William M. Tuck took action. Recalling an obscure law passed in the colonial days when Patrick Henry was Governor of Virginia that declared every able-bodied man a member of the "unorganized militia", the Governor proclaimed an emergency and "drafted" the 3500 employees of Virginia Electric and Power into the National Guard. The workers were furloughed to their jobs with the threat of court martial if they struck. Twenty-four hours before the strike deadline, the action was called off and the Governor issued "honorable discharges" to the "recruits".[22]

Realizing that the old law, good luck and a humorous situation would not prevent future strikes, Governor Tuck called for legislative action to deal with the problem. The Virginia Advisory Legislative Council undertook the study of a proposed law drawn up by the Attorney General. The end result was the Virginia statute discussed above.[23]

It will be recalled that the Virginia statute is peculiar in that it allows strikes, has no compulsion in its

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21 "State Rights," Business Week, April 6, 1946, p. 98.

22 James J. Kilpatrick, "Virginia Keeps her Public Utilities Running," Public Utilities Fortnightly, 44:843, December 22, 1949.

23 See pp. 65 ff.

procedure and ends in state seizure. The law was so written as to discourage strikes or lockouts by making it very expensive, both in terms of money and in terms of benefits, to cause a work stoppage.

The Virginia act has had less usage than the New Jersey act. As of December, 1949, eighty-five proceedings had been filed under the act and only five had led to state seizure.[24]

The first test of the workability of the Virginia act came in the spring of 1947 in connection with the nationwide telephone strike. The Chesapeake and Potomac Telephone Company and the Virginia Federation of Telephone Workers negotiations broke down in February and the first conference was begun. By April, the Governor's request for arbitration had been refused and a strike date set for May 17th. Governor Tuck declared he would seize the facilities on that date and preparations for seizure were begun. After several days' hesitation, the workers polled by the State Corporation Commission, the Governor's appointed agent to run the utility, showed that the workers would continue on their jobs for the state. Elsewhere in the nation, long distance and local lines were closed because of strike. Only in Virginia and Indiana did the lines stay open.[25]

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24 Kilpatrick, "Virginia Keeps . . .," op. cit., p. 847.

25 "Strike Laws Tested," Business Week, April 19, 1947, p. 102.

Of the five seizures, the one above involved the state-wide Bell Company affiliate, one involved a small phone company and three involved local transportation companies. All of the seizures were executed without violence or recriminations.

In writing about the operation of the Virginia law, Mr. Kilpatrick states:

> . . . There has been no predominant pattern for negotiations. Many proceedings have ended after satisfactory "first conferences". Many others have resulted in settlement, often with the assistance of a representative of the Governor, during the second conference phase. In perhaps 15 cases, the Governor has been required to ask the parties for arbitration of matters, in most instances, the utility companies have refused and strike notices have been filed--but disputes have been settled in the 35 day waiting period.[26]

Virginia seems to approve of the law as a fair means of settling public utility labor disputes. It was considered a deciding factor in the 1949 gubernatorial campaign by one writer.[27] Editorial comment after the 1947 phone strike was generally favorable with one newspaper going so far as to say that Virginia "may be pioneering in the field of labor relations as surely as she blazed a new trail for a free people in the first period of the American Revolution".[28]

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26 Kilpatrick, "Virginia Keeps . . .," op. cit. p. 849.

27 Ibid., p. 850.

28 "First Test of Utilities Act," Richmond News Leader, May 22, 1947.

Vance Julian, Chairman of the Missouri State Board of Mediation, has reviewed the experience of Missouri in operating under its statute. He indicated that during the first nine months of operation, forty-six cases had been docketed. Twenty of these cases were still pending at the time of the article. Of the remaining twenty-six cases, twelve had ended by the parties reaching new agreements on all issues before the expiration date of the contract. In ten disputes, the parties had agreed in writing before the expiration date to continue negotiations and if new contracts could not be reached, to use voluntary arbitration. Only one of the ten had not completed voluntary arbitration by June, 1948. Three cases had gone on to compulsory public hearing panels. In two of these, the parties accepted the recommendations of the panel and in the third, the parties reached agreement after the hearing was concluded but before the panel submitted its recommendations. One case was settled while an arbitration panel was being set up.[29]

According to Julian, questions of jurisdiction have presented some problems of application. The Missouri act, calling for jurisdiction over "transportation other than railroads" led to the board's ruling that "companies engaged in long distance trucking" came within the definition of the

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29 Vance Julian, "How Missouri's New Utility Anti-Strike Law Works," Public Utilities Fortnightly, 42:207, August 12, 1948.

law. The question of jurisdiction over taxicab companies, requested by the taxicab union, was pending decision of the Attorney General at the time of the article. Jurisdiction was denied to a radio station and a "bottled gas" company, when requested by the employees, as not being utilities under the meaning of the act.[30]

Although the Missouri statute specifically covers all utilities operating under governmental ownership and control, the Supreme Court of Missouri has held that the jurisdiction here is illegal. The Court said "Under our form of government, public office or employment never has been and cannot become a matter of bargaining and contract."[31]

Information about the application of the statutes in the other states attempting this approach is scarce. Only in such instances as the nationwide telephone strike of 1947 have the laws been given national publicity. Even this event gives examples of application on a very limited scale due to the fact that a limited number of states had anti-strike legislation that early in 1947. In fact, the very strike that called attention to the laws in effect at that time served to speed legislation designed to deal with the continuity of service in other states.

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30 Julian, "How Missouri's . . .," op. cit., p. 207.

31 City of Springfield v. Clouse, 206 SW (2d) 539, 545 (1947).

In Michigan, the statute was held unconstitutional in 1948 because of the peculiar provision that a circuit judge act as chairman of the Board of Mediation.[32] On June 1, 1949, the law was revised and modified, making it constitutional.[33]

Much court action has come as a result of jurisdictional questions in the application of the Wisconsin act. The jurisdiction of the act has been upheld where the federal government and federal legislation does not apply.[34] The statute has been amended so that it includes in its jurisdiction electric light and power cooperatives,[35] and this feature of the act has been held to be constitutional also.[36]

Since it was passed before the nationwide telephone strike of 1947, the Indiana statute had important application in dealing with this dispute. When the phone lines were closed down elsewhere in the country, Indiana and Virginia lines stayed open. The National Federation of Telephone

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32 Local 170, Transport Workers of America v. Godala, 322 Mich 332; 34 NW (2d) 71, 77.

33 "Modified Labor Law Signed," Public Utilities Fortnightly, 44:882, June 23, 1949.

34 IBEW Local B-953 v. Wisconsin Employment Relations Board, 30 NW (2d) 241.

35 "Cooperative under Anti-strike Law," Public Utilities Fortnightly, 43:46, March 31, 1949.

36 M. L. Friedman, "Compulsory Arbitration of Labor Disputes in the Public Utilities," George Washington Law Review, 17:370, April 1949, quoting State of Wisconsin ex. rel., Dairyland Power Cooperative v. Wisconsin Employment Relations Board, 22 L.R.R.M. 2351 (1948).

Workers ordered their Indiana locals not to go on strike. Actually no impasse was ever reached so that the procedures were never invoked.[37]

Indiana's Governor Gates claimed this as positive proof of the workability of the statute. However, Business Week adds, as an after-thought to this claim:

> . . . Most likely, neither management nor the union in Indiana was willing to have local issues go to arbitration; both preferred to follow a pattern set on national bargaining levels. Had the dispute involved only Indiana, the situation might have had a different twist.[38]

Even though the statutes have been applied infrequently, the application does show two things. First, application shows certain flaws in the statutes and in the general philosophy behind the acts, which will be discussed in the next chapter; and second, application shows that approach to the problem on the state legislative, private ownership level is possible and presents one possible approach to the problem of continued service.

In conclusion, the two basic approaches to the problem of continued service, the ownership approach and the legislative approach, seem to end with approximately the same result. That is, when either governmental ownership or private ownership with legislative procedures is used to solve the problem, the end result is generally compulsory

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37 "Strike Laws Tested," Business Week, April 19, 1947, p. 102.

38 Loc. cit.

arbitration. The main difference seems only to be the agency that enforces the procedure and owns the utilities.

The exceptions to this conclusion are the two states whose statutes do not contain compulsory arbitration provisions: Massachusetts and Virginia. Under these statutes, the settlement of the disputes remains the responsibility of the disputing parties and no compulsion is used to force a settlement.

CHAPTER VII

EFFECTS OF ANTI-STRIKE LEGISLATION

Since the ten statutes considered here have been in use for only a short period, it is difficult to draw any conclusions as to the effects of this type of legislation. Not only is information concerning application of the laws scarce but opinion as to the effectiveness of the statutes in accomplishing their objectives is hard to find. To many the whole question of anti-strike legislation comes down to a question of politics. That is, the laws have become a campaign question in many states and the appointments to the mediation and arbitration boards have been made with a view to the political advantage. Further, the Governor is usually charged with administration of the statutes and this also opens the way for charges of politics.

In an attempt to ascertain the effects and prevailing opinions of the laws as an approach to the problem of continued service, questionnaires were sent out to a selected list of utilities, local unions and labor leaders. The results of the canvass were disappointing. Over one hundred questionnaires were mailed and the total return, from both labor and management, was slightly better than 38 per cent. Of the inquiries sent to labor leaders and labor organizations, 29 per cent were returned. Of the questionnaires sent to

utilities, 47 per cent were returned; however, half of these felt that they could not answer the questions since they had not had sufficient experience with the statute or because they felt that as a public utility, operating under regulation and grant of the state government, they were in no position to give opinions or criticism of state laws.

Even though the returns of questionnaires were small, they give some indication of the attitude toward this type of legislation and provide some clue to the effect of the statutes. The information gained from the questionnaires will be utilized in this discussion of the effects of the statutes along with other information gained from letters and articles. Dr. Lois MacDonald's book on the New Jersey law also furnishes some material. Sample copies of the questionnaires are found in Appendix A.[1]

Labor is generally dissatisfied with the statutes. Nearly 94 per cent of the replies to the questionnaires sent to labor leaders and labor organizations considered the laws unsatisfactory. All of the labor leaders were strong in their condemnation of the legislation.

One member of a Missouri Central Trades and Labor Union was particularly strong in his condemnation of the Missouri act. He called the legislation "vicious" and a

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1 See p.130.

"club" put forth and passed by "enemies" of organized labor".[2] Organized labor in Missouri has been especially active in attempts to get the legislation repealed, including repeal of the statute, in a six-point program adopted by a meeting of the labor leaders representing every segment of organized labor in 1949.[3]

Labor's opposition to the legislation has been general. That is, the fight for repeal in nearly every state has been lead by labor. Only in Illinois was the campaign successful in defeating the initial legislation.[4]

It is interesting to note that only in those states where compulsion is not used, Massachusetts and Virginia, were there any labor organizations that felt the statutes were satisfactory. These unions, generally centered in Massachusetts, made up only 6 per cent of the returns.

As an approach to the problem of continued service, over 68 per cent of the labor organizations replied that no

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2 Since some of the organizations and individuals who answered questionnaires wish to remain anonymous, no names will be used here. Geographic locations, however, are useful in that some of the statutes differ in their approach of the problem.

3 "Vote to Oppose Ban on Strikes," Public Utilities Fortnightly, 39:256, February 17, 1947.

4 "Illinois Labor Wins," Public Utilities Fortnightly, 39:798, June 5, 1947; "Senate Passes Strike Law Over Labor Compromise Bill," Public Utilities Fortnightly, 39:866, June 19, 1947; and "Bucks Anti-Strike Law," Public Utilities Fortnightly, 39:256, February 16, 1947.

regulation at all (some substituting the phrase "free collective bargaining") was the best approach.

Since strikes are absolutely forbidden in all of the statutes except Virginia, labor is giving up one of its strongest weapons. It is only natural that the unions and labor leaders would oppose this type of legislation. Only where the unions are given adequate compensation by gaining other issues would one expect to find labor approval of the loss of the traditionally powerful and necessary weapon, the strike. Very few states have given additional weapons to labor in substitution for the loss of the right to strike.

Management, on the other hand, is split in its opinion of the statutes. In fact, 50 per cent of the utilities replied that the laws are unsatisfactory and 50 per cent replied that they are satisfactory. However, when asked what approach they favored to the problem of continued service, over 66 per cent indicated a preference for anti-strike legislation.

Dr. MacDonald found that in New Jersey neither labor nor management favored the law. Claiming that the law operated to the advantage of the other, both sides felt that the law was unfair and one-sided.[5]

The major objection of management seems to be the idea

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[5] Lois MacDonald, Compulsory Arbitration in New Jersey, (New York University: New York), 1949, p. 60.

of having contract provisions set by arbitration boards made up of persons unfamiliar with the conditions in the industry. For example, one Indiana utility manager commented on the questionnaire:

> . . . the arbitrators usually are lawyers, preachers, priests, school teachers and others who as a rule have no knowledge of problems involved and who generally act on the basis of emotion rather than fact.

Any statutes introducing methods of dealing with labor disputes which differ markedly from the customary pattern are bound to create sharp attitudes and differences of opinion.

The attitude of the public towards this type of legislation is difficult to find. Since the public is primarily concerned with continuity of service, they probably favor these laws. Articles about the Missouri and Virginia laws indicate that the public is pleased with the effects of the legislation.[6] James Kilpatrick, editorial writer for a Richmond paper, claims that Virginians are pleased with the operation of the Virginia statute. Various editorial comments from Virginia (furnished mostly by management) seem to indicate approval. However, it should be noted that the information on this point is scarce and that all available

6 Vance Julian, "How Missouri's New Anti-Strike Law Works," Public Utilities Fortnightly, 42:210, August 12, 1948, and James J. Kilpatrick, "Virginia Keeps Its Public Utilities Running," Public Utilities Fortnightly, 44:850, December 22, 1949.

comment indicating the public approval generally came from the management side of the question. Further, the laws do not arouse public attention unless they are actively used to bring about settlement. Since many of the statutes are designed to prevent strikes and work stoppages by making it too "expensive" for either side to do anything but follow the procedure of the statute, the attention of the public is not centered on the workings of the acts.

The statutes have had a decided effect on collective bargaining. In general, the compulsory arbitration features of the statutes have tended to replace the collective bargaining process. In other words, because a compulsory settlement is the end result in most disputes, both parties look to this arbitration when placing their offers and demands and in arguing their cases.

Both sides set their goals as high as possible and refuse to compromise or bargain since they realize that in the end they can force the issue to a decision before a board of arbitration. Since these boards have a tendency to compromise the issues in question, it is expedient policy for each side to enter arbitration with the highest demands or lowest offers possible.

The tendency to compromise generally does not satisfy either party. In answering the questionnaire, over 73 per cent of the labor organizations replied that the laws have

benefitted them rarely in regard to wages, hours, and working conditions. The same groups that found the laws satisfactory replied that the statutes have benefitted them greatly. Nearly 14 per cent gave no answer and 6 per cent replied the statutes have benefitted them "at times".

A majority of the utilities, 58 per cent, indicated that the statutes have benefitted them rarely, while more than 8 per cent replied that they have been benefitted greatly. However, 33 per cent of the utilities felt that they have been benefitted at times, which follows the indication that half the utilities found the statutes satisfactory.

In addition, there is a tendency for the basic issues of the dispute to remain obscured by a multitude of demands and charges. In hopes of making a better settlement, each side is not adverse to presenting every conceivable type of demand. Dr. MacDonald quotes one public member of a New Jersey Board as saying, "they come with everything including the kitchen sink, properly dressed up".[7] Although both sides probably intend to withdraw a number of their demands, the multitude of demand tends to confuse the real issue that has caused the dispute and puts an extra burden on the arbitrators.

Both sides feel that the arbitration decisions have been unfavorable to their cause. Over 53 per cent of the labor organizations answered that the arbitration decisions

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7 MacDonald, Compulsory Arbitration . . ., op. cit., p. 68.

were generally unfavorable to labor, with only 6 per cent feeling that arbitration decisions favored labor. (This latter answer came from the same groups that had a favorable opinion of the statutes in general.) Twenty per cent answered that the arbitration decisions generally favored neither side and 20 per cent held no opinion on this question. The utilities held similar views with over 49 per cent answering that the decisions have been unfavorable to management and 8 per cent answering that the decisions have clearly favored their cause. Thirty-three per cent answered that the decisions have favored neither side and over 16 per cent gave no answer. In reply to the question regarding wage increases that was put to the utilities, over 41 per cent answered that wages have been increased without justification by arbitration, (the same 41 per cent that felt that the decisions were unfavorable to management), over 33 per cent answered that the decisions have had no effect on wages and 25 per cent had no opinion.

There seems to be a tendency for the parties to attempt to fulfill the conditions of the procedures in as short a time as possible so that the arbitration proceedings may begin. In doing this, opportunities for settlement of the dispute and traditional bargaining is by-passed in the haste.

As further evidence that compulsory arbitration tends

to replace free collective bargaining, comments on the questionnaires mentioned that a "poor atmosphere" prevailed when the laws were used. One utility in New Jersey noted:

> To illustrate how compulsory arbitration tends to negate the principle of free collective bargaining, Counsel for the union representing the switchboard operators in New Jersey stated during hearings in the traffic dispute that the union representing our plant department employees proposed to proceed to arbitration under the State statute in July 1950 when their current contract expires. This statement preceded by several weeks the making of demands by either party. Obviously, free collective bargaining cannot flourish in that sort of atmosphere. Neither party will make any real concessions for the simple reason that any company concessions would be used by the unions as a "floor" in arbitration proceedings and any union concessions would be used by the company as a "ceiling".

It was the opinion of several persons who sent comments on the workings of the statutes that with the tendency to compromise the issues by the arbitration boards, the disputes were never actually settled. Arbitration merely served to postpone the strikes and work stoppages but did not settle the basic issue in dispute. Dr. MacDonald also found this to be true.[8]

Because of the desire of both parties to proceed to arbitration as quickly as possible, there is a tendency for each party to accuse the other of "stalling" and "playing politics". This tends to create ill will and certainly does not produce an atmosphere conducive to free bargaining.

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8 MacDonald, Compulsory Arbitration . . ., op. cit., p. 60.

One possible effect of this type of legislation is that it would increase the membership of the union because it forces the utilities to recognize and bargain with their employees. However, the opposite could be the effect of the laws too because the law takes away the powerful right to strike, forces the utilities to deal with the members, and in some cases guarantees the workers the right to their jobs during labor difficulties. Since the workers might see no further need for a union, some locals might lose membership.

In attempting to answer this question, it was found from the incomplete returns on the labor questionnaires that in only 20 per cent of the organizations was there any loss in membership. However, in only slightly over 6 per cent of the organizations was there any increase in membership. These locals were the same group that had shown approval of the laws in general, perhaps being a significant reason for this approval. Over 46 per cent of the replies indicated no change in membership and over 28 per cent failed to answer this question. Therefore, it would seem that the laws have had very little over-all effect on union strength.

When asked if the laws had affected their relationship with the employers, over 73 per cent of the unions answered that relations with management have been worsened. Again the same 6 per cent answered that relations have improved while 20 per cent answered that the laws have had

no effect on their relations with management. However, 50 per cent of the utilities were of the opinion that the laws have not affected their relations with the workers. Twenty-five per cent answered that relations with the workers have been worsened by the laws and over 16 per cent felt that employer-employee relations have been improved.

The effect on the bargaining positions of the parties to disputes followed the same pattern. The majority (80 per cent) of the unions indicated that the laws have had a detrimental effect on their bargaining position, the same 6 per cent answered that their bargaining position has been improved, and over 13 per cent replied that the laws have not affected the bargaining position. Again, 50 per cent of the utilities indicated that the laws have had a detrimental effect on their bargaining position, 25 per cent found their bargaining position improved, 16 per cent replied that the laws have not affected their bargaining position, and over 8 per cent gave no answer.

This type of legislation has had a profound effect on labor union policies. The role of labor in the production of public utility services is generally very small. That is, it takes very few men to produce electricity or gas, for example. In the short run, the utilities have found that they are entirely independent of organized labor. During some work stoppages, supervisory employees have been able to maintain

full service even though all the workers have left their posts.

Added to its already minor role in the production of the utility services, labor has been deprived of its right to strike through anti-strike legislation. This situation has served to turn the attention of the labor organizations from the traditional economic battles of strikes and bargaining to the battles of politics in an attempt to voice its demands. The increasing role in politics on the part of labor in general has grown in the last few years. Political action is fast becoming the chief weapon available to enforce the workers' demands, particularly the demands of the public utility workers who have been deprived of the right to strike.

Therefore, public utility labor has been forced to turn to politics as the only remaining weapon. Labor has led the fight for repeal of this type of legislation in every state. Where repeal has failed, other political methods are attempted. As evidence of this fact, one utility manager from Indiana commented:

> In our state we have a compulsory arbitration law which was fairly well administered until the present Democratic Governor campaigned on the repeal of this arbitration law, saying that it was unfair to organized labor. He was elected by a very minor majority while the state legislature is Republican. Since the laws were not repealed by vote, he made the statement that he would make the utilities damned sorry that there was an arbitration law and proceeded to fill all the Arbitration Boards with ex-A. F. of L. presidents. In one case they allowed wage raises to employees of a bus company which threw it into receivership.

Although this comment is frankly partisan, it does show that the political activities of labor are on the increase. Labor is certainly not the only party that has turned to politics as a means of gaining advantage. It is probably true that management has been active in this field too. As Dr. MacDonald so aptly stated, "one inevitable result of legislation setting up machinery for settlement of labor disputes is accelerated political pressures which tend to reduce efforts at direct settlement."[9]

Another effect of this type of legislation on the role of labor is an actual financial threat to the existence of the local union. Since provision is made for appeal of the decisions of the boards, it is not unusual for the dispute to be taken to court. The expense of a long legal battle is an extreme burden on the treasuries of most local labor organizations. Several complaints accompanied the questionnaires from labor leaders and labor organizations stating that it was potential bankruptcy for the union to pursue its case when appealed to the courts. Not only are the financial resources of the union small when compared to those of the utility but the utility continues to draw profit from its sales while waiting for a decision. In fact, it might be profitable for the utility to appeal the arbitration decision

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9 MacDonald, Compulsory Arbitration . . ., op. cit., p. 78.

when large increases in wages are granted because the profits from sales during the legal battle might be greater than the costs of such litigation.

The effect of this type of legislation on the policies of the utilities is also potentially great. It would seem that company labor policies could be affected by a prohibition of strike. The companies might be less concerned with the grievances of the workers since the strike weapon has been taken away.

However, where seizure is more than on a token basis, there might be some concern on the part of the utilities lest their labor policies bring on state operation. State seizure and operation probably is not welcomed by the utilities. Although seizure does not impose penalties on utility earnings (except in Virginia), it certainly takes away the traditional management prerogative of "running the business as management sees fit".

The cost of advertising utility labor policies might be affected by the laws. That is, since the threat of strikes has been removed, it would be no longer necessary to inform the public of the "good deeds" of the utilities toward the workers in an effort to gain favorable public opinion. However, it is also possible that the opposite could be the effect. That is, because the power of public opinion may be strong in forcing settlements of differences before or after

seizure and because of the increased political activity of both parties, the costs of advertising labor policies might be increased.

In answer to the questionnaires, over 58 per cent of the utilities indicated that the laws had not affected the costs of advertising labor policies. In only 8 per cent of the replies was an increased cost noted. Since over 33 per cent gave no answer to this question, it is difficult to substantiate the effect of the statutes on this cost item. However, it is probable that the statutes had little effect in view of the fact that the advertising of labor policy is probably a minor cost item for the majority of the utilities.

The assurance of no work stoppages and continued service might have an effect on business confidence in this industry. This might lead to increased capital expansion caused by the increased stability of income. However, since there were few interruptions of service before the laws were passed, and since income to the utilities has always been rather stable, the statutes probably have had little effect on business confidence and capital expansion in the utilities.

The laws might have an effect on rate and pricing politices. The utilities probably find it easier to get rate increases from the regulatory commissions when arbitration decisions raise the labor costs. Professor Thomas Kennedy of the University of Pennsylvania has noted:

> . . . a company may prefer to use compulsory arbitration when it is available if it is of the opinion that the granting of what it considers a reasonable and necessary wage raise will necessitate an increase in the rates to be paid by the public for its services. The company is able to make a much stronger case before the Public Utility Commission for a rate increase if it can show that its costs are higher not because it freely negotiated a certain wage increase but rather because it was forced to give the increase by a compulsory board of arbitration. In presenting its case for a fare increase before the Public Utility Commission in 1948, the Public Service Transport Company argued that one State body should not deny a fare increase which was necessitated by a wage increase granted by another body appointed by the State.[10]

Labor might feel that the utilities pass on the increased wages to the customer through increased rates and therefore lose nothing in unfavorable arbitration decisions. However, when the arbitration decisions are unfavorable to labor, the unions lose the increased wages and the right to ask for revisions in the wage levels for the rest of the year or the rest of the life of the contract. Therefore, the unions claim the utilities cannot lose by arbitration whereas labor can lose not only the wage increase but the opportunity to bargain for a year.

In so far as appeals to the arbitration decisions are taken into court by the utilities, the laws might increase the cost of litigation for the utilities. That is, since

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10 Thomas Kennedy, "The Handling of Emergency Disputes," a paper presented before the joint meeting of the Industrial Relations Board Association and the Political Science Association, New York City, 1949.

appeals usually go through a long and costly court battle regardless of which party originates this action, there is an additional expense on the company. However, as pointed out above, it is possible that the utility could make an actual profit by taking the arbitration decisions to the courts since the cost of litigation might be less than the increased wages paid to the workers.

This type of legislation might affect public policy. The public utility concept, as outlined in Chapter II, is purely a legal concept. In so far as this legal concept is based on the natural monopoly position of public utilities and the essential nature of the services of utilities, these laws might serve to reinforce the public utility concept. They certainly point up the essentiality of public utility service and emphasize the "natural monopoly" position of these industries.

In so far as the concept of "natural monopoly" is based on high fixed costs and increasing returns, the laws might give emphasis to this concept. There might be a tendency for the laws to stabilize the costs of labor and thus tend to make labor costs into at least short term (one year) fixed costs. By making the labor costs more or less fixed, this in turn gives additional emphasis to the increasing returns of the utilities. The greater the fixed costs, the more the principle of increasing returns applies.

Strikes have often been considered as "Acts of God" by regulatory commissions. That is, above and beyond the control of the utility and therefore not a responsibility of the utility. These laws certainly tend to increase this concept in so far as they take away, even more so than in the past, the responsibility of the utility for work stoppages.

In the absolute sense, the amount of regulation of the utilities is increased by the statutes. The acts attempt to settle labor disputes and in so doing impose even more regulation on the utilities than previously known. In addition, it has been proposed by one writer and in one state that the regulatory commissions administer the laws since they are the best informed as to the condition of the industry.[11] Should this come about, the amount of regulation would be further increased.

The statutes probably have the effect of increasing the amount of future regulation as well. Should labor relation regulation prove successful, it might be a starting place for future regulation in areas still left beyond the control of the law at present.

It is possible that this type of legislative approach might further the public ownership movement in the utility

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11 Roscoe Ames, "Should State Commissions Regulate Utility Labor Relations?" Public Utilities Fortnightly, 39:352-6, March 13, 1947, and "Maryland Anti-Strike Law Proposed," Public Utilities Fortnightly, 45:320, March 2, 1950.

field. Since the statutes cause additional regulation and control of the utilities, they give additional emphasis to the idea that utilities are, as creatures of the state, really a part of the state. The conclusion from this is that they should be in fact as part of the state government. As far as this reasoning holds true, these laws would further the public ownership movement.

In addition, should the statutes fail to cope with the problem of continued service, public ownership might result as the alternative method of providing continued service.

If the laws will have this effect, the utilities themselves do not see this threat to their position. In answering the questionnaire, 75 per cent of the utilities were of the opinion that the laws have not affected the question of public ownership. The remaining 25 per cent did not give opinions.

The general effect on future public regulation could be that, if successful, this type of approach to labor problems might be attempted in other industries. Therefore, the statutes might have the effect of sponsoring future legislation. The opposite could also be true. Should the laws fail to do the job that they were designed to do, they might have the effect of causing abandonment of this type of approach to the problem in general and compulsory arbitration

in particular. The whole question of the worth of compulsory arbitration could be answered in the experience of these statutes.

CHAPTER VIII

EVALUATION OF ANTI-STRIKE LEGISLATION

In attempting to evaluate this type of legislation, certain weaknesses or flaws appear that seem to detract from the effectiveness of the anti-strike laws as a means of settling labor disputes. A large group of these weaknesses appear in the laws themselves. That is, certain things are missing from the statutes or the statutes are worded in such a way as to detract from their effectiveness.

The very basis of the legislation has been challenged in its definition of a "public emergency". Because supervisory employees have always prevented a complete service stoppage, even in the long Duquesne Power strike, Professor Thomas Kennedy, University of Pennsylvania, seriously doubts that a "public emergency", as defined by the law, has ever existed.[1]

According to Professor Kennedy, at no time during any of the so-called "public emergencies" was the service stopped completely and therefore he states that the health and welfare of the people were never threatened. As evidence that there was no actual stoppage of service and thus no public

1 Thomas Kennedy, "The Handling of Emergency Disputes," a paper presented before the joint meeting of the Industrial Relations Board Association and the Political Science Association, New York City, 1949.

emergency during the legally contested phone strike in New Jersey in 1947, Kennedy notes:

> Both the Company and the Union have agreed that the following statement is correct: "The strike had the following effect on telephone service: dial service was relatively unaffected; emergency calls were completed; in communities where dial service was not furnished, the service was approximately 20 per cent of normal; interstate service was curtailed to about 40 per cent of normal."[2]

Kennedy, upon further analysis of the strikes in gas and transportation plants in New Jersey, concludes that a public emergency has never actually existed under the New Jersey statute.[3]

Further question arises from the fact that Massachusetts and Pennsylvania do not consider that stoppages in telephone and transportation services are emergencies under the law. According to Kennedy, citing the Slichter report, there is serious doubt that the interruption of these services jeopardize the public health and public safety.[4]

It does seem inconsistent that one state considers

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2 Kennedy, "The Handling . . ., op. cit., citing Brief on Behalf of the Defendant, New Jersey Bell Telephone Company, in The State of New Jersey v. Traffic Telephone Workers Federation of New Jersey, et. al., in Chancery of New Jersey 158/37.

3 Op. cit.

4 Op. cit., citing Slichter, Sumner H., Report of the Governor's Labor-Management Committee, (House No. 1875).

work stoppages in telephone and transportation services as emergencies whereas another adjoining state feels that these do not jeopardize the public safety.

Another weakness of the laws is the lack of adequate penalties on management. The laws take from labor the right to strike and forbid the utilities from "locking out" their employees. The lookout has been used infrequently in the utilities because of the responsibility of management to provide continuous service, under regulation of the law. The utilities, unlike the unions, therefore, are not losing a major weapon of economic warfare.

Therefore, since it is the unions that would probably cause work stoppages, the fines and penalties are aimed directly at them. There are no fines against management for refusal to bargain or for inciting strikes by various means. It would be possible for the utilities to manipulate their labor policies in such a way as to cause discontent and grievances without concern about possible strikes. Should strikes or work stoppages occur, the utility is protected by the law and the unions are broken, physically or financially, by the statutes and court battles. In addition, the utilities continue to make profits from continued operations, even under seizure.

The wage criteria that the laws set up for the arbitrators to follow in making decisions could be questioned.

Because of the lack of adequate guides for the arbitrators, the decisions of the boards are prone to be made on a basis of compromise.

Most of the laws do have some standards. Generally, these standards set the guide of comparability for the arbitrators to follow. However, if new wages and hours are to be set on the basis of comparable wages and hours in the industry, it could be possible that the wage level would remain low throughout the entire industry. Because the arbitration decisions are based on comparable wage rates, wages might all rise to the point of the highest wages at the time of the passage of the laws and no higher, with no regard to such things as cost of living or improvement in real wages. In addition, where broad standards are laid down, such as the amended New Jersey act, there is no indication of the weight to be given each standard. Further, no definition is given to the meaning of such phrases as "the interest and welfare of the public" in the New Jersey law or "value of service to the consumer" in the Wisconsin law.[5]

Likewise, there are no standards to be followed by the arbitration board in Massachusetts. Although arbitration under this act is voluntary on the "request" of the Governor, the board is of state origin, being appointed by the Governor,

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5 See pp. 79 f. for New Jersey standards and p. 51 for Wisconsin and standards of other states having compulsory arbitration decisions.

and the board does have the power to set wages and working conditions.[6]

The above weakness applies generally to that group of laws that call for compulsory arbitration and in some cases, such as the Massachusetts act, to the other group that relies on seizure. However, this does not mean that the seizure group does not also have weaknesses.

Within the seizure groups (characterized as the "New Jersey pattern" in Chapter V) the statutes of New Jersey and Missouri which incorporate compulsory arbitration as well as seizure are open to the above criticism also.

One outstanding weakness of the seizure groups is the failure to provide any means of settling the dispute after seizure has taken place. In New Jersey, provision for settlement after seizure was added in an amendment after the lack became apparent. However, as yet, none of the other states have seen fit to add any procedure for settlement past the point of seizure. After seizure it would be possible for either side to prolong the state operation indefinitely by refusing to settle the dispute. In this respect, the Missouri, Massachusetts and Virginia laws seem weak.

The possibility of prolonged seizure points out another possible weakness of the statutes. During a period of lowering price levels, it would be possible for the unions

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6 See p. 62.

to cause seizure by failure to agree to a settlement and thereby preserve their present wage level. During seizure, the laws provide that no change in pay or working conditions will be made by the state and that the workers have the right to their jobs under state employment. Therefore, the workers in a period of falling prices and wages would be guaranteed their jobs and their wages at the conditions prevailing at the beginning of the seizure for an indefinite period since there is no compulsion to end seizure. Since the laws have been in operation in a period of rising prices, this use of seizure has not yet occurred. However, it seems to be a definite weakness should the laws be operative in a period of falling prices.

Another weakness of seizure is the indefiniteness of the laws about the financial aspects of plant operation during seizure. Only the Virginia law states that the Governor will take complete charge of affairs, even to supervising the payment of wages and collection of revenues. The other states provide that the Governor or his agent "shall take possession for the use and operation for the state" and the Governor may "prescribe the necessary rules and regulations" to carry out operation of the seized utility. This seems to put the state government in complete charge of the affairs of the utility during seizure.

If the state has complete charge, the question arises

as to the state's policy should a utility that is losing money be seized. There is no provision in any of the laws for appropriations from state funds to keep the utility running and the customer served. Yet, continued service being the object of seizure, it would seem that the state government would have to provide funds from some source to keep the labor employed and pay the expenses of operation should the state seize a utility that is not collecting enough revenue to meet its expenses. If the state government only seized profitable utilities, the intent of the law would not be fulfilled.

Since the state government would be forced to seize a utility regardless of its financial condition, a convenient method would be provided for management to retain their jobs and stay in business during a business depression. The moment a utility began to lose money and/or was refused rate increases by the regulatory commission, management could cause a work stoppage forcing state seizure. The seizure would force the state to employ and pay the workers and provide the utility with a method of staying in operation during the lull in business. The New Jersey act which forces settlement after seizure, of course, avoids this possibility.

The Virginia statute is the only act which omits the right of the individual to quit his job. Since strikes are permitted, this right has been left out. However, this

appears to be a weakness.

After the workers have been polled under the Virginia law and assuming they have gone to work for the state, there would be no right to quit the job for employment elsewhere. This would constitute a type of involuntary servitude for it would mean that the state could force the workers, once they have agreed to stay on to work for the state, to remain at their posts regardless of individual preference.

Further, the guarantee of the right of the individual to quit his job seems basic to the individual's freedom. Although the Virginia act has not been tested in the courts, involuntary servitude has been a leading question in the test cases elsewhere.[7] It is possible that the Virginia law might be unconstitutional because of its lack of a guarantee of this basic right of the individual.

In addition to the weaknesses of the laws themselves, there are several weaknesses that appear in the application of the statutes.

As noted in Chapter VII, the laws have tended to become a political question. The laws were designed to provide continued service to the consumers, not to be a campaign issue or a "political football". The possibility of politics and the use of the laws for political advantage is unfortunate.

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7 See p. 78, point #1 union brief filed in _State v. Traffic Telephone Workers Federation of New Jersey_.

Perhaps this is a natural consequence of attempting to deal with labor relations through state legislation. Nevertheless, it seems to be a weakness of the application of the laws for they were designed to cope with a definite economic problem and have instead become a political problem.

Another weakness in the application of the laws is the tendency to fail to protect the consumer. Labor is given a chance to plead their case before an arbitration board and many of the rights of labor, such as the right to bargain and to quit their jobs, are specifically guaranteed. The utilities are protected in their rights to bargaining and through the "wise" presentation of arbitration decisions, the utilities are able to get rate increases in an easier manner from the regulatory commissions. However, nowhere in the statutes have the rights of the consumer been considered.

Labor asks and may receive wage increases. These wage increases are taken before the regulatory commissions and rate increases may be granted to the utilities. Therefore, the demands of labor may be satisfied and the rate of return may be maintained for the utilities. It is only the unfortunate consumer who is caught in the middle and forced, not only to put up with service stoppages should they come about in the process of the settlement of the dispute, but to pay higher bills as well. Although the regulatory commissions are undoubtedly attempting to protect the

consuming public, it is unlikely that they would refuse rate increases when the utilities have been forced to give wage increases by compulsory arbitrations, a matter over which the commissions have no control. Therefore, it is the consumer of the utility service who directly or indirectly pays the bill.

It is regrettable that the laws are based, to some extent, on the principle of compulsion. It seems unfortunate that we are not able to find some other method of solving labor disputes without having to force individuals to perform acts under the threat of compulsion. This reflects the basic weakness that the laws, not looking to the underlying causes of labor disputes, take the short run method of forcing settlement on the parties in disagreement. The laws do not seem to be designed to find and correct the basic causes of labor difficulties. Rather, they seem to be designed with the idea of continuing the service to the consumer regardless of the long run effects of such a policy of compulsion or the failure to find the basic causes of disputes.

Perhaps it is too soon to make an evaluation of this legislation. Some of the statutes, the New Jersey act for example, have been changed and are in the process of change. Therefore, any generalization must consider the over-all legislation and not the particular statute. Further, the laws have been operative but a short period and the experience

gained under the statutes is incomplete.

Nevertheless, it seems possible from the small amount of information available to draw two preliminary conclusions. First, if continuity of service is the only criterion used to evaluate this type of legislation, then the laws are a success. They have prevented strikes and they have continued the service to the consumer. Therefore, in this respect they are successful.

Second, if the effects on labor relations are considered, it is doubtful that the laws are a success. They do not consider the long run effects of compulsion, they impose a static procedure upon the settlement of labor disputes and they fail to attack the basic causes of disagreement, thus creating a short run crisis in the long run. Therefore, the laws aid in bringing about what they seek to remedy and avoid. When any other standard except continuity of service is used in evaluating the worth of this type of legislation, the laws prove unsatisfactory.

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and Jones are useful surveys of the anti-strike legislation at that date. The articles by Governor Edge, Julian and Kilpatrick are studies of the application of the statutes in New Jersey, Missouri and Virginia. They provide excellent background and useful statistics. Mr. Hill's editorial in the Electrical World was a leading factor in bringing forth compulsory arbitration and is good. The alternative proposals by Ames, Bowen, Dorau and McIntosh give indication of the reaction to public utility work stoppages. Generally, they are good. Vogel's article on the rights of public employees is useful in pointing out the legal aspects of bargaining.

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APPENDIX

QUESTIONNAIRE - LABOR ORGANIZATION

(Please check one in each classification)

1. General opinion of statutes

06.6% Satisfactory
93.3% Unsatisfactory
_____ No opinion

2. Beneficial (in regard to wages, hours and working conditions)

06.6% They have benefited us greatly in regard to wages, hours and working conditions
06.6% They have benefited us at times in regard to wages, hours and working conditions
73.3% They have benefited us rarely in regard to wages, hours and working conditions
13.3% No answer

3. Union strength (membership)

06.6% The laws have improved our relative strength (increased our membership)
20.2% The laws have been detrimental to our relative strength (decreased membership)
46.6% The laws have not affected our relative strength (constant membership)
26.6% No answer

4. Arbitration decisions

06.6% The results of the arbitration decisions have generally been favorable to labor
53.5% The results of the arbitration decisions have generally been unfavorable to labor
20.0% The results of the arbitration decisions have generally been neither favorable nor unfaborable to labor
20.0% No answer

5. Relations with companies (employers)

06.6% Our relations with the employers have been improved by these laws
73.3% Our relations with the employers have been worsened by these laws
20.1% Our relations with the employers have not been affected by these laws

6. Bargaining position

06.6% The laws have improved our general bargaining position

80.0% The laws have been detrimental to our general bargaining position

13.3% The laws have not affected our general bargaining position

7. Fines

46.6% The fines imposed by the laws are too severe

____ The fines imposed by the laws are inadequate

____ The fines imposed by the laws are adequate

53.3% No answer

(Have the fines ever been imposed on you?
____yes 100% no)

8. (In states requiring compulsory arbitration) Compulsory arbitration

33.3% The compulsory arbitration provisions are too severe

06.6% The compulsory arbitration provisions are insufficient

13.3% The compulsory arbitration provisions are adequate

46.6% No answer

9. (In states with seizure provisions) Seizure

40.2% The seizure provisions of the laws are too severe

06.6% The seizure provisions of the laws are insufficient

06.6% The seizure provisions of the laws are adequate

46.6% No answer

10. Approach to the problem of continued service

06.6% This type of law is the best approach to the problem

13.3% Government ownership is the best approach to the problem

13.3% Regulation by existing regulatory bodies is the best approach to the problem

66.6% No regulation at all is the best approach to the problem

Your comments on any or all of the above opinions or answers would be welcomed and appreciated.

QUESTIONNAIRE - MANAGEMENT ORGANIZATION

(Please check one in each classification)

1. General opinion of statutes
50.0% Satisfactory
50.0% Unsatisfactory
_____ No opinion

2. Beneficial
08.3% They have benefited us greatly
58.3% They have benefited us rarely
33.3% They have benefited us at times

3. Arbitration decisions
08.3% The results of the arbitration decisions have generally been favorable to management
41.6% The results of the arbitration decisions have generally been unfavorable to management
33.3% The results of the arbitration decisions have generally been neither favorable nor unfavorable to management

4. Wage increases
41.6% Arbitration decisions have tended to increase wages without justification
_____ Arbitration decisions have tended to hold back wages without justification
33.3% Arbitration decisions have had no effect on wages
25.0% No answer

5. Relations with employees
16.6% Our relations with employees have been improved by the laws
25.0% Our relations with employees have been worsened by the laws
50.0% Our relations with employees have not been affected by the laws
08.3% No answer

6. Bargaining position
25.0% The laws have improved our bargaining position
50.0% The laws have been detrimental to our bargaining position
16.6% The laws have not affected our bargaining position
08.3% No answer

7. Costs of advertising labor policy

08.3% The laws have increased the costs of advertising our labor policy

_____ The laws have decreased the costs of advertising our labor policy

58.3% The laws have not affected the costs of advertising our labor policy

33.3% No answer

8. Fines

_____ The fines imposed by the laws are too severe

_____ The fines imposed by the laws are insufficient

33.3% The fines imposed by the laws are adequate

66.6% No answer

(Have fines ever been imposed on you?
_____ yes 100% no)

9. (In states requiring compulsory arbitration) Compulsory arbitration

16.6% The compulsory arbitration provisions are too severe

16.6% The compulsory arbitration provisions are insufficient

33.3% The compulsory arbitration provisions are adequate

33.3% No answer

10. (In states with seizure provisions) Seizure

08.3% The seizure provisions are too severe

_____ The seizure provisions are insufficient

33.3% The seizure provisions are adequate

58.3% No answer

11. Move towards public ownership

_____ The laws have tended to move public utilities toward public ownership

_____ The laws have tended to prevent movement toward public ownership

75.0% The laws have not affected the question of public ownership

25.0% No answer

12. Approach to the problem of continued service

66.6% This type of law is the best approach to the problem

_____ Government ownership is the best approach to the problem

16.6% Regulation by existing regulatory bodies is the best approach to the problem

08.3% No regulation at all is the best approach to the problem

08.3% No answer

Your comment on any or all of the above opinions or answers would be welcomed and appreciated.