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C H A P T E R 13

Labor Relations

ROBERT M. SEGAL

A. LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

§13.1. **General.** The most important development in the dynamic and fluid field of labor during the 1959 SURVEY year was the passage of the federal Labor-Management Reporting and Disclosure Act of 1959.¹ The new law, consisting of seven titles and 16,240 words, is the first major change in our federal labor law since the Taft-Hartley Act of 1947.² It is basically two measures: (1) a code of conduct in the first six titles aimed at eliminating corrupt practices and abuses in union-employer relations and in the internal operations of labor unions, and (2) amendments (in Title VII) to the Taft-Hartley Act in the field of labor relations.³

§13.2. **"Bill of Rights."** The new law regulates the internal affairs of labor organizations by setting up a statutory "Bill of Rights."¹ It provides for equal rights to nominate candidates and vote in elections, to attend meetings, to criticize the union or its officers and to express views freely at meetings, subject to the union's right to impose

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§13.1. ¹ Pub. L. No. 86-257, 73 Stat. 519, signed by the President on September 14, 1959.

² Labor Management Relations Act, 29 U.S.C. §§141-197 (1952).

³ For a discussion of the background to the new law, see Bureau of National Affairs, *The Labor Reform Law*, pp. 1-5 (1959); CCH, *The New Labor Law of 1959 with Explanations*, pp. 9-14 (1959). For Senator Kennedy's report to the Senate on the new law, see 105 Cong. Rec. 16413-16418 (Sept. 3, 1959). See also House Conference Report No. 1147 (Sept. 3, 1959), including the Statement of the Managers on the Part of the House; Section by Section Analysis, prepared for the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate (Sept. 10, 1959).

§13.2. ¹ For a justification of this approach, see Findings and Declaration of Policy in the new law, §2. See also Cox, *The Role of Law in Preserving Democracy*, 72 Harv. L. Rev. 609 (1959).

reasonable rules uniformly applied for the conduct of the meetings. Local union dues or initiation fees cannot be increased nor can assessments be levied by local union officers or executive boards except by a majority vote of the members voting in a secret ballot election after notice or by a secret ballot membership referendum.

No member can be fined, suspended or otherwise disciplined by a union (except for non-payment of dues) unless certain formalities are met, i.e., specific written charges, reasonable time to prepare a defense, a full and fair hearing, and compliance with the union constitution.² Members are given the right, free from union discipline, to sue unions or officers in courts after four months' exhaustion of internal union remedies.³ Any person whose rights are violated can bring a civil suit in the federal court and it is a crime for any person to use force or threats to restrain, coerce, intimidate or interfere with any union member exercising any of his rights under the new law. Furthermore, a member retains all his present rights (relative to conduct prior to an election) under the union constitution, state and federal laws.

Every labor union must inform all its members about the provisions of the new federal law, and must furnish a copy of the collective bargaining agreement to each employee who requests it and is covered by the contract. National or company-wide agreements must be available for inspection in local union offices.

§13.3. Reporting. Five different types of reporting to the United States Secretary of Labor are required by the new law. Every labor union must adopt a constitution and by-laws and file a copy with the Secretary. It must file a report signed by the president and union secretary giving the names and titles of its officers, its fees, dues structure, and detailed information on qualifications for membership, participation in insurance or other plans, discipline, calling of meetings, audits, strike authorization and other procedures.¹

Every union must file a detailed annual financial report, signed by the president and treasurer, with the Secretary of Labor.² It must

² In the light of the detailed requirements of the new law relative to discipline of a union member, it can be argued that Section 8(a)(3) of the Taft-Hartley Act, 49 Stat. 542 (1935), as amended, 29 U.S.C. §158(a)(3) (1952), limiting discharges from employment to non-payment of dues, should be repealed since the new law gives adequate protection against the abuse of disciplinary power. At the same time, Section 8(a)(3) of Taft-Hartley denies a union the power to use the union shop as a means of disciplining wildcat strikes, espionage for a dual union or for the employer, or for membership in the Communist Party. See Cox, *The Role of Law in Preserving Democracy*, 72 Harv. L. Rev. 609, 623-624 (1959).

³ For a criticism of the procedures of the new law, see Senator Morse's statement in 105 Cong. Rec. 16384-16401 (Sept. 3, 1959). See also Senator Kennedy's statement in 105 Cong. Rec. 16414 (Sept. 3, 1959).

§13.3. ¹ The Secretary of Labor has already issued Form LM-1 which must be filed by December 13, 1959. In addition he has published eleven pamphlets as information documents relative to the new law and has set up a Bureau of Labor-Management Reports.

² At the same time, the financial and other reports required by Sections 9(f), (g) and (h) of the Taft-Hartley Act have been repealed by the new law.

show the financial condition and operations for the fiscal year, giving details on receipts and expenditures, loans to officers, members and employees in excess of \$250, loans to business, per capita payments, and disbursements to each officer or employee if they exceed \$10,000.

Every member has a right to see the financial reports and "for just cause" to see the financial books and records of his union, which must be retained for five years for verification by the Secretary of Labor. If necessary, the member can sue for this right in the federal court, which can assess attorney's fees and suit costs against the union and its officers.

Every individual union officer and employee has to file annual reports if he is involved in certain enumerated conflict of interest transactions. These include any loans, payments, reimbursements, special discounts and other financial transactions (except listed securities) which he or members of his family had with an employer whose employees his labor union represents or is seeking to represent.

Employers must also make annual financial reports signed by the company officers if they have engaged in certain enumerated transactions. These include payments or loans to officers, agents or employees of unions, and payments or expenditures made to "persuade, interfere with, restrain or coerce" employees in their rights to organize and bargain collectively, or to obtain information concerning union activities. In addition, the employer must report any agreement with, and payments relative to labor activities to, any independent labor relations consultant. The latter has to report to the Secretary of Labor within thirty days any agreement he has with an employer whereby he is to persuade employees or to furnish information relative to labor and union activities; the report also contains specified financial data. Excepted from these provisions are persons giving advice to the employer, representing the employer before any court, administrative or arbitral tribunal, or engaging in collective bargaining on behalf of the employer. The law also declares that nothing in the act shall require an attorney to include in any report any information lawfully communicated to him by any of his clients in the course of a "legitimate" attorney-client relationship.

The reports, which must be kept for five years, are public information and can be published by the Secretary of Labor, who is given broad rule-making, investigatory and subpoena powers³ as well as power to bring civil suits for enforcement in the federal court. In addition there are criminal penalties for willful violations of the reporting requirements.

§13.4. Trusteeships. Union trusteeships are also regulated by the act but are not prohibited, for their indispensability is recognized.¹

³ He is given the same powers as the Federal Trade Commission. 15 U.S.C. §§49, 50 (1952).

¹ See testimony of George Meany, President of the AFL-CIO, before the Senate Subcommittee. Hearings on Union Financial and Administrative Practices and Procedures Before the Subcommittee on Labor of the Senate Committee on

They can be established only in accordance with the union constitution and on the basis of broad general standards (i.e., to correct corruption or financial malpractice, to insure the performance of labor agreements, to restore democratic procedures, or otherwise to carry out the union's legitimate objectives). During their first eighteen months, they are presumed to be valid if established according to the procedural requirements of the union constitution and authorized or ratified after a fair hearing by the international union; but detailed reports (which are made public) must be filed with the Secretary of Labor. During the trusteeship, delegates cannot vote in national elections unless they have been chosen by a secret ballot vote of all members in good standing, and the funds of the trustee local cannot be transferred. Any union member, or the Secretary of Labor upon written complaint of any member, can bring suit to enforce this section. In addition, the member has all his present rights and remedies at law or in equity until the Secretary of Labor files a complaint in the federal court, whose jurisdiction then becomes exclusive and whose final judgment is *res judicata*. This provision should help to produce uniformity in this area.

§13.5. **Union elections.** Union elections are regulated as to frequency, procedure and qualifications.¹ National and international unions must elect officers at least once every five years either by secret ballot of the membership or by a convention of delegates elected by secret ballot. Local unions must elect officers by secret ballot at least once every three years after at least fifteen days' written notice mailed to each member. Proxy voting is prohibited. Nominations are not so governed, but reasonable opportunity must be given for nominations and every "member in good standing" is eligible to be a candidate subject to "reasonable qualifications uniformly imposed."² Union funds cannot be used to promote any candidate but can be used for notices and the expense of the election. Candidates can inspect membership lists once, have equal facilities for the distribution of their literature at their own expense, and have observers present at the casting and counting of the ballots, which must be preserved for one year. In addition, the provisions of the union constitution not inconsistent with the new law must be complied with in elections.

Once an election is held, the aggrieved member can complain to the Secretary of Labor only after three months of exhaustion of the internal union remedies; the Secretary investigates election complaints and if

Labor and Public Welfare, 85th Cong., 2d Sess. 62-70 (1958). See also Cox, *The Role of Law in Preserving Democracy*, 72 *Harv. L. Rev.* 609, 635-644 (1959).

§13.5. ¹In explaining these provisions, the Senate Committee report makes it definite that states are precluded from imposing requirements upon unions for conducting elections of officers with greater frequency than provided for in the federal law. The report stressed the need for uniformity in laws governing union elections, pointing out that many unions function in several states. See CCH, *The New Labor Law of 1959 with Explanations* 36-37 (1959).

²The meaning of the quoted words of the statute may well not be determined until after many years of litigation.

he finds probable cause to believe that a violation has occurred and is unremedied for sixty days, he must bring a civil action in the federal court. The court will set aside elections and order a new election under the Secretary's supervision and regulations if it finds, upon a preponderance of the evidence, that (1) the election was not held within the prescribed time limits, or (2) the violation may have affected the results of the election. At the same time the challenged election is presumed valid pending a final decision except that a court-directed election will not be stayed, pending appeal; the court also has power to take action by appointment of a temporary receiver to preserve the union's assets. In addition, if the union's constitution does not provide adequate procedures (as determined by rules and regulations promulgated by the Secretary) for the removal of officers "guilty of serious misconduct," a member, after three months of exhaustion of internal procedure, may file a complaint with the Secretary of Labor, who holds a hearing and can have the guilty officer removed by a secret ballot election of the membership. In addition, the Secretary can bring a federal court action as provided in election cases.

§13.6. "Restrictions" on labor organizations. Union officials and agents are placed under a fiduciary duty to the members by the act, which restates the common law applicable to trust relations. Not only are all conflict of interest transactions prohibited but exculpatory clauses in union constitutions are voided. Aggregate loans in excess of \$2000 to union officers are prohibited, and unions (and employers) cannot pay the fines of any officer or employee convicted of any willful violation of the new law. Union officials must hold the union money and property "solely" for the benefit of the organization and its members. Not only are they bound to follow the constitution and by-laws of the labor union relative to the union funds and property but they are liable for acts of omission as well as acts of commission, since they are regarded as trustees, considering "the special problems and functions of a labor organization." Union officers can be personally sued for personal profits resulting from their position, and if the union refuses to sue, an individual member can, on ex parte application, bring an action after court approval, in any federal or state court for the benefit of the union. The court may allot a reasonable part of any recovery to pay the counsel fees and the plaintiff's expenses.

At the same time, there are statutory restrictions on eligible candidates for union office. Persons convicted of felonies and violations of certain sections of the new law or persons who have been members of the Communist Party are prohibited from holding union office or staff employment or being a labor relations consultant for a period of five years following the termination of party membership, criminal conviction or the end of the imprisonment. Furthermore, every union officer and employee handling funds must be personally bonded by a surety company, authorized by the Secretary of the Treasury as an acceptable surety on federal bonds, "for the faithful discharge of his duties" in an amount not less than 10 percent of the funds handled

by him. In addition, every representative of a union or health and welfare trust must be similarly bonded, and the law can be read to require employer trustees to be bonded on the same terms.¹ Although embezzlement of union funds is already a state crime, the new law also makes it a federal crime.

§13.7. Taft-Hartley amendments.¹ The most controversial amendments in the new law are in the field of labor relations. Departing in part from the principle of a national labor relations policy, the new law delegates to the state labor agencies (such as the Massachusetts Labor Relations Commission) and state courts the cases in the so-called "no man's land,"² i.e., cases in interstate commerce but below the jurisdictional standards set by the NLRB in August, 1959.³ The new law does not require initial resort to the NLRB, but the state agency or court will decide (subject to review by the United States Supreme Court) whether the labor dispute is one in which the NLRB declines by rule of decision or published rules to assert jurisdiction.⁴ At the same time, the extent to which states may assert jurisdiction over cases that affect interstate commerce and also meet the NLRB's jurisdictional standards is still governed by the principles of federal pre-emption most recently summarized by the United States Supreme Court in *San Diego Building Trades Council v. Garmon*.⁵

Replaced economic strikers will be able to vote in NLRB elections held within twelve months after the start of the strike, subject to such rules as the NLRB may issue.⁶ Furthermore the NLRB must now

§13.6. 1 Section 502(a) of the new law provides in part as follows: "Every officer, agent, shop steward, or other representative or employee of any labor organization . . . or of a trust in which a labor organization is interested, who handles funds or other property thereof shall be bonded for the faithful discharge of his duties." For a criticism of the bonding requirements, see Morse in 105 Cong. Rec. 16388-16389 (Sept. 3, 1959).

§13.7. 1 These amendments are contained in Title VII of the new law.

² NLRB, Twenty-Third Annual Report, p. 8 (1958); for the "no man's land" cases, see *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 Sup. Ct. 773, 3 L. Ed. 2d 775 (1959); *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 Sup. Ct. 598, 1 L. Ed. 2d 601 (1957). The Court has, however, held that the NLRB may not refuse to exercise jurisdiction over an entire industry as a class. *Hotel Employees Local v. Leedom*, 358 U.S. 99, 79 Sup. Ct. 150, 3 L. Ed. 2d 143 (1959); *Office Employees v. Labor Board*, 353 U.S. 313, 77 Sup. Ct. 799, 1 L. Ed. 2d 846 (1957).

In addition, the new law retains Section 14(b) of Taft-Hartley, permitting states to pass more restrictive legislation in the union security field.

³ NLRB Press Release R-576, Oct. 2, 1958.

⁴ The NLRB has established declaratory judgment procedures for parties and agencies in state labor cases to obtain board opinions on federal jurisdiction. NLRB Press Release R-639, Nov. 8, 1959.

⁵ 359 U.S. 236, 79 Sup. Ct. 773, 3 L. Ed. 2d 775 (1959), commented on in §13.9 *infra*. See also 1958 Ann. Surv. Mass. Law §15.1; 1957 Ann. Surv. Mass. Law §25.1.

⁶ Under the Wagner Act, the NLRB originally voted the strikers and excluded the replacements. *A. Sartorius & Co., Inc.*, 10 N.L.R.B. 493 (1938). In 1941, the NLRB reversed itself and held that both strikers and replacements should be allowed to vote in an NLRB representation election. *Rudolph Wurlitzer Co.*, 32 N.L.R.B. 163 (1941). This rule was followed until the Taft-Hartley amendments. *Lloyd Hollister, Inc.*, 68 N.L.R.B. 733 (1946). The Taft-Hartley Act, §9(c)(3), pro-

give priority to complaints involving discharges for discrimination by an employer or a union. The NLRB can delegate to its twenty-three regional directors authority to handle election cases, with final decisions subject to appeal to the NLRB, which may hear and decide all cases by a panel of three members.

Picketing for recognition or organization is outlawed and subject to injunctions by the General Counsel of the NLRB in three specific cases: (1) the employer has lawfully recognized another union;⁷ (2) a valid election has been held within the preceding twelve months; or (3) the picketing has continued for a reasonable time (not exceeding thirty days) without a petition for an election being filed.⁸ If a petition is filed, the NLRB has to move "forthwith" to hold an election;⁹ informational picketing (not for recognition or organization), with clear signs notifying consumers that the employer is non-union, is permitted unless the picketing has the effect of interrupting deliveries by teamsters or of causing other employees to respect the picket line.¹⁰

vided, "Employees on strike who are not entitled to reinstatement shall not be eligible to vote." The new law does not make it clear whether the present rules relative to "misconduct" will be applied to economic strikers. *Republic Steel Corp. v. NLRB*, 107 F.2d 472 (3d Cir. 1939).

⁷ The provision does not apply if the employer's recognition of the other union was unlawful, or even if it was lawful if a question concerning representation may appropriately be raised. This brings into play the board's various rules and doctrines as to when a union may obtain an election even though another union has theretofore been certified and recognized.

Senator Kennedy's explanation, 105 Cong. Rec. 16415 (Sept. 3, 1959), is as follows: "Two of the three restrictions upon organizational picketing are taken from the Senate bill. Paragraphs (A) and (B) of the new section 8(b)(7), which is added to the National Labor Relations Act, prohibit picketing for union organization or recognition at times when the National Labor Relations Board would not conduct an election. Subdivision (A) covers the situation where a contract with another union is a bar to an election. If the contract is not a bar, either because the incumbent union was recognized improperly or lacked majority support, or because the contract had run for a reasonable period, a question concerning representation could appropriately be raised and subdivision (A) would not bar the picketing. Subdivision (B) bars union recognition for 12 months after an election in order to secure the expressed desire of the employees. In both cases the prohibitions relate only to picketing in an effort to organize employees or secure recognition in a bargaining unit covered by the existing contract or the prior election."

⁸ Under this section, picketing could theoretically be barred in less than thirty days provided the NLRB could as a practical matter hold an election. Furthermore the filing of a petition by any person (employer or union) will legalize this picketing beyond the thirty day limit. In picketing cases, the NLRB must determine whether the picketing falls within Section 8(b)(7)(C) so as to direct an election "forthwith."

⁹ The problem of "forthwith" directing an election is a serious one, for the NLRB must determine "the appropriate unit," which requires the making of a record, and pre-hearing elections are not authorized.

¹⁰ The informational picketing and advertising permitted is limited in scope: truthfully advising that the employer does not employ members of or have a contract with a union. It would seem that constitutional issues are raised by this limitation as well as the limitation that peaceful truthful informational picketing is illegal if its effect is to induce any person to refuse to perform services in the course of his employment.

Senator Kennedy's explanation of this section is as follows: "Organizational picket-

If a union can show that the employer has committed an unfair labor practice by signing with another union, then the union can picket without being enjoined. Picketing for the personal profit of any person ("extortion picketing") is subject to severe criminal penalties.

Secondary boycotts (i.e., putting a picket line around employer B to make him cease doing business with employer A, who is struck by the union) are outlawed. It is now illegal to bring pressure not only upon the employees of the second employer but also directly upon the neutral second employer B. Furthermore in a strike against employer A it is even illegal to induce the individual employees of employer B (including employees of railroads or government agencies) to refuse to deal with the goods or materials of the struck employer A.¹¹ The picketing of a retail store selling goods produced by a struck manufacturer or jobber is forbidden although the use of handbills or other forms of publicity is legal, provided these do not affect the working employees or teamsters delivering goods to the store.¹² At the same time a primary strike against an employer is legal, and it is not unlawful for employees of a second employer to refuse to cross the picket lines at the struck plant.¹³ The new law does not overrule the "ally" doctrines whereby a union can picket a secondary employer who is directly allied with, or makes an "arrangement" with, the struck employer to do the farmed-out struck work,¹⁴ nor does it prohibit publicity (leaflets, ads, etc.) to influence customers (as distinguished from employees).¹⁵ At the same time, if an employer has a permanent place of business where a union may picket, then picketing at another situs where other employers are working is not permitted by the new law.¹⁶

ing: The House bill would have forbidden virtually all organizational picketing, even though the pickets did not stop truck deliveries or exercise other economic coercion. The amendments adopted in the conference secure the right to engage in all forms of organizational picketing up to the time of an election in which the employees can freely express their desires with respect to the choice of a bargaining representative. When the picketing results in economic pressure through the refusal of other employees to cross the picket line, the bill would require a prompt election. Purely informational picketing cannot be curtailed under the conference report, although even this privilege would have been denied by the Landrum-Griffin measure." 105 Cong. Rec. 16413 (Sept. 3, 1959).

See also the speech by Senator Morse in 105 Cong. Rec. 16399-16400 (Sept. 3, 1959). NLRB member Fanning recently stated that the new restrictions on organizational and recognition picketing in many ways are not as broad as those previously imposed by the NLRB in the Curtis and related cases. 119 N.L.R.B. 232 (1957).

¹¹ The new law overrules in part NLRB v. International Rice Milling Co., 341 U.S. 665, 71 Sup. Ct. 961, 95 L. Ed. 1277 (1951), and closes several alleged "loopholes" in this area.

¹² See note 10 *supra*.

¹³ See provisos in Section 704(a) of the new act.

¹⁴ NLRB v. Business Machine and Office Appliance Mechanics Board, 228 F.2d 553 (2d Cir. 1955); Douds v. Metropolitan Federation of Architects, 75 F. Supp. 672 (S.D.N.Y. 1948). Also see Die Sinkers Union, 120 N.L.R.B. 1227 (1958).

¹⁵ See note 10 *supra*.

¹⁶ See NLRB v. Denver Building and Construction Trades Council, 341 U.S. 675, 71 Sup. Ct. 943, 95 L. Ed. 1284 (1951); Brotherhood of Painters, Decorators and Paper Hangers and Pittsburgh Plate Glass Co., 110 N.L.R.B. 455 (1954); Washing-

Employer contributions to unions for pooled vacation, holiday, severance and other benefits, and apprenticeship and other training programs, are now specifically permitted under joint trust fund arrangements similar to the health and welfare plans permitted under the Taft-Hartley Act.¹⁷ At the same time, the demand for, or the payments of, fees or charges for unloading a truck are prohibited except for wage payments directly to the employees of the employer. "Hot cargo" or "struck goods" or "unfair employer" clauses are prohibited and made subject to priority injunction except in the construction and garment industries. The strike for,¹⁸ or the making of, such a clause is made an unfair labor practice subject to priority injunctions and private damage suits. Excepted from this provision and from the secondary boycott section are subcontracting clauses in the garment and clothing industry relative to working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production.

In the construction industry, subcontract clauses for on-the-site work, pre-hire contracts,¹⁹ seven-day union shop clauses, and objective hiring hall²⁰ provisions are also permitted.

ton Coca-Cola Bottling Works, Inc., 107 N.L.R.B. 233 (1953); Moore Drydock Co., 81 N.L.R.B. 1108 (1949).

¹⁷ Recently a federal district judge ruled that apprenticeship training funds were exempted from Section 302 of the Taft-Hartley Act. The court stated that the amendment in the new law was intended to correct court rulings that had applied the language of Section 302 too literally. *Electrical Contractors v. Local 130, IBEW*, 177 F. Supp. 432 (E.D. La. 1959).

¹⁸ In the Sand Door case, *Local No. 1796, United Brotherhood of Carpenters v. NLRB*, 357 U.S. 93, 78 Sup. Ct. 1011, 2 L. Ed. 2d 1186 (1958), the Supreme Court held that the existence of a hot cargo provision was not a defense to a charge of inducing employees to strike or refuse to handle goods for objectives proscribed by Section 8(b)(4)(A). The Court, however, declined to pass upon the validity of the hot cargo clauses and left open the question whether they could be enforced by means other than strikes or boycotts, prohibited by Section 8(b)(4)(A).

¹⁹ The House managers claim that a strike for a pre-hire contract is illegal, 105 Cong. Rec. 16553 (Sept. 3, 1959), but Rep. Thompson had the following to say on the House floor relative to this matter: "Mr. Speaker, in connection with the conference report there is one more matter of great importance which must be made clear if there is to be a valid legislative history accompanying this vital legislation. I did not have an opportunity to see or to read the statement of the Managers on the part of the House before it appeared in the Congressional Record today. Upon a very hasty examination of this document, I find at least one statement therein upon which I should like to make this comment for purposes of clarification. The last paragraph of the statement is correct when it refers to the fact that the conference adopted the provision of the Senate bill permitting pre-hire agreements in the building and construction industry. In these circumstances, the considerations in the Senate committee report which were before the Senate when it debated the bill are governing in determining the intent of the language on this subject in the conference report.

"With respect to the phrase in the last paragraph of the statement that nothing in section 705 is intended 'to authorize the use of force, coercion, strikes, or picketing to compel any person to enter into such pre-hire agreements,' I would state that literally speaking, the above quoted phrase is not incorrect. However, it should be entirely clear that there is no language in the conference report which justified

§13.8. Conclusions. The new law raises many constitutional issues¹ (free speech relative to the picketing and publicity prohibitions,² privilege against self-incrimination relative to mandatory reporting of prohibited transactions subject to criminal penalties, and unreasonable search and seizure relative to the broad investigatory and subpoena powers of the Secretary of Labor) and many other legal problems (interpretation of general phrases, duplication of remedies, interrelation of secondary boycott and picketing sections, and the interpretation of the broad "hot cargo" clause). At the same time it weakens our national labor policy but increases the workload of the state labor boards and state courts which receive jurisdiction over the "no man's land" cases. It will produce protracted litigation and, in the words of the *Christian Science Monitor*, "will need 'good lawyering' to interpret what its legal language means, and what final effect it will have on unions."

B. FEDERAL DECISIONS

§13.9. Pre-emption. Two leading cases decided by the United States Supreme Court in the October Term, 1958, are important variants of the much litigated problem of federal-state relations.¹ In the first case, *San Diego Building Trades Council v. Garmon*,² the Court was dealing with the same parties for a second time. The original litigation arose as a result of peaceful picketing, allegedly to compel

any implication that section 705 is intended to deny the right of a union to strike or to picket for a legal object, such as a pre-hire agreement in the building and construction industry which is validated by Section 705." 105 Cong. Rec. 16636 (Sept. 4, 1959).

It would seem that a strike or picketing to secure these pre-hire provisions which are specifically lawful (§8(e) of Taft-Hartley) is no different than a strike or picket line to secure any other lawful contractual provision.

²⁰ See *Associated General Contractors (Mountain Pacific case)*, 119 N.L.R.B. 883, *reversed and remanded sub nom. NLRB v. Associated General Contractors*, 270 F.2d 425 (9th Cir. 1959).

§13.8. ¹ For a detailed criticism of the new law and the legal problems created by the new law, see speech by Senator Morse in the Senate in 105 Cong. Rec. 16371-16401 (Sept. 3, 1959). See generally Segal, *The New Federal Labor Statute*, 46 A.B.A.J. 31 (1960); Symposium, 48 Geo. L.J. 205-429 (1959).

² The question of violations of Section 8(b)(1) by peaceful picketing and publicity has recently been raised in several cases. *Drivers Local 639 v. NLRB*, 36 CCH Lab. Cases ¶65,030 (D.C. Cir. 1958), rev'g *Curtis Bros., Inc.*, 119 N.L.R.B. 232 (1957); *NLRB v. IAM., Lodge 942*, 263 F.2d 796 (9th Cir. 1958), rev'g *Machinists Union*, 119 N.L.R.B. 307 (1957). These issues are currently pending before the Supreme Court. See *Drivers Local 639 v. NLRB*, 359 U.S. 965, 79 Sup. Ct. 876, 3 L. Ed. 2d 833 (1959). The Supreme Court has several times in the past held that peaceful truthful picketing is protected under the free speech amendment to the Constitution. *Thornhill v. Alabama*, 310 U.S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940); *AFL v. Swing*, 312 U.S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855 (1940); cf. *International Brotherhood of Teamsters v. Vogt*, 354 U.S. 284, 77 Sup. Ct. 1166, 1 L. Ed. 2d 1347 (1957).

§13.9. ¹ See 1958 Ann. Surv. Mass. Law §15.1; 1957 Ann. Surv. Mass. Law §25.1.

² 359 U.S. 236, 79 Sup. Ct. 773, 3 L. Ed. 2d 775 (1959).

the employer to sign a union security contract. A representation petition filed by the employer was dismissed by the Regional Director on jurisdictional grounds. In the state court, the employer obtained an injunction against the picketing and an award of \$1000 damages for losses sustained because of the picketing. On certiorari in the first case³ the Supreme Court had reversed the injunction on the basis of the *Garner*⁴ line of cases, but remanded the case for a clearer ruling on the local law question of the basis for the damage award. On remand, the California court by a 4-3 decision sustained the damage award, holding that the picketing constituted a tort based upon an unfair labor practice under state law.⁵

In the present case, the Supreme Court unanimously reversed the holding of the California court, and clarified one of the unsettled areas of the federal pre-emption field. The Court in effect ruled that states may not award damages (or injunctions) to an employer for losses suffered as a result of conduct which is protected, or which the NLRB might reasonably consider protected, by Section 7 of the NLRA. The opinion delivered by Mr. Justice Harlan, with whom Justices Clark, Whitaker and Stewart joined, put their concurrence in the result "upon the narrow ground that the Union's activities for which the State has awarded damages may fairly be considered protected under the Taft-Hartley Act, and that therefore state action is precluded until the National Labor Relations Board has made a contrary determination respecting such activities."⁶

In the *Garmon* case, the Court by a 5-4 vote settled a second area of federal pre-emption: the interdiction of state action against action prohibited by the federal labor law. Mr. Justice Frankfurter delivered the opinion of the Court which held that the prohibition against state action pending an NLRB decision upon whether the defendant's action is prohibited by the NLRA extends to actions for damages as well as suits for injunctions;⁷ the opinion confines the *Laburnum* and *Russell* cases⁸ to situations involving violence or other imminent threats to domestic peace or "merely peripheral concern" to the federal statutory

³ 353 U.S. 26, 77 Sup. Ct. 607, 1 L. Ed. 2d 618 (1957).

⁴ *Garner v. Teamsters, Chauffeurs & Helpers Local Union No. 776*, 346 U.S. 485, 74 Sup. Ct. 161, 98 L. Ed. 228 (1953), discussed in 1955 Ann. Surv. Mass. Law §14.1.

⁵ *Garmon v. San Diego Building Trades Council*, 44 Cal. 2d 595, 320 P.2d 473 (1958).

⁶ 359 U.S. 236, 249, 79 Sup. Ct. 773, 782, 3 L. Ed. 2d 775, 785-786 (1959).

⁷ In 1959, on the authority of the *Garner*, *Weber* and *Fairlawn* cases, the Supreme Court in a per curiam opinion reversed an injunction granted by the Florida courts which had enjoined organizational picketing of resort hotels engaged in interstate commerce. The Court stated that the Florida courts did not have jurisdiction in this case whether the picketing was protected by Section 7 of the Labor-Management Relations Law of 1947 or prohibited by Section 8(b)(4) of the act even though the NLRB had refused jurisdiction of the cases. *Hotel Employees Union v. Sax Enterprises*, 358 U.S. 270, 79 Sup. Ct. 273, 3 L. Ed. 2d 289 (1959).

⁸ *Association of Machinists v. Gonzales*, 356 U.S. 617, 78 Sup. Ct. 923, 2 L. Ed. 2d 1018 (1958); *United Automobile Workers v. Russell*, 356 U.S. 634, 78 Sup. Ct. 932, 2 L. Ed. 2d 1030 (1958). See 1958 Ann. Surv. Mass. Law §15.1.

scheme on the other hand. Mr. Justice Harlan and his three colleagues in their special concurrence asserted that the state may also award damages for conduct that is or may be prohibited by federal law.⁹

Still left open is the question whether a state may act to regulate conduct (e.g., slowdown or a partial strike) which is neither protected nor prohibited by the NLRA. The opinion of the Court explicitly reserves judgment on this question, although the minority would hold that a state may regulate conduct in this intermediate area.¹⁰ Also still open is the related question regarding the extent to which the theory of "peripheral" labor matters, exemplified by *Gonzales*,¹¹ will support state jurisdiction.

In the second important case, *International Brotherhood of Teamsters v. Oliver*,¹² the Court dealt with the question of state power to regulate substantive terms and conditions of employment. The Ohio court had, under the state antitrust laws, enjoined the performance of an employer's collective bargaining agreement which had special provisions (wages, hours and working conditions and specified minimums for the use of equipment) for owner-operators. The United States Supreme Court reversed the injunction, holding that the federal law leaves "no room . . . for the application of this state policy limiting the solution that the parties' agreement can provide to the problems of wages and working conditions." The Court ruled that the collective agreement's rental provisions were sufficiently related to the wages of the owner-operators to draw them within the ambit of subjects on which collective bargaining is required by the federal labor law. In broad sweeping language, the Court stated that the federal government has legislated so comprehensively concerning "concerted activities and collective bargaining" agreements that there is no room for local law except for "a local health or safety regulation." The Court stated:

Federal law here created the duty upon the parties to bargain collectively; Congress has provided for a system of federal law applicable to the agreement the parties made in response to that duty . . . and federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide. . . .

⁹ The division within the Court on this vital pre-emption theory was underscored by the per curiam reversal, four justices dissenting, in *DeVries v. Baumgartner's Electrical Construction Co.*, 359 U.S. 498, 79 Sup. Ct. 1117, 3 L. Ed. 2d 976 (1959), reversing 91 N.W.2d 663 (S.D. 1959). In this case the state court had awarded damages to an employer for picketing which was apparently violative both of the state's right-to-work law and of the Taft-Hartley Act.

¹⁰ The minority relied upon *United Automobile Workers v. Wisconsin Employment Relations Board*, 336 U.S. 245, 69 Sup. Ct. 516, 93 L. Ed. 651 (1949). Professor Cox argues that the Taft-Hartley Act should be held to effect a total pre-emption of state law dealing specifically with unionization and collective bargaining. Cox, *The Labor Decisions of the Supreme Court at the October Term, 1957*, Proceedings of the ABA Section of Labor Relations Law, pp. 12, 19 (1958).

¹¹ *Association of Machinists v. Gonzales*, 356 U.S. 617, 78 Sup. Ct. 923, 2 L. Ed. 2d 1018 (1958).

¹² 358 U.S. 283, 79 Sup. Ct. 297, 3 L. Ed. 2d 312 (1959).

We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions.¹³

Whether the Court will limit this sweeping generalization by later decisions is open to question. Professor Cox believes that it will, for otherwise private labor contracts not even subject to approval by federal authority could override state legislation, and thus state fair employment practices, maximum hours, equal pay and similar laws regulating substantive terms not inconsistent with federal legislation would fall.¹⁴ He maintains that

no serious interference with the policy of encouraging union organization and collective bargaining as a method of establishing terms and conditions of employment is likely to result from the application of state legislation outlawing substantive conditions of employment which the state regards as undesirable without regard to the method by which they are established. Where the objective is unlawful without regard to the method used to achieve it, Section 7 should have no application. When the objective can be lawfully achieved by other methods, Section 7 guarantees employees the right to resort to concert of action.¹⁵

§13.10. Judicial review. Another important labor decision of the United States Supreme Court, *Leedom v. Kyne*,¹ dealt with judicial review of orders in proceedings to resolve a question of employee representation. The Westinghouse Engineers Association had filed a petition under Section 9 of the NLRA seeking certification as the bargaining representative of 233 professional employees. The NLRB found that nine non-professional employees had a community of interest with the professionals and included them in the unit. The election was held over the objection of the association, which was certified as the bargaining representative but which brought an action under Section 24 of the Judicial Code alleging that the NLRB's action deprived it of the statutory right to have the unit confined to professionals. The Court held that the suit "is not one 'to review' in the sense of that term as used in the Act, a decision of the Board made within its jurisdiction. Rather it is one to strike down an order of the Board made in excess of its delegated powers and contrary to a specific prohibition in the Act." For the board to include non-professional employees in the unit without polling the professional employees "deprived the professional employees of a right 'assured to them by Congress. . . . Where, as here, Congress has given a right' to the pro-

¹³ 358 U.S. at 296, 79 Sup. Ct. at 304-305, 3 L. Ed. 2d at 321 (1959).

¹⁴ Cox, *The Major Labor Decisions of the Supreme Court*, October Term 1958, Proceedings of the A.B.A. Section of Labor Relations; pp. 23, 25-31 (1959).

¹⁵ *Ibid.*

§13.10. 1 358 U.S. 184, 79 Sup. Ct. 180, 3 L. Ed. 2d 210 (1958).

fessional employees it must be held that it intended that right to be enforced, and 'the courts . . . encounter no difficulty in fulfilling its purpose.' " ²

The issue of judicial review of representation orders was first raised in *AFL v. NLRB*,³ where the Court dismissed a petition, under Section 10(f) of the NLRA, by a union whose claim concerning the appropriate bargaining unit had been rejected by the NLRB; the Court held that the certification or determination of the bargaining unit is not an "order" under Section 10. Three years later, in *Switchmen's Union of North America v. National Mediation Board*,⁴ the Court held by a 4-3 vote that a United States District Court had no jurisdiction under Section 24 of the Judicial Code to review a certification decision of the National Mediation Board. The *Kyne* case tries to distinguish the *Switchmen's* case and make it clear that the Court believes that the NLRB had disregarded its obvious instructions from Congress and that this type of case falls within the Court's scope of review. It may be that the *Kyne* case places all NLRB certifications (not orders for elections) in the category of reviewable orders even though Mr. Justice Whittaker's majority opinion obviously attempts to confine the holding to suits which challenge a certification upon the ground that the NLRB acted "in excess of its delegated powers," thereby distinguishing any "decision of the Board made within its jurisdiction."

In *Hotel Employees Union v. Leedom*,⁵ the Court held that the NLRB's jurisdictional standards could not be used to decline jurisdiction over an entire industry. Furthermore, on October 2, 1958, the NLRB put into effect revised jurisdictional standards which were expected to result in the extension of its jurisdiction to twenty percent of the cases formerly consigned to the "no man's land" under the *Guss* line of cases.⁶

§13.11. Massachusetts Lord's Day Statute. The so-called Sunday laws¹ of Massachusetts were involved in a federal court case. A panel of three judges by a 2-1 vote held that the application of these Sunday laws to a kosher meat market which closed on Saturday but opened on Sunday was a denial of the equal protection of laws and unconstitutional.² The case is being appealed to the United States Supreme

² Citing *Texas & New Orleans R. Co. v. Railway Clerks*, 281 U.S. 548, 568, 50 Sup. Ct. 427, 433, 74 L. Ed. 1034, 1045 (1930).

³ 308 U.S. 401, 60 Sup. Ct. 300, 84 L. Ed. 347 (1940).

⁴ 320 U.S. 297, 64 Sup. Ct. 95, 88 L. Ed. 61 (1943).

⁵ 358 U.S. 99, 79 Sup. Ct. 150, 3 L. Ed. 2d 143 (1958).

⁶ *San Diego Building Trades Council v. Garmon*, 353 U.S. 26, 77 Sup. Ct. 607, 1 L. Ed. 2d 618 (1957); *Amalgamated Meat Cutters and Butcher Workmen v. Fairlawn Meats, Inc.*, 353 U.S. 20, 77 Sup. Ct. 604, 1 L. Ed. 2d 613 (1957); *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 77 Sup. Ct. 598, 1 L. Ed. 2d 601 (1957); *Weber v. Anheuser-Busch*, 348 U.S. 468, 75 Sup. Ct. 480, 99 L. Ed. 546 (1955). See 42 L.R.R.M. 96 (Revised NLRB Standards for Asserting Jurisdiction).

§13.11. ¹ G.L., c. 136.

² *Crown Kosher Super Market of Massachusetts, Inc. v. Gallagher*, 176 F. Supp. 466 (D. Mass. 1959).

Court by the Attorney General of the Commonwealth. Two essential issues seem to be involved in this case: (1) whether the Massachusetts Sunday law is a "Lord's Day" law as distinguished from a "day of rest" law and, if the former, does it violate the establishment clause of the First Amendment? and (2) does the law, by discriminating against Saturday observers, violate their due process rights?³

C. MASSACHUSETTS DECISIONS

§13.12. **Arbitration.** In *Kesslen Brothers, Inc. v. Board of Conciliation and Arbitration*,¹ the Supreme Judicial Court held that if arbitrators make errors of law and not merely of fact by making findings not warranted by the evidence, this will not invalidate the decision of the arbitration board. Basically, the Court reiterated its position in earlier cases whereby, in the absence of fraud, the decision of arbitrators who are acting as a quasi-judicial tribunal is final and binding even though there may be an error of law or of fact. In the future, the new arbitration act will govern this type of case and should produce the same result.²

§13.13. **Internal union affairs.** In *McDermott v. Jamula*,¹ the Supreme Judicial Court held that the provisions of the international constitution of the International Brotherhood of Electrical Workers, rather than the custom or practice of the local union, govern the relationship of a member with his union. In this case, the individual member, a licensed electrician, sued the officers of Local 284 and the IBEW for alleged unjust suspension from the union. The member had failed to pay his \$9.10 monthly membership dues for March, April and May until June 2, and the local secretary had returned the money because he was suspended for a three months' arrearage in his dues, requiring application for reinstatement. The Court upheld the suspension and held that a person who fails to pay his dues in advance as required by the constitution can be suspended as a delinquent member if the constitution so provides. Furthermore, the Court stated that a local union has no power to waive the express provisions of the constitution of the international union. This case has some language important for unions relative to dues, delinquencies, constitutions, and relations between locals and internationals.

§13.14. **Labor agreement.** In *Karcz v. Luther Manufacturing Co.*,¹ the Supreme Judicial Court denied the claims of two former employees

³ In *People v. Friedman*, 302 N.Y. 75, 96 N.E.2d 184 (1950), the New York Court of Appeals upheld a Sunday law of that state upon the ground that the statute simply provided in reasonable terms for a day of rest. The United States Supreme Court, without opinion, dismissed an appeal for lack of a substantial federal question. *Friedman v. New York*, 341 U.S. 907, 71 Sup. Ct. 607, 95 L. Ed. 1345 (1951).

§13.12. ¹ 1959 Mass. Adv. Sh. 903, 158 N.E.2d 871.

² For comment on the new act, see §13.17 *infra*.

§13.13. ¹ 338 Mass. 236, 154 N.E.2d 595 (1958).

§13.14. ¹ 338 Mass. 313, 155 N.E.2d 441 (1959).

of a textile company for retirement separation pay under a union contract, when the mill closed for economic reason before the employees reached sixty-five, the age of retirement. The Court distinguished the retirement separation pay in the contract from severance pay clauses in many union contracts where payments are required upon the closing of a plant. The Court stressed the specific eligibility provision of the union contract and found that the employees were not entitled to retirement separation pay based upon length of service.

§13.15. **Miscellaneous.** In an important advisory opinion to the House of Representatives,¹ the Supreme Judicial Court stated that the General Court can constitutionally enact legislation setting up a panel of three judges for actions arising out of labor disputes. The Court also stated that the enactment of such legislation would not be class legislation or conflict with the requirement of equal protection under the law. This advisory opinion helped clear the way for the passage of a labor-sponsored bill providing for three judges of the Superior Court to hear equity actions involving labor disputes.²

In *Allied Theatres of New England, Inc. v. Commissioner of Labor and Industries*,³ the Court interpreted the procedure required for the judicial review of state minimum wage orders and held that the State Administrative Procedure Act did not overrule the judicial review procedure set forth in the state minimum wage law.

D. MASSACHUSETTS LEGISLATION

§13.16. **Legislation in 1958.** Several measures were passed in the 1958 legislature after the end of the 1958 SURVEY year. These included an increased state minimum wage¹ effective January 2, 1959, establishing a \$1 per hour minimum for all manufacturing employees and others not covered by wage boards, a floor of 90 cents per hour for all future wage board orders, and a floor of 65 cents for gratuity employees. Also adopted was a measure² liberalizing the eligibility provisions of the Employment Security Law by changing the language in the disqualification for leaving work from leaving "without good cause attributable to the employing unit" to "without good cause," and granting unemployment benefits to retired employees regardless of whether prior assent to compulsory retirement had been given by the employee either directly or indirectly through his union. This legislation reverses the decision of the Supreme Judicial Court in *Lamont v. Director of the Division of Employment Security*.³ Also passed was a measure providing for the determination of prevailing wages for

§13.15. ¹ Opinion of the Justices, 1959 Mass. Adv. Sh. 775, 158 N.E.2d 354.

² Acts of 1959, c. 600, commented on in §13.18 *infra*.

³ 338 Mass. 609, 156 N.E.2d 424 (1959).

§13.16. ¹ Acts of 1958, cc. 61, 620.

² *Id.*, c. 677.

³ 337 Mass. 328, 149 N.E.2d 372 (1958). See 1958 Ann. Surv. Mass. Law §15.3.

demolition on public work projects.⁴ The legislature also enacted and put in the general labor section a measure giving an injured employee preference for re-employment if he is capable of performing the available work.⁵ The industrial homework law was further amended by a law providing that during a strike the employer's industrial homework permits and certificates are automatically canceled until the strike is ended or ruled illegal.⁶

Of major importance was an extensive revision⁷ of the Health, Welfare and Retirement Funds Law of 1957 which met many of the criticisms of the old law.⁸ The new law covers all health, welfare or retirement "trusts,"⁹ whether they are run solely by the union or by employers, or jointly by both, if the contributions come from the employer, the employees, or both, and the benefits include medical or hospital care, pensions, retirement pay, supplementary unemployment compensation, sickness compensation, or life disability or accident insurance for twenty-five or more beneficiaries in Massachusetts. It requires registration and annual filings by all funds. In addition to the registration and reporting requirements, the law is regulatory, for it prohibits "kickbacks" and other practices. It provides criminal penalties for non-payment of required health and welfare or retirement contributions. It also includes a waiver provision upon application by funds filing under the federal disclosure law. The health, welfare and retirement trust funds board set up to administer the new law consists of the Commissioners of Banks, Insurance, and Labor and Industries, with a director and staff.¹⁰

The new Health, Welfare and Retirement Funds Board, created by Chapter 655 of the Acts of 1958, issued six regulations during the 1959 SURVEY year. The first extended the time for registering funds to August 1, 1959. The second defined the scope of the act to cover all health, welfare and retirement programs or funds (unilateral or joint), regardless of separation or segregation, so long as they are used directly or through insurance for hospital, surgical, medical care, sickness or accident, pension, annuity, retirement, death or unemployment benefits for twenty-five or more employees.¹¹ The third regulation sets up

⁴ Acts of 1958, c. 364.

⁵ Id., c. 593, adding new §51B to G.L., c. 149.

⁶ Acts of 1958, c. 666.

⁷ Id., c. 655, amending G.L., c. 151D, inserted by Acts of 1957, c. 778.

⁸ See 1957 Ann. Surv. Mass. Law §25.3.

⁹ This term is defined in Section 1 of the law as follows: "Trust, all funds derived in whole or in part from contributions from employers or employees or both, and designed for the purpose of paying or providing for medical or hospital care, pensions, annuities, benefits or retirement or death or unemployment of beneficiaries, compensation for injuries or illness, insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance for the benefit of beneficiaries or their dependents." For a description of the new law, see Segal, Labor Legislation in 1958 in Massachusetts, 3 Boston B.J. 13 (Jan. 1959).

¹⁰ The lack of appropriations has limited the staff to two employees.

¹¹ Three cases are pending in the Superior Court involving this regulation and the definition of the term "trust" as used in the law. See note 9 *supra*.

the R-1 registration form but alternatively permits funds to file a duplicate of the federal D-1 form. Another regulation requires amendments or modifications of plans to be filed within ninety days of their effective date. The fifth regulation defines "employer" and "employees." The final regulation temporarily waived until November 1, 1959, the \$5 per day penalty for late registration. As yet, no R-2 forms for the annual filing have been issued nor has any regulation been promulgated permitting duplicate filings of the federal D-2 form.

§13.17. **Labor relations: Model Arbitration Law.**¹ The new Chapter 150C of the General Laws, based upon the Uniform Arbitration Act prepared by the Commissioners on Uniform Laws and endorsed by the House of Delegates of the American Bar Association, is limited to labor arbitration.² It changes the common law³ and makes agreements to arbitrate as well as reinstatement awards enforceable in the courts of the Commonwealth. It spells out the respective roles of the courts and the arbitrators and, unlike the New York doctrine in *International Association of Machinists v. Cutter-Hammer, Inc.*,⁴ it places the question of "arbitrability" before the arbitrator rather than the courts. It provides for judicial review limited to five specific grounds: (a) corruption, fraud or undue means; (b) evident partiality or prejudicial misconduct; (c) arbitrator exceeds his powers or his award requires violation of a law; (d) unfair hearing; (e) no arbitration agreement. The new act, which became effective December 31, 1959, applies only to labor agreements written after that date. Although the *Lincoln Mills* case⁵ may have decreased the importance of a state arbitration statute, nevertheless the new law of Massachusetts may play an important part in the field of labor relations especially with the delegation of the "no man's land" cases to the state courts by the new federal law.⁶

§13.18. **Three-judge panel in labor disputes.** As a result of a new law,¹ a panel of three Superior Court justices appointed by the Chief Justice is required in any action or proceeding involving a labor dispute. The bill is a broad one and covers all restraining orders and temporary or preliminary injunctions in labor disputes, and even covers court actions involving the Massachusetts Labor Relations Commission under Chapter 150A of the General Laws. It can reasonably

§13.17. ¹ For a detailed report on 1959 labor legislation, see Segal, 1959 Labor Legislation in Massachusetts, 3 Boston B.J. 21 (Oct. 1959).

² Adopted by Acts of 1959, c. 552.

³ *Sanford v. Boston Edison Co.*, 316 Mass. 631, 56 N.E.2d 1, 156 A.L.R. 644 (1946); *Vynior's Case*, 8 Co. Rep. 81b, 77 Eng. Rep. 597 (K.B. 1609); see also *Magliozzi v. Handschumacker & Co.*, 327 Mass. 569, 99 N.E.2d 856 (1951). Even at common law, the Court will not upset an award based upon an error of law or of fact. *Kessler Brothers, Inc. v. Board of Conciliation*, 1959 Mass. Adv. Sh. 963, 158 N.E.2d 871. See §13.12 *supra*.

⁴ 297 N.Y. 579, 74 N.E.2d 464 (1947).

⁵ 353 U.S. 448, 77 Sup. Ct. 912, 1 L. Ed. 2d 972 (1957).

⁶ For comment on this provision, see §13.7 *supra*.

§13.18. ¹ Acts of 1959, c. 600.

be interpreted to apply to permanent labor injunctions. Appeals from decisions of the three-judge panel can be taken to a single justice of the Supreme Judicial Court.² The constitutionality of this new measure was favorably reported in an advisory opinion to the legislature.³

§13.19. Employment security. The most important unemployment compensation bill enacted was a \$5 increase in weekly maximum benefits to \$40 with a revised benefit formula, but with an increase in minimum earnings required for eligibility in the base period from \$500 to \$650.¹ Dependency benefits were increased by \$2 to \$6 per week per dependent.² The maximum duration of benefits was increased from 26 to 30 weeks, with an increase in benefits from 34 to 36 percent of base period earnings.³ The solicitation of employers by anyone to handle unemployment compensation cases is prohibited.⁴ Another measure grants unemployment compensation to persons laid off during the negotiations of a collective bargaining contract prior to a strike;⁵ this bill overrules the decision of the Supreme Judicial Court in *Adomaitis v. Director of the Division of Employment Security*.⁶ Women who refuse to accept employment between the hours of 11 P.M. and 6 A.M. no longer will be denied unemployment compensation benefits.⁷ Defeated was the labor-sponsored bill to grant unemployment compensation benefits to strikers after six weeks.⁸ Also defeated were industry's proposals to revise the eligibility requirements of the law.⁹

§13.20. Miscellaneous legislation. The state minimum wage law was changed so that wage boards can no longer set wage orders below \$1 per hour, rather than the previous 90 cents, and the minimum for gratuity employees was raised 5 cents per hour to 70 cents. Residential janitors with living quarters were raised \$2 per week to a new minimum of \$30 per week.¹

The use of lie detectors for employees as a condition of employment or continued employment was prohibited by Chapter 255 of the Acts

² See G.L., c. 214, §9(6).

³ Opinion of the Justices, 1959 Mass. Adv. Sh. 775, 158 N.E.2d 354, commented on in §13.15 *supra*. When the Governor approved the bill, he issued an unusual statement which stated that he had signed "with the understanding that it was intended to be applicable only when the question involves a temporary injunction or restraining order. The bill as enacted is broadly drawn and is not clear in several respects. . . . I believe that this law should be clarified and its application defined more precisely."

§13.19. ¹ Acts of 1959, c. 587.

² *Id.*, c. 589.

³ *Id.*, c. 588.

⁴ *Id.*, c. 506.

⁵ *Id.*, c. 554.

⁶ 334 Mass. 520, 136 N.E.2d 259 (1956), noted in 1956 Ann. Surv. Mass. Law §14.4.

⁷ Acts of 1959, c. 533.

⁸ House No. 721.

⁹ Senate Nos. 179, 183, 185, 186.

§13.20. ¹ Acts of 1959, c. 551.

of 1959. The Commissioner of Labor and Industries was given power to suspend the labor laws for women and minors by Chapter 45 of the Acts of 1959.

A measure was enacted which provided that the excess of any dividends received in a joint contribution insurance policy over the employer's aggregate expenditures for insurance will be applied by the policyholder for the sole benefit of insured employees or members.²

Sent to studies were such measures as the labor-sponsored proposal to grant overtime after 40 hours,³ and thirty-one bills dealing with Sunday laws and legal holidays.⁴

² *Id.*, c. 552.

³ House No. 1190.

⁴ House No. 2811.