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Chapter 25: Labor Relations

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CHAPTER 25

Labor Relations

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A. Court Decisions

§25.1. State-federal jurisdiction.[1] Although some of the doubt which has surrounded the "twilight zone" of federal-state regulation of labor relations has been dispelled by several new decisions by the United States Supreme Court, the twilight zone remains. The Court in three cases[2] held that the states have no power to act in the regulated area "affecting commerce" even when the National Labor Relations Board has declined or obviously would decline to exercise its jurisdiction. In the *Guss* case, the Court held that the Utah Labor Relations Board does not have jurisdiction over an unfair labor practice case against an employer engaged in interstate commerce, even though the NLRB has declined jurisdiction under its monetary jurisdictional standards.[3] In the *Fairlawn* case, the Court held that a state court may not enjoin peaceful picketing of an interstate commerce employer by a union that is seeking a union shop clause but which does not represent a majority of the employees; this question is covered by federal law in spite of the fact that the NLRB would decline jurisdiction of the dispute under its own standards. Finally, in the *Garmon* case the Court held that a state court does not have jurisdiction in an action for damages and for an injunction restraining a minority union from peaceful picketing for a union shop of an interstate employer, even though the NLRB would not assert jurisdiction.[4]

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§25.1. [1] Garner v. Teamsters, 346 U.S. 485, 74 Sup. Ct. 161, 98 L. Ed. 228 (1953); see 1955 Ann. Surv. Mass. Law §14.1; 1954 Ann. Surv. Mass. Law §16.2.

[2] Guss v. Utah Labor Relations Board, 353 U.S. 1, 77 Sup. Ct. 598, 1 L. Ed. 2d 601 (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); San Diego Building Trades Council v. Garmon, 353 U.S. 26, 77 Sup. Ct. 607, 1 L. Ed. 2d 618 (1957).

[3] See NLRB Press Rel. No. R-445, issued July 1, 1954. See also Breeding Transfer Co., 110 N.L.R.B. 493, 35 L.R.R.M. 1020 (1954); Humphrey, The Changing Jurisdictional Standards of the NLRB, 15 Fed. B.J. 30 (1955).

[4] In several other cases the Supreme Court by per curiam decisions reversed state courts and held that they were without power to act:

The effect of these decisions was well summarized by the Chief Justice in the *Guss* case when he stated:

> We are told by appellee that to deny the State jurisdiction here will create a vast no-man's-land, subject to regulation by no agency or court. We are told by appellant that to grant jurisdiction would produce confusion and conflicts with federal policy. Unfortunately, both may be right.[5]

In Massachusetts, these decisions mean that the Massachusetts Labor Relations Commission has no jurisdiction over employers whose activities affect interstate commerce but who cannot go to the NLRB because they do not meet the jurisdictional standards of the Board. Inasmuch as the Massachusetts Labor Relations Law[6] does not conform to the Labor Management Relations Act, 1947, the NLRB cannot cede jurisdiction to the state board. In effect, the MLRC and other state labor relations boards are out of business except for voluntary submissions or the ill-defined and fairly unpromising de minimis situations.

The state courts are also restricted in their control over the field of labor relations. State courts are powerless to enjoin the whole gamut of labor activities which are "covered" by the Taft-Hartley Act. If the activity is protected by Section 7 of the act or is an unfair labor practice under Section 8, state courts have no jurisdiction except possibly over suits for damages for violence.[7] Furthermore, employees in the unregulated area have none of the rights guaranteed by Section 7 or the protections of Section 8 (a), while labor organizations in this area are free of the restrictions of Section 8(b). To remedy these various situations, federal legislation is needed.

The doubt as to the enforcement of collective agreements in the federal courts[8] was resolved in *Textile Workers Union of America*

(a) Jurisdictional picketing which violated the state's secondary boycott statute. Pocatello Building and Construction Trades Council v. C. H. Elle Construction Co., 352 U.S. 884, 77 Sup. Ct. 130, 1 L. Ed. 2d 82 (1956).

(b) Picketing for organizational purposes or to compel a contract after a NLRB finding of no unfair refusal to bargain. Retail Clerks v. J. J. Newberry Co., 352 U.S. 987, 77 Sup. Ct. 385, 1 L. Ed. 2d 367 (1957).

(c) Picketing to induce the employer to employ union labor in violation of the state's right-to-work law. Local 429, Electrical Workers v. Farnsworth & Chambers, 353 U.S. 969, 77 Sup. Ct. 1056, 1 L. Ed. 2d 1133 (1957).

(d) Refusal of employees of a common carrier to cross a picket line, a refusal which was held by the state court to be violation of state law. Teamsters Local 327 v. Kerrigan Iron Works, 353 U.S. 968, 77 Sup. Ct. 1055, 1 L. Ed. 2d 1133 (1957).

[5] 353 U.S. 1, 10, 77 Sup. Ct. 598, 603, 1 L. Ed. 2d 601, 607 (1957).

[6] General Laws, c. 150A, §10(b) does not affect the decision of the United States Supreme Court on federal pre-emption.

[7] United Auto Workers v. Wisconsin Employment Relations Board, 351 U.S. 266, 76 Sup. Ct. 794, 100 L. Ed. 1162 (1956). On the question of damages, see United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656, 74 Sup. Ct. 833, 98 L. Ed. 1025 (1954); the question of damages was expressly left open in the Fairlawn and Garmon cases, note 2 *supra*.

[8] For a discussion of this issue, see 1955 Ann. Surv. Mass. Law §14.2.

v. Lincoln Mills of Alabama[9] and two companion cases,[10] wherein the United States Supreme Court held that arbitration provisions in collective bargaining agreements affecting interestate commerce are enforceable in the federal courts under Section 301 of the Taft-Hartley Act, irrespective of the law of the state in which the controversy arises. As Mr. Justice Frankfurter stated in his dissenting opinion in the *Lincoln Mills* case, Section 301 has been "transmuted into a mandate to the federal courts to fashion a whole body of substantive federal law appropriate for the complicated and touchy problems raised by collective bargaining."[11] This case raises some important questions relative to state labor law and courts: (1) Has the federal government taken exclusive hold of the field of labor arbitration? (2) May a suit also be brought in a state court for the enforcement of an agreement to arbitrate under a labor agreement? (3) Will the federal courts look to state law in fashioning federal law on a case-by-case basis?[12] Professor Paul Hays of Columbia University Law School concludes:

> ... state laws are no longer applicable to contracts between employers and labor organizations representing employees in an industry affecting commerce. State courts which rule upon such contracts will be required to rule in accordance with the new federal law which the federal courts will now proceed to fashion. ... It will be some time before the full implications of the *Lincoln Mills* decision are recognized. In the meantime, there will be an unparalleled opportunity for counsel in the state and federal courts and for commentators to make an imaginative contribution to the new federal law which the courts must fashion.[13]

§25.2. Massachusetts decisions. During the 1957 SURVEY year the Supreme Judicial Court delivered only two decisions in the field of labor relations; it also decided sixteen workmen's compensation cases.[1]

In *Leonard v. Eastern Massachusetts Street Railway Co.*[2] the Court considered federal jurisdiction no obstacle to its entertaining an action on behalf of discharged employees for a declaration of their right under a collective bargaining agreement to arbitrate the issue of their

[9] 353 U.S. 448, 77 Sup. Ct. 912, 1 L. Ed. 2d 972 (1957).

[10] Goodall-Sanford, Inc. v. United Textile Workers of America, AFL, Local 1802, 353 U.S. 550, 77 Sup. Ct. 920, 1 L. Ed. 2d 1031 (1957); General Electric Co. v. Local 205, United Electrical Workers of America, 353 U.S. 547, 77 Sup. Ct. 921, 1 L. Ed. 2d 1028 (1957).

[11] 353 U.S. 448, 461, 77 Sup. Ct. 912, 923, 1 L. Ed. 2d 972, 983 (1957).

[12] For a detailed discussion of these and related questions, see Isaacson, Report of the Committee on Labor Arbitration, Proceedings A.B.A., Section of Labor Relations Law, 55 (1957).

[13] Hays, Report of the Committee on State Labor Legislation, id. at p. 105.

§25.2. [1]The cases on workmen's compensation are covered in Chapter 30.

[2] 335 Mass. 308, 140 N.E.2d 187 (1957).

discharge, although the issue of discharge had already been passed upon by the NLRB, which had held that no unfair labor practice had been committed.

In *Binnall v. Thayer Co.*[3] the union sought to review earlier final injunctive decrees of the Court in *Thayer Co. v. Binnall*[4] on the grounds that the decrees were in conflict with and superseded by a decision of the NLRB[5] and that the field had been pre-empted by federal law. The Court held that since there was no report of the evidence and the trial court had found that "no new facts have been presented and there has been no significant change of circumstances since the granting and upholding of the final decrees,"[6] the finding was decisive and the leave to file a bill of review was not allowed. As an original case or on a full report of the evidence, there is some question as to whether the original decree would be valid in the light of new federal-state developments.[7]

Although there has been no decision by the full bench of the Supreme Judicial Court on the amended anti-injunction law of the Commonwealth,[8] a decision is expected soon on the basis of the report to the full bench by Justice Ronan in the case of *Poirier v. Justices of the Superior Court.*[9] In this case the unions peacefully picketed an employer, none of whose employees were members of the union, for informational and possibly organizational purposes. Although the bill of complaint alleged interstate commerce, Judge Goldberg in a special hearing on a plea to the jurisdiction based on the Supreme Court decisions in the *Guss, Fairlawn,* and *Garmon cases,*[10] found that there was no interstate commerce involved and that there was no "labor dispute" within the meaning of the state anti-injunction law.[11] When the judge refused to report the case under G.L., c. 214, §9A(6), the unions, relying on *Mengel v. Justices of the Superior Court,*[12] sought a writ of mandamus and Judge Ronan has reported the question as to whether there is a labor dispute under the laws of Massachusetts to the full bench of the Court.

3 335 Mass. 150, 138 N.E.2d 765 (1956).

4 326 Mass. 467, 473n, 95 N.E.2d 193 (1950).

5 H. N. Thayer Co., 99 N.L.R.B. 1122 (1952), *enforcement granted,* 213 F.2d 748 (1st Cir. 1954).

6 326 Mass. 467, 473, 95 N.E.2d 193, 198 (1950).

7 See §25.1 *supra.*

8 Acts of 1950, c. 452. See Segal, The New Anti-Injunction Law, 21 Boston B. Bull. 155 (1950).

9 C. L. No. 57161 (Oct. 1957).

10 See §25.1 *supra,* note 2.

11 But cf. Capitol Super Market v. McNamara, Suffolk Sup. Ct. Eq. 67757 (1954). Judge Spalding sitting as a single justice held that a "labor dispute" existed and the procedural requirements of Chapter 214 applied in a case of peaceful picketing of an establishment in which none of the employees were members of the union.

12 313 Mass. 238, 47 N.E.2d 3 (1943).

B. Massachusetts Legislation

§25.3. The new Health, Welfare and Retirement Funds law.[1] The last act signed by Governor Furcolo in the 1957 session of the General Court was Chapter 778, "An Act Establishing a Health, Welfare and Retirement Funds Board and Regulating Such Funds in the Commonwealth." Joining several other states,[2] Massachusetts has adopted a broad registration and reporting law as a result of various investigations of health and welfare funds.[3]

The new law does not become effective until October 1, 1958, and in the interim the Special Commission Established to Study and Investigate the Need for Administration and Regulation of Health and Welfare Trust Funds in the Commonwealth will continue its investigation and has been directed to make a final report by December, 1958.[4]

Administration. A board consisting of the Commissioners of Labor and Industries, of Banks and of Insurance will administer the new law. It has broad powers to adopt rules and regulations, require reports, employ personnel, pass on registration of funds, require posting of bonds, receive the annual filings of the funds, require distribution of the summary of the annual report to all employers, employees, and unions, examine trusts after notice to the trust with approval of the probate judge, subpoena witnesses, and bring suits against trustees when after notice and hearing, it finds that the trust has been depleted by the wrongful or negligent act of a trustee or any person connected with the trust.

Coverage. The new law applies to all funds derived in whole or in part from contributions from employers or employees, or both, for the purpose of employee benefits directly, or through insurance, for medical or hospital care, pensions, annuities, retirement, death or unemployment benefits, compensation for injuries or illness, life insurance, disability and sickness or accident insurance. The new law applies to joint health and welfare or pension funds administered by employer and union representatives and already subject to Section 302 (c) of the Labor Management Relations Act, 1947; to unilateral

§25.3. [1] Acts of 1957, c. 778, creating a new Chapter 151D in the General Laws. For a detailed analysis of the new law, see Segal, The New Health and Welfare Act of Massachusetts, 1 Boston B.J. No. 11, p. 11 (1957).

[2] California, Connecticut, New York, Washington and Wisconsin passed such laws in 1956 or 1957.

[3] In Massachusetts, an unpaid Special Commission established by Resolves of 1955, c. 107, was revived and continued by Resolves of 1956, c. 59, and further continued by Resolves of 1956, c. 156, and Resolves of 1957, c. 113. It has made five interim reports, two of the most important being Senate No. 675 (1957) and Senate No. 690 (1957). Other investigations in the field of health and welfare funds include four major investigations by Congressional committees, and state investigations in California, Minnesota, New York and Washington.

[4] Resolves of 1957, c. 113.

pension funds set up by employers and already subject to Sections 401 and 404 of the Internal Revenue Code; to supplementary unemployment compensation funds, and pre-Taft-Hartley health and welfare retirement funds set up by unions and based on contributions from employers; to health and welfare or pension funds operated as corporations; to national out-of-state funds so long as there are twenty-five or more beneficiaries in the Commonwealth.

The law does not apply to union mortuary funds or other union funds where the contributions do not come from employers. The law specifically exempts funds with less than twenty-five beneficiaries in Massachusetts, funds established by the state government or any of its political subdivisions, and any employees' retirement association established by law subject to an audit by the Commissioner of Insurance or the Commissioner of Banks. It also does not apply to ordinary profit-sharing plans of corporations. Opinions of the Attorney General or statutory changes by the 1958 session of the General Court are needed to clarify many problems raised by the definitions in the law.[5]

Obligations of Funds. By January 1, 1959, all covered funds must register with the Board. The Board will approve any trust provided that in its opinion the documents regulating the fund make adequate provisions for its investment and operation, for the interests of the beneficiaries, and for an accounting. If the Board disapproves the registration, the fund has twenty days to make amendments and can go to the Probate Court for review.

The funds must file detailed annual reports with the Board. The reports must include amounts contributed by employers or employees, the amount of benefits paid, the number of employees covered, the salaries and fees paid and to whom. If the benefits are provided through an insurance or service company, the carrier must supply the fund with extensive financial and administrative information.

"Kickbacks" are prohibited by the new law; no trustee or employer or labor union or their officers or agents can receive any payments directly or indirectly from any insurance company, agent, broker, or the trust. This does not prohibit unions or employers from receiving reasonable compensation from the fund for necessary services rendered or for expenses.

[5] Although the new law uses such terms as "trust," "trustees," and "beneficiaries," the interchangeable use of the words "funds," "plans," and "programs" by the Special Commission and in the exclusions under Section 6, as well as the inexactly drafted definitions, permits the interpretation that the law will apply to many unilateral benefit plans that have no trust corpus in the usual sense. Thus it is arguable that the law applies to an employer who buys workmen's compensation, life, sickness or accident insurance for his employees; who buys Blue Cross-Blue Shield; or who pays sick leave or sets up a medical department in his plant. It can also be argued that the law even applies to the "funds" of Blue Cross-Blue Shield and of insurance companies.

Trustees are held responsible in a fiduciary capacity for all property of the trust. In spite of any exculpatory clauses in the trust instrument, the new law imposes a duty to use good faith or due care in administering the trust.

Criminal penalties of up to five years in prison and of fines up to $10,000 are provided for embezzlement or misappropriation of trust property, falsification or destruction of records, filing false statements or taking "kickbacks."

Criticisms. The new law is open to several criticisms.[6] Technically the definitions are poor, the standards vague, and there is a lack of reciprocity or waiver for federal or other state laws. Some critics argue that there was no evidence to require the broad coverage or detailed requirements of the new law. Others point out that there should be a federal law in this field rather than forty-eight different state laws. Some segments of labor also criticize the new law because of its omissions: [7] it provides for (1) no regulation of insurance abuses; (2) no removal of the requirements of mandatory payment or charge of brokerage commissions even though no service was rendered; (3) no provision for strengthening the insurance laws; (4) no provision for any reduction in premiums based on pro rata contributions by employees; (5) no regulation of profit-sharing plans or the investment of trust funds in company stocks. At the same time other critics call for stronger regulations and the prudent-man rule for investments of trust funds.[8] These and other proposals probably will be introduced in the 1958 session of the General Court.

§25.4. Miscellaneous statutes. Unemployment compensation benefits were liberalized to provide for an increase from $3 to $4 for dependents of unemployed workers.[1] The definition of "remuneration" in the Employment Security Law was changed to exclude severance payments but to apply to payments in lieu of dismissal notice.[2] This helps the long-service employee who previously lost his unemployment compensation benefits because of his accrued severance payments. Another short-run correctional amendment [3] was passed providing that unemployed persons who would have been eligible for benefits on October 1, 1956, under G.L., c. 151A, if Chapter 719 of the Acts of 1956 had not been enacted creating a changing base period, "could receive their unemployment compensation benefits" using the

[6] See MacIntyre, Regulations of Employee Benefit Programs, 10 Indust. & Lab. Rel. Rev. 554 (1957); see also Segal, The New Health and Welfare Act of Massachusetts, 1 Boston B.J. No. 11, pp. 11, 15-16 nn. 14-22 (1957).

[7] See AFL, Guides for Administration of Health and Welfare Funds (1955).

[8] See Senate No. 675 (1957).

§25.4. [1] Acts of 1957, c. 542, amending G.L., c. 151A, §29(c).

[2] Id., c. 632, amending G.L., c. 151A, §1(r). This definitely affects the holding in Kalen v. Director of the Division of Employment Security, 334 Mass. 503, 136 N.E.2d 257 (1956), discussed in 1956 Ann. Surv. Mass. Law §14.5.

[3] Acts of 1957, c. 626.

old "base period" of July 1, 1955, to July 1, 1956, rather than the new period.[4] This applies only during 1957.

Representation of labor was provided on the twelve-man advisory correction committee [5] and on the contributory group insurance program of government employees.[6] The compensation for expert assistants used in arbitration cases was increased from $20 to $30 per day.[7] The minimum wage law was also amended to provide for an extention of from 30 to 90 days for the time within which the minimum wage boards must submit their reports and recommendations for a minimum fair wage rate.[8] With labor's sponsorship, there was a $300 increase in the minimum salary for public school teachers to a new minimum of $3300.[9] The law providing for security for payments to laborers and subcontractors on public construction was strengthened.[10]

Several relaxing amendments were also passed. As in former years, the Commissioner of Labor and Industries was authorized to suspend until July 1, 1958, the operation of the labor laws relating to minors and women.[11] The minimum wage law was amended to permit the Commission to issue a special license for rates below the minimum fair wage rates for learners, apprentices or persons in apprentice training programs as well as persons impaired by age, physical or mental deficiency or injury.[12] Furthermore, women employed in legislative printing or binding during the sessions of the General Court were exempted from the provisions of G.L., c. 149 limiting work periods of women.[13]

Although the House passed the Uniform Arbitration Act,[14] adopted in whole or in part in several other states,[15] the Senate insisted on several emasculating amendments requiring courts to pass on arbitrability in the first instance.[16] When no compromise was reached, this important bill died between the branches.

Several labor matters were referred to Special Commissions. These

4 Acts of 1956, c. 719.

5 Acts of 1957, c. 704, amending G.L., c. 27, §3.

6 Id., c. 242.

7 Id., c. 481, amending G.L. c. 150, §7.

8 Id., c. 202, amending G.L., c. 151, §7.

9 Id., c. 447, amending G.L., c. 71, §40.

10 Id., c. 682, amending G.L., c. 149, §29.

11 Id., c. 162. The Commissioner's power requires the finding of an emergency or a hardship.

12 Id., c. 225, amending G.L., c. 151, §9.

13 Id., c. 91, amending G.L., c. 149, §36.

14 See Final Report of Department of Labor and Industries, House No. 2692 (1957).

15 In 1957, Minnesota adopted the Uniform Act. Florida and Maine adopted their own versions of the act and earlier versions of the act have been adopted in other states.

16 See Journal of the Senate, June 27, 1957, p. 1180; id., July 1, 1957, p. 1191; id., July 22, 1957, p. 1318.

included time and one-half for work in excess of forty hours,[17] investigation of labor laws relating to women and children,[18] disqualification in the Employment Security Law,[19] and continuation of investigation of health and welfare plans.[20] In addition, the new Commission on the Audit of State Needs and Problems will study many labor matters.[21]

17 Resolves of 1957, c. 40.
18 Id., c. 58.
19 Id., c. 93.
20 Id., cc. 66, 70, 90, 113.
21 Id., c. 38.