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# Management's Prerogatives vs. Labor's Rights

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in England,<sup>29</sup> that the insurance money is impressed with a trust for the benefit of the purchaser is the proper view.

2. Since the situation in Ohio is not fully settled, legislation should be adopted to remedy this problem and clarify the rights of the parties.

3. Until such legislation is adopted or until the Ohio Supreme Court renders a decision in point, Ohio attorneys, real estate brokers and insurance men should be certain their clients are protected during the escrow period.

DON WOLFSON

## *Management's Prerogatives vs. Labor's Rights*

The subject of management's prerogatives as opposed to labor's rights is a troublesome problem. When employees organize to promote their interests in an enterprise by the application of their group strength, they do so for the purpose of obtaining a voice in the determination of policies which, prior to the inception of collective bargaining, were solely within the area of management's discretion.<sup>1</sup>

There can be little doubt that a majority of the ranks of management now hold firmly to the view that some line of demarcation must separate the areas in which management has sole authority from those in which the union may be conceded to have the right to bargain.<sup>2</sup> Until comparatively recent times, both labor and management have agreed that certain matters come under the exclusive control or jurisdiction of one party or the other; but this picture is starting to cloud at present.<sup>3</sup>

### OVERLAPPING AUTHORITY

Labor is gradually expanding its field of action and as a natural consequence there has been increasing labor-management friction on points which in the past have been considered by management as being exclusively within its own sphere of authority. There is the prevalent belief that management must be accorded certain prerogatives as essential to the successful performance of its role.<sup>4</sup> However, it has always been difficult to get labor and management to agree as to just where the respective lines of authority

<sup>1</sup> MATHEWS, LABOR LAW CASES AND MATERIALS 76 (Temp. Ed. 1950).

<sup>2</sup> CHAMBERLAIN, THE UNION CHALLENGE TO MANAGEMENT CONTROL 129 (1948); PRESIDENT'S NATIONAL LABOR—MANAGEMENT CONFERENCE, SUMMARY AND COMMITTEE REPORTS 56, 57 (Bull. No. 77, U.S. Dept. of Labor, Div. of Labor Standards 1945).

<sup>3</sup> MANAGEMENT'S RIGHT TO MANAGE 1 (United States Chamber of Commerce 1948).

<sup>4</sup> MATHEWS, *op. cit. supra* note 1, at 77; HILL AND HOOK, MANAGEMENT AT THE BARGAINING TABLE 56 (1945).

are to be drawn.<sup>5</sup> It is this overlapping of the two fields of claimed authority that causes much labor-management strife when the topic of management's prerogatives or labor's rights is raised in a labor dispute.

The fact that these overlapping claims of authority exist is known to most persons who are connected with labor disputes. Furthermore, both labor and management are anxious to present their views to the interested bystander and for this purpose maintain research organizations. Their theories on the surface seem generally to agree with each other; but, in practice, these views can be interpreted so as to lead to lively arguments at the bargaining table or before an administrative board.

#### POINTS AFFECTING RIGHTS OF BOTH PARTIES

##### (a) *Right to hire, release or discipline*

One of the most important areas of overlapping claims of authority is the power to hire, release or discipline employees. According to the United States Department of Labor:

The right to hire, release or discipline for just cause and to maintain discipline and efficiency of employees, is the sole prerogative of the company. In addition, the products to be manufactured, the location of plants, the schedule of production if in harmony with the provisions incorporated heretofore under the section of Wages and Hours, the methods, processes and means of manufacturing are solely and exclusively the responsibility of the company.<sup>6</sup>

The right to hire, release or discipline for just cause and to maintain discipline and efficiency of employees immediately raises the question of who is to be the judge of a "just cause," what is to be considered "efficient," and how these issues are to be decided. Not too long ago, the above questions would not have been raised since it would have been understood that management would decide the issues. It was presumed that management's rights in this respect came about by virtue of "(1) its ownership of the premises; and (2) its relationship as an employer, rather than as a party to collective bargaining agreements."<sup>7</sup> Strictly speaking, therefore, any concession made was voluntary on management's part since it was part of its pre-existing rights; today, however, labor is partaking to a far greater degree in the deciding of such issues. For example, labor unions in connection with the right to hire have taken the stand that such autocratic power in the hands of management deprives the worker of the right of contract.<sup>8</sup>

<sup>5</sup> MATHEWS, *op. cit. supra* note 1, at 80; CHAMBERLAIN, *op. cit. supra* note 2, at 130.

<sup>6</sup> COLLECTIVE BARGAINING PROVISIONS — MANAGEMENT PREROGATIVES 5 (U.S. Government preliminary draft November, 1948).

<sup>7</sup> HILL AND HOOK, *op. cit. supra* note 4, at 116.

<sup>8</sup> RESOLVED THAT LABOR SHOULD BE GIVEN A DIRECT SHARE IN THE MANAGEMENT OF INDUSTRY (American Federation of Labor Memorandum 1946).

With labor's more aggressive stand on these matters, there are certain to be more claims of overlapping authority on a greater number of issues.

(b) *Personalities*

Aside from the purely factual disagreements, there are problems arising out of differences in the personalities of parties to a labor dispute. One person might take a completely different stand on a question than another, regardless of whether he is on the same side of the economic fence or not. Not all managements assert the same prerogatives, and not all labor unions are equally aggressive. Consequently, a perfect solution or settlement for one group of labor representatives might be no solution for another group and might even cause untold damages regarding future negotiations. Different people often interpret the same printed material in different ways. For example, two different managements may give opposite interpretations of a contract paragraph which lists the functions belonging to management and those belonging to labor. One management will claim that all the functions not specifically mentioned as belonging to labor belong to management, whereas another management will admit that these functions are subject to collective bargaining.<sup>9</sup>

(c) *Industry-wide bargaining*

A possible step toward a solution for such problems is industry-wide bargaining. However, even if this would eliminate some of the difficulties arising from personalities, management would run into greater dangers. Labor favors industry-wide bargaining, but certain management groups favor a regional basis as against a national basis.<sup>10</sup> These management groups believe that a contract good for the whole industry could well be disastrous for an individual firm, and that, consequently, bargaining should be kept at a local level. This would, they claim, also protect the local management's rights in that it could make its own contract with the local union and not be forced to agree to a plan adopted in some distant plant or area. They argue that if industry-wide bargaining were established a plant in a completely different labor market area from the local employer might set the local employer's practice concerning wages or fringe benefits. In many cases, the local employer might not be able to meet the pace set in collective bargaining negotiations between leading companies in the industry and a powerful labor union.

(d) *Joint committees*

One of the clauses which labor often seeks to incorporate in employ-

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<sup>9</sup> HILL AND HOOK, *op. cit. supra* note 4, at 117.

<sup>10</sup> *New Issues in Collective Bargaining*, address by Frank Rising before the Evening Session of the 52d Annual Congress of American Industry, Waldorf-Astoria Hotel, New York City, Thursday, December 4, 1947.

ment contracts is a provision for labor-management committees, sometimes known as joint committees. From labor's point of view this is something generally to be desired since the formation of such committees would give labor representatives some voice in the actual running of the company concerned.<sup>11</sup> A common example of a joint committee in existence today is a production committee. Such committees are made possible only because management has given ground on one of its oldest rights, namely, the right to control production.<sup>12</sup>

(e) *Arbitration*

Regardless of the fact that management does not ordinarily desire arbitration, it is becoming more and more a part of the contract picture. Under this class of contracts there is, however, the danger that if the arbitration clause is too indefinite or gives the arbitrator too much ground either party might find itself losing some of its supposedly fixed rights.<sup>13</sup> As a consequence, the arbitrator's scope and power as to matters brought before him is often the subject of dispute between labor and management. Here, again, management is giving up some of its rights to a third party because it has given the third party arbitrator the potential power to infringe upon its remaining rights. Of course, labor may lose its newly attained rights by the same procedure. Since some management groups are against unlimited arbitration as proposed by unions, they have set up certain defenses including a general management clause, specific limitation of the referee's jurisdiction, a clearly defined grievance procedure and clarified management discretion for use in arbitration proceedings.<sup>14</sup>

#### HISTORY OF RIGHTS AND PREROGATIVES

(a) *Labor's heritage*

Labor has not always had the right to bargain collectively for its wages and to better working standards. In the early years of recognized guilds—men and masters in Europe, it was an offense, indictable under the doctrine of conspiracy, for laborers to combine for the purpose of raising wages or bettering working standards.<sup>15</sup>

In 1786 the American worker took one of the first steps down the long road leading to the recognition of his rights. In that year, in Philadelphia, some printers struck for a six dollar a week wage.<sup>16</sup>

<sup>11</sup> SHOULD LABOR HAVE A DIRECT SHARE IN MANAGEMENT 4, 30, 31 (C.I.O. Dept. of Education and Research 1947)

<sup>12</sup> HILL AND HOOK, *op. cit. supra* note 4, at 114.

<sup>13</sup> VOLUNTARY ARBITRATION OF LABOR DISPUTES 3 (American Federation of Labor 1947)

<sup>14</sup> HILL AND HOOK, *op. cit. supra* note 4, at 111.

<sup>15</sup> MERGERS AND THE LAW 11 (National Industrial Conference Board 1929).

Until the landmark case of *Commonwealth v. Hunt*<sup>17</sup> was decided in 1842, however, American labor combinations were considered conspiracies. In this case, the American law departed from the theory that employee action became an unlawful conspiracy as soon as it took the form of joint action or combination. Without legalizing strikes, picketing or many other related union activities, the court refused to classify combined action by a labor union as criminal simply because it was combined action. Criminality of concerted action thereafter depended upon the nature and purpose of the action.<sup>18</sup> Although since that time American labor has obtained recognition as an independent bargaining force, as the result of numerous court decisions and the passage of legislation, there have been many setbacks for labor.

(b) *Management prerogatives and labor rights under the law*

As the labor movement progressed in the United States, the management factions, in an attempt to retain as long as possible their "prerogatives," continuously applied every legal maneuver which they could discover to block labor's expanding power. The management maneuvers were highly successful in the late 1800's and the early 1900's. However, as the twentieth century grew older, labor's bargaining position was strengthened by judicial decisions and legislation. Generally speaking, management was able, until the 1930's, to protect its position and prerogatives better than labor was able to gain recognition of its wanted rights.

The Sherman Antitrust Act of 1890, which placed sanctions on contracts, agreements or combinations which tended to restrain interstate trade or commerce,<sup>19</sup> when applied by the courts in actions against labor unions had an adverse effect on the rights of labor.

The courts first applied the Sherman Act to labor unions in *United States v. Workingmen's Amalgamated Council of New Orleans*.<sup>20</sup> In that case an injunction was granted restraining a labor union from striking on the ground that the strike was an unlawful restraint of interstate commerce. The court declared that the union members by their strike had become a combination in restraint of interstate commerce within the meaning of the statute.

The United States Supreme Court in *Loewe v. Lawler*<sup>21</sup> held that under the Act secondary boycotts affecting interstate commerce were illegal.

<sup>18</sup> MILLIS, HOW COLLECTIVE BARGAINING WORKS 871 (Twentieth Century Fund 1942).

<sup>17</sup> 4 Metcalf 111 (Mass. 1842).

<sup>18</sup> For a detailed discussion of the case in the economic and social setting, see Nelles, *Commonwealth v. Hunt*, 32 COL. L. REV. 1128 (1932).

<sup>19</sup> 26 STAT. 209 (1890), as amended, 15 U.S.C. §§ 1 *et. seq.* (1946).

<sup>20</sup> 54 Fed. 994 (C.C.E.D.La. 1893).

More important, however, was the Court's declaration that the labor union officers and members were jointly liable in statutory damages<sup>22</sup> to the plaintiff for injuries caused by their unlawful restraint of interstate commerce.

The decision of the Supreme Court in *Loewe v. Lawler* was most disconcerting to organized labor. This decision placed both union funds and the individual savings of the members in jeopardy. As a result, labor put on a drive for new legislation which resulted in the passage of the Clayton Act of 1914.<sup>23</sup>

The Clayton Act was intended to protect labor unions from injunctions halting strikes, peaceful picketing, payment of strike benefits by the union to its members and peaceful boycotts. Another important provision of the statute intended to be beneficial to labor was the section which declared that the antitrust laws could not be used to prevent labor from achieving legitimate objectives.<sup>24</sup>

Labor's enthusiasm over the Clayton Act was short-lived for the ambiguous language of the Act still permitted management forces to attack labor through the courts.<sup>25</sup> In *Duplex Printing Co. v. Deering*, the Supreme Court repudiated the idea that the Act was intended to legalize the secondary boycott; and, further, the Court declared that a labor organization could become an illegal combination in restraint of trade if it departed from lawful objectives.<sup>26</sup> The Court also held that the employer's business is a property right and under Section 20 of the Act could be protected by an injunction granted to the employer.

By allowing management to bring a private suit in equity to restrain a violation of the antitrust laws, the Clayton Act gave to management an additional legal weapon against labor.<sup>27</sup> Under the Sherman Act there were only three enforcement methods: (1) criminal proceedings brought by the Government; (2) damage suits brought by private parties; and (3) injunction proceedings brought by the Government.<sup>28</sup> The Clayton Act added a fourth method which was a private suit in equity to restrain a violation of the Sherman Act. Although later cases were more sympathetic

<sup>22</sup> 208 U.S. 274, 28 Sup. Ct. 301 (1908); *Lawlor v. Loewe*, 235 U.S. 522, 35 Sup. Ct. 170 (1915).

<sup>23</sup> *Lawlor v. Loewe*, 235 U.S. 522, 35 Sup. Ct. 170 (1915).

<sup>24</sup> 38 STAT. 730 (1914), as amended, 15 U.S.C. §§ 12-27, 44 (1952); 38 STAT. 737 (1914), 28 U.S.C. §§ 381 *et. seq.* (1946); 38 STAT. 738 (1914), 29 U.S.C. § 52 (1946).

<sup>25</sup> P-H LABOR COURSE ¶ 1042 (1949).

<sup>26</sup> PURDY, LINDAHL, CARTER, CORPORATE CONCENTRATION AND PUBLIC POLICY 316 (1942).

<sup>27</sup> 254 U.S. 443, 41 Sup. Ct. 172 (1921).

<sup>28</sup> P-H LABOR COURSE ¶ 1044 (1949).

<sup>29</sup> BERMAN, LABOR AND THE SHERMAN ACT 102-103 (Harper'1930).

to labor,<sup>29</sup> it can be safely said that the Clayton Act did not materially affect any of management's traditional powers.

The Railway Labor Act of 1926 gave to railroad workers engaged in interstate commerce some of the claimed basic rights of labor. This statute and its subsequent amendments were the culmination of legislative attempts to regulate labor-management practices in the railroad transportation industry.<sup>30</sup>

Under the terms of the Act, railway workers were expressly given the right to organize and bargain collectively through representatives of their own choosing. The statute established a system of compulsory arbitration wherein management was required to meet with labor to discuss the settlement of disputes. It also outlawed "yellow dog" contracts by declaring specifically that "no carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement to join or not join a labor organization."<sup>31</sup> Under the terms of the statute any failure by the employer to comply with the act amounted to a misdemeanor.<sup>32</sup> Labor's power was significantly increased by the passage of the Railway Labor Act. It should be noted also that many of the provisions of this bill were incorporated in subsequent labor legislation.

The Federal Anti-Injunction Norris-LaGuardia Act<sup>33</sup> was designed to curb drastically the use of the injunction as an anti-strike weapon. Almost from the beginning of the rise of organized labor, late in the nineteenth century, federal courts have used injunctions to frustrate unions in their efforts to win concessions from employers. As noted before, the Sherman Antitrust Act was interpreted to apply to labor organizations and to permit federal courts to enjoin strikes as illegal combinations in restraint of trade. The Clayton Act was designed to wipe out the anti-labor court decisions under the Sherman Act. However, it fell short of its purpose. It left federal courts with the power to issue injunctions against labor unions when irreparable injury was threatened and the employer had no other

<sup>29</sup> *United States v. Hutchison*, 312 U.S. 219, 61 Sup. Ct. 463 (1941); *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 60 Sup. Ct. 982 (1940).

<sup>30</sup> 44 STAT. 577 (1926), as amended, 45 U.S.C. §§ 151 *et. seq.* (1946). The Railway Labor Act of 1926 was preceded by other attempts to regulate labor practices in the railroad industry. The Erdman Act, passed in 1898, was intended to establish the legal right of railroad employees to organize. "Yellow dog" contracts were prohibited, but this particular section of the Act was declared unconstitutional. *Adair v. United States*, 208 U.S. 161, 28 Sup. Ct. 277 (1908). The Supreme Court declared that personal liberty as well as the right of property was invaded without due process in violation of the Fifth Amendment of the United States Constitution.

<sup>31</sup> 44 STAT. 577 (1926), as amended, 45 U.S.C. § 152 (1946).

<sup>32</sup> 44 STAT. 577 (1926), as amended, 45 U.S.C. §§ 151 *et. seq.* (1946).

<sup>33</sup> 47 STAT. 70 (1932), 29 U.S.C. §§ 101-115 (1946).

available remedy.<sup>34</sup> Labor organizations continued to campaign for an effective anti-injunction statute and, in 1932, the Norris-LaGuardia Act was passed.

The Federal Anti-Injunction Act is noteworthy in that Congress explicitly defined in it the public policy of the United States in regard to labor controversies and the employer-employee relationship. In declaring the public policy of the United States in reference to labor controversies, the Act provided: (1) that the individual unorganized worker have full freedom of association, self-organization and designation of representatives of his own choosing; (2) that he have the right to negotiate the terms and conditions of employment; and (3) that he should be free from interference, restraint or coercion by employers or their agents in the designation of representatives and in self-organization or other concerted activities for the purpose of collective bargaining or other mutual protection.<sup>35</sup>

The Act prohibits federal courts from issuing an injunction in a labor dispute under most circumstances. Unless an employer is threatened with irreparable injury to his property as a result of the union's unlawful acts and has exhausted all reasonable efforts to settle the dispute, he cannot obtain an injunction.<sup>36</sup>

The passage of this act produced a great change in the rights of the labor and management factions. Section 4 of the Act clearly denied management the use of the federal courts to enforce by injunction any "yellow dog" contract. In general, it can be said that Section 4 of the Act prevented management from enjoining peaceful picketing; however, picketing was still enjoined if accompanied by fraud or violence.<sup>37</sup>

For a long time courts had been inclined to hold that the primary boycott was lawful. There were, however, powerful judicial precedents against the secondary boycott until the passage of the Norris-LaGuardia Act.<sup>38</sup> After the passage of that Act, the courts held that a secondary boycott was legal unless accompanied by fraud or violence.<sup>39</sup> Although the term "boycotting" was not specifically mentioned in the Act, Section 4(i) dealt with the problem in general. That Section denied the use of an injunction by the federal courts in the case of "advising, urging, or otherwise

<sup>34</sup> Duplex Printing Press Co. v. Deering, 254 U.S. 443, 41 Sup. Ct. 172 (1921).

<sup>35</sup> 47 STAT. 70 (1932), 29 U.S.C. § 102 (1946)

<sup>36</sup> 47 STAT. 71 (1932), 29 U.S.C. § 107 (1946). Cinderella Theater Co. v. Sign Writers' Local Union No. 591, 6 F. Supp. 164 (E.D. Mich. 1934)

<sup>37</sup> Milk Wagon Drivers' Union of Chicago, Local 753 v. Meadowmoor Dairies, 312 U.S. 287, 61 Sup. Ct. 552 (1941)

<sup>38</sup> Bedford Cut Stone Co. v. Journeymen Stone Cutter's Ass'n, 274 U.S. 37, 47 Sup. Ct. 522 (1929); Duplex Printing Press Co. v. Deering, 254 U.S. 443, 41 Sup. Ct. 172 (1921); Loewe v. Lawlor, 208 U.S. 274, 28 Sup. Ct. 301 (1908).

<sup>39</sup> Wilson & Co. v. Birl, 105 F.2d 948 (3d Cir. 1939).

causing or inducing without fraud or violence the acts heretofore specified. ”

The courts have held that a labor union could not be enjoined from striking and picketing to enforce a closed shop under the Norris-LaGuardia Act if fraud or violence did not appear. The Act allowed a union to strike and picket the plant of an employer for the purpose of forcing him into a closed shop agreement, as long as the picketing was conducted in a peaceful manner. This is the rule even though the members of the union are not the employees of the employer against whom the picketing is directed so long as a “labor dispute” as defined in the Act exists.<sup>40</sup>

An important piece of legislation dealing with the rights of the American laborer was the National Labor Relations Act of 1935.<sup>41</sup> The Act placed new restrictions on the powers of management by invading what management had previously regarded as matters strictly within the province of the individual employer. The Act not only enumerated the powers taken from management, but it also put management in the position of not being able to sue a labor union for certain acts, such as the breach of its contract, etc. Therefore, the Act was a double blow to management.

The National Labor Relations Act of 1935, often called the Wagner Act, was designated to regulate the activities of employers only. It provided for representative elections in which employees could designate that union which they wished to represent them.<sup>42</sup> After a union had been designated, the employer was required to bargain with it on wages, hours and working conditions.<sup>43</sup> Gone forever from the American labor picture was management’s power to decide those matters arbitrarily. In addition, the Act contained a list of other unfair labor practices,<sup>44</sup> thus greatly restricting the powers of management. If an employer were found guilty of committing one of these unfair labor practices, the National Labor Relations Board had the power to order the issuance of a cease and desist order against him and to take remedial action to effectuate the policies of the Act.

The Fair Labor Standards Act<sup>45</sup> has an important bearing upon the wage, hour and other related provisions which are usually written into a collective bargaining agreement. This Act gave to persons working on

<sup>40</sup> P-H LABOR COURSE ¶ 5064 (1949).

<sup>41</sup> 49 STAT. 449 (1935); 29 U.S.C. §§ 151 *et. seq.* (1946). This act has been changed considerably by 61 STAT. 136 (1947), as amended, 29 U.S.C. §§ 141 *et. seq.* (Supp. 1952).

<sup>42</sup> 61 STAT. 136 (1947), 29 U.S.C. § 157 (Supp. 1952).

<sup>43</sup> 61 STAT. 136 (1947), 29 U.S.C. § 158 (Supp. 1952).

<sup>44</sup> *Ibid.*

<sup>45</sup> 52 STAT. 1060 (1938), as amended, 29 U.S.C. §§ 201-219 (1946).

interstate goods the right to a minimum wage as prescribed in the Act.<sup>46</sup> Also provisions were included on child labor<sup>47</sup> and record-keeping.<sup>48</sup> Of great importance to the average working man was the clause requiring that he be paid at the rate of time and a half for all hours worked over the statutory week of forty hours.<sup>49</sup>

The Fair Labor Standards Act did not, however, cover all employees. Exempted from the overtime provisions were employees of motor carriers, railroad and steamship lines, agricultural laborers and processors and seasonal workers. In addition, executive, administrative and professional employees; retail employees; outside salesmen; employees of retail or service establishments, small newspapers, telephone exchanges and local transit companies; agricultural laborers and seamen were exempt from both the overtime and the minimum wage provisions.<sup>50</sup>

Generally speaking, while former labor legislation dealt primarily with strikes, boycotts, etc., this Act dealt with the physical aspect of the working place and the amount of remuneration an individual should receive for his efforts. Both topics had previously been considered by management as being within its realm of control.

The most recent major piece of legislation affecting labor and management is the Labor Management Relations (Taft-Hartley) Act of 1947<sup>51</sup> which amended the National Labor Relations Act of 1935. This Act generally favors management but it has some features that are favorable to the average worker, even though these may not be favorable to the union as such. The individual worker has acquired the right not to be coerced or restrained by any union<sup>52</sup> from the exercise of his right of organization and collective bargaining.<sup>53</sup>

Several sections of the 1947 Act struck at the power of the labor unions. The Act modified the union shop provisions of the old National Labor Relations Act. Under the old law, the union shop was permissible whether or not a majority of the employees wanted it. Under the 1947 amendments to the old National Labor Relations Act, the union shop was made legal only if a majority of the employees covered by the contract had voted for it. The 1951 amendments to the old National Labor Relations Act allow the

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<sup>46</sup> 52 STAT. 1062 (1938), as amended, 29 U.S.C. § 206 (1946)

<sup>47</sup> 52 STAT. 1067 (1938), as amended, 29 U.S.C. § 212 (1946).

<sup>48</sup> 52 STAT. 1066 (1938), as amended, 29 U.S.C. § 211 (1946).

<sup>49</sup> 52 STAT. 1063 (1938), as amended, 29 U.S.C. § 207 (1946).

<sup>50</sup> 52 STAT. 1067 (1938), as amended, 29 U.S.C. § 213 (1946)

<sup>51</sup> 61 STAT. 136 (1947), as amended, 29 U.S.C. §§ 141 *et. seq.* (Supp. 1952).

<sup>52</sup> 61 STAT. 140 (1947), as amended, 29 U.S.C. § 158 (Supp. 1952)

<sup>53</sup> 61 STAT. 140 (1947), as amended, 29 U.S.C. § 157 (Supp. 1952).

company and the union by agreement to set up a union shop.<sup>54</sup> However, provision is made for a method by which the employees can end the union shop by having an election.<sup>55</sup> The closed shop was made illegal along with the preferential shop, union hiring hall and referral clauses.<sup>56</sup> Under the old law only employers were obliged to bargain. Under the 1947 amendments, unions as well as employers were guilty of an unfair labor practice if they refused to bargain.<sup>57</sup> The amended National Labor Relations Act permits the National Labor Relations Board to obtain a temporary restraining order as soon as it issues a complaint. It can obtain a five day restraint on unlawful boycotts and jurisdictional strikes.<sup>58</sup> Formerly, the Board could act only against employers and its orders were effective only when enforced by a court. The 1947 Act states that unions cannot engage in unlawful boycotts or jurisdictional strikes or persuade employees of other employers to do so. Employers thus affected may file charges with the National Labor Relations Board and secure temporary restraining orders.<sup>59</sup> Another provision of the 1947 Act specifies that employers and unions both must give a sixty day notice before terminating or modifying a contract. Employees who strike within the sixty day period lose their status as employees.<sup>60</sup>

#### CONCLUSION

Both management and labor realize the need for a sound understanding between each other as to just what constitutes the rights of one as opposed to the rights of the other. Even though there is desire for agreement, it does not necessarily follow, however, that an agreement will be reached on all matters brought up for discussion. It is inevitable that certain points will touch areas thought by both parties to be under their authority or control. In such cases there is little more for the parties to do than bargain between themselves on the basis of factual information. This will undoubtedly cause one or both of the parties to give some ground before a workable solution can be attained.

RICHARD A. CLAPP

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<sup>54</sup> 65 STAT. 601 (1951), as amended, 29 U.S.C. § 158(a) (3) (Supp. 1952).

<sup>55</sup> 65 STAT. 601 (1951), as amended, 29 U.S.C. § 159(e) (1) (Supp. 1952).

<sup>56</sup> 65 STAT. 601 (1951), as amended, 29 U.S.C. § 158(b) (Supp. 1952).

<sup>57</sup> 65 STAT. 601 (1951), as amended, 29 U.S.C. § 158(b) (3) (Supp. 1952).

<sup>58</sup> 62 STAT. 991 (1948), as amended, 29 U.S.C. § 160 (Supp. 1952).

<sup>59</sup> 61 STAT. 140 (1947), 29 U.S.C. § 158 (Supp. 1951); 61 STAT. 146 (1947), 29 U.S.C. § 160 (1947).

<sup>60</sup> 61 STAT. 140 (1947), 29 U.S.C. § 158 (Supp. 1951).