LEGISLATION

Pennsylvania Defines the Status of Labor

The Pennsylvania Labor Relations Act [1] was signed by Governor Earle and became effective on June 1, 1937. Its stated purpose was "to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers".[2] Thus began a new era for labor in Pennsylvania.

Provisions of the Act

The heart of the Pennsylvania Labor Relations Act is found in the provisions defining rights of employes [3] and listing unfair labor practices.[4] Section 5 is in effect a codification of the semi-common law privilege of employes to organize for purposes of collective bargaining.[5] To this privilege, section 6 (e) adds the right of the employe that the employer bargain collectively, by making refusal so to act an unfair labor practice. Other unfair labor practices [6] include, in general or specific terms, various types of employer interference with the employes' privilege of self-organization for purposes of collective bargaining. There is an additional proviso that closed shop agreements are not precluded by the Act.[7] Section 7 contains the important provision that representatives chosen by a majority of employes shall represent all,[8] and that the Pennsylvania Labor Relations Board [9] shall determine the appropriate unit for collective bargaining.[10] The provisions empowering the Board to prevent unfair labor practices,[11] providing for judicial review,[12] granting investigatory powers,[13] and fixing a penalty for interference with enforcement of the Act [14] parallel the provisions of the Wagner Act.[15] Indeed the Pennsylvania Act is a close reproduction of the Wagner Act with two notable exceptions. First, it applies only where the Wagner Act does not,[16] and secondly, in defining a "labor organization", it excludes any organization denying persons membership because of race, color or creed; [17] the Wagner Act is silent on this point.

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1. Pa. Laws 1937, no. 294.
2. *Id.* § 2 (c).
3. *Id.* § 5.
4. *Id.* § 6.
5. See Note (1929) 3 TEMP. L. Q. 421, 422.
6. Pa. Laws 1937, no. 294, § 6 (a) (b) (c) and (d).
7. *Id.* § 6 (c).
8. *Id.* § 7 (a).
9. *Id.* § 4. The Board is the administrative body set up by the Act.
10. *Id.* § 7 (b).
11. *Id.* § 8.
12. *Id.* § 9.
13. *Id.* § 10.
14. *Id.* § 11.
15. 49 STAT. 449, 29 U. S. C. A. § 151 (Supp. 1935).
16. Pa. Laws 1937, no. 294, § 3 (c): "The term 'employer' . . . shall not include . . . any person subject to the Federal Railway Labor Act or the National Labor Relations Act. . . ."
17. *Id.* § 3 (f). This provision does not appear in any other state labor relations act.

Comparison With Similar State Statutes

It is interesting to note that four other states—Massachusetts,[18] New York,[19] Utah,[20] and Wisconsin [21]—have passed unfair practice laws similar to the Pennsylvania Act.[22] The Massachusetts Act is unique in listing an illegal practice of labor unions among unfair labor practices. It outlaws sit-down strikes,[23] thus giving employer as well as employe the protection of the Labor Commission and a means of protecting an existing legal right. The value of this provision is doubtful since the employer already has a remedy in the form of an injunction; it has been suggested, however, that the board might be more useful if empowered to act as an advisory committee to cooperate with the courts in determining whether or not an injunction should be issued.[24] The New York Act differs from the Pennsylvania Act only in that it is a little more complete. It contains a detailed definition of "company union" [25] not found in the Pennsylvania Act, and it specifically lists among unfair labor practices spying on employes,[26] blacklisting,[27] and refusal to discuss grievances.[28] The unfair practice section on company controlled unions [29] is more comprehensive than the Pennsylvania provision.[30] An important addition in the New York law is the stipulation that either a majority of employes or a majority of employes *voting* in a properly conducted election shall determine the exclusive bargaining agency.[31] The Utah Act differs from the Pennsylvania Act only in that it more closely follows the provisions of the Wagner Act.[32] The Wisconsin Act contains a detailed definition of "company union" [33] not found in the Pennsylvania Act, and adds spying on employes [34] and blacklisting [35] to the

18. Mass. Laws 1937, c. 436. The Massachusetts State Labor Relations Act approved May 29, 1937, became effective Aug. 28, 1937.

19. N. Y. Laws 1937, c. 443. The New York State Labor Relations Act approved May 20, 1937, became effective July 1, 1937.

20. Utah Laws 1937, c. 255. The Utah Labor Relations Act was approved and became effective March 22, 1937.

21. Wis. Laws 1937, c. 51. The Wisconsin Labor Relations Act approved April 14, 1937, became effective April 16, 1937.

22. Under union pressure Governor Murphy vetoed a Michigan labor relations bill which would have empowered the board to investigate unions charged with racketeering. A unique feature of the bill appeared in section 19 which legalized picketing, at the same time prohibiting picketing by a person neither employed in the plant nor a party to the dispute nor an official of a labor organization that was party to the dispute. See Murphy, *The Shaping of a Labor Policy* (1937) 8 SURVEY GRAPHIC 411, 413; STATE LABOR RELATIONS ACTS (1937) 1 LABOR BULL. no. 7, pp. 4, 5.

23. Mass. Laws 1937, c. 436, § 8A: "It shall be an unfair labor practice for any person or labor organization to seize or occupy unlawfully private property as a means of forcing settlement of a labor dispute." For a discussion of the illegality of sit-down strikes under common law principles, see (1937) 85 U. OF PA. L. REV. 643.

24. Garrison, *Government and Labor; the Latest Phase* (1937) 37 COL. L. REV. 897, 906.

25. N. Y. Laws 1937, c. 443, § 701 (6).

26. *Id.* § 704 (1).

27. *Id.* § 704 (2).

28. *Id.* § 704 (7).

29. *Id.* § 704 (3).

30. Pa. Laws 1937, no. 294, § 6 (b).

31. N. Y. Laws 1937, c. 443, § 705 (1). Under the Wagner Act, the problem arose as to whether a majority of those eligible to vote or a majority of those voting in an election were to designate the sole bargaining agency. The Board adopted the latter interpretation in R. C. A. Manufacturing Co., 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,353.2 (N. L. R. B. 1936). But certification was denied where a substantial number of qualified voters failed to participate in an election; Chrysler Corp., 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,353.4 (N. L. R. B. 1936).

32. The declaration of policy, section 2 of the Utah Act, differs from that in the Wagner Act only in that the word "intrastate" is substituted for "interstate".

33. Wis. Laws 1937, c. 51, § 111.02 (6).

34. *Id.* § 111.08 (6).

35. *Id.* § 111.08 (7).

list of specified unfair labor practices. Most unique are the provisions for a listing by the Labor Board of organizations eligible to apply to the Board for relief,[36] and for statewide committees of employers and labor leaders to make a preliminary investigation of trade union and employer abuses, backed by the Board with its power to hold hearings and make its findings public.[37] This sort of a provision will undoubtedly discourage new abuses and expose existing ones.[38] The Act also empowers the Board to appoint arbitrators and conciliators,[39] a function of the Department of Labor and Industry in Pennsylvania.[40]

The Wisconsin Act presents a peculiar situation, in that it alone fails to provide against conflict with similar federal legislation,[41] since no provision expressly limits the sphere of its application.[42] It has been suggested that both the state and the federal government might have power to regulate labor practices of employers engaged in interstate commerce; the federal government by virtue of its power to regulate such commerce, and the state by virtue of the police power.[43] However, it seems that such a holding would constitute a new departure. The conventional theory seems to be that the police power of the state can enter the zone of interstate commerce only in those fields which Congress has not invaded,[44] and that the police power ceases to exist in a given field of interstate commerce and is supplanted by the federal power as soon as Congress exercises it.[45] When a conflict between the federal and state rules arises, the state rule must fall.[46] Such a conflict exists where the state and federal rules are the same, since both cannot apply.[47] Therefore, it would appear that the Wisconsin Act, insofar as it applies to interstate commerce, is nullified by the Wagner Act, although it is doubtful that the conflict would cause invalidation of the Wisconsin Act since its zone of applicability to intrastate commerce remains.[48]

Validity of the Act and Changes Wrought Thereby

In a message to the General Assembly,[49] Governor Earle proposed that a bill strictly in line with the Wagner Act be enacted in place of a measure, known as the McGinnis bill, which extended the provisions of the Wagner Act to include clarifications of the Act made in decisions of the courts and the National Labor Relations Board. The purpose of this suggestion was to assure the validity of the Act under the Pennsylvania Constitution. It seems reasonably clear that this

36. *Id.* § 111.06. Labor partisans have criticized this provision. See *State Labor Relations Acts* (1937) 1 LABOR BULL. no. 7, pp. 4, 7.

37. Wis. Laws 1937, c. 51, § 111.51.

38. See Garrison, *supra* note 24, at 908.

39. Wis. Laws 1937, c. 51, §§ 111.12, 111.16.

40. Pa. Laws 1937, no. 177, §§ 4, 6. This Pennsylvania Labor Mediation Act was approved and became effective May 18, 1937.

41. The other state acts contain the following provisions: Mass. Laws 1937, c. 436, § 14 (b) (not applicable to cases subject to the Wagner Act); N. Y. Laws 1937, c. 443, § 715 (not applicable to employes of any employer who "concedes . . . that such employes are subject to . . . the national labor relations act or the federal railway labor act . . ."); Pa. Laws 1937, no. 294, § 3 (c) ("employer" does not include persons subject to the Wagner Act or the Federal Railway Labor Act); Utah Laws 1937, c. 55, §§2, 10 (c) (limits applicability to questions involving intrastate commerce).

42. Wis. Laws 1937, c. 51, §§ 111.01, 111.02 (1), (2), (3), 111.10.

43. Garrison, *supra* note 24, at 899.

44. See Erie R. R. v. New York, 233 U. S. 671, 682 (1914).

45. Southern Ry. v. Reid, 222 U. S. 424 (1912); Second Employers' Liability Cases, 223 U. S. 1 (1912); McDermott v. Wisconsin, 228 U. S. 115 (1913); Houston E. & W. Tex. Ry. v. United States, 234 U. S. 342 (1914); Shafer v. Farmers' Grain Co., 268 U. S. 189 (1925).

46. St. Louis, etc. Ry. v. Hesterly, 228 U. S. 702 (1913); Southern Ry. v. Railroad Comm. of Indiana, 236 U. S. 439 (1915).

47. WILLIS, CONSTITUTIONAL LAW (1936) 298.

48. Chesapeake & Ohio Ry. v. Stapleton, 279 U. S. 587 (1929).

49. 21 LEGIS. J. 3323 (1937).

purpose has been achieved. Apparently, the Act does not run afoul of the constitutional prohibition of local and special laws regulating labor.[50] It is obviously not local since its application is statewide.[51] Nor is it special since it embraces a group properly classified for a reasonable public purpose.[52] Furthermore, it is apparent that the Act does not violate the constitutional right to jury trial [53] in its provisions for Board proceedings,[54] since the constitutional guarantee applies only to rights and duties existing at the time the Constitution was adopted and not to those subsequently created by the legislature.[55] Indeed, the Act seems to fall clearly within the police power of the legislature to prescribe regulations for promotion of the public health, safety, morals, and welfare.[56] The Act expressly states that it shall be deemed an exercise of the police power,[57] and the reasonable public purpose which it serves [58] justifies this provision.

That the Pennsylvania Labor Relations Act has brought about a decided change in the legal relationship of employer and employe is unquestionable. The privilege of organizing for purposes of collective bargaining [59] is a semi-common law privilege,[60] but the right of the employe that the employer bargain collectively [61] is a new concession to labor. It is not entirely clear what the practical value of this new right will be as the employer is not forced to reach an agreement;[62] however, it gives capital and labor the opportunity to meet together, present proposals and counter proposals, and thus progress a step farther toward the peaceful reconciliation of their conflicting interests.

Probably the most valuable gains made by labor as a result of the Act are the provisions making it an unfair labor practice for employers to interfere with unionization by any of the conventional devices of intermeddling in union activity.[63] This is something totally new in Pennsylvania.[64] The making of "yellow

50. PA. CONST. art. III, § 7.

51. See Commonwealth v. Beatty, 15 Pa. Super. 5 (1900); Taylor v. Philadelphia, 261 Pa. 458, 463, 104 Atl. 766, 767 (1918).

52. Commonwealth v. Wormser, 260 Pa. 44, 103 Atl. 500 (1918); *cf.* Commonwealth v. Clark, 14 Pa. Super. 435 (1900), holding that a statute making coercion by corporate employers in regard to labor organizations a misdemeanor was unconstitutional as a special law regulating labor and industry, since no reasonable purpose was served by distinguishing between corporate and non-corporate employers.

53. PA. CONST. art. I, § 6.

54. Pa. Laws 1937, no. 294, §§ 8, 9, 10.

55. Premier Cereal & Beverage Co. v. Pennsylvania Alcohol Permit Board, 292 Pa. 127, 140 Atl. 858 (1928); *cf.* Wise v. Pressed Steel Car Co., 19 Pa. Dist. 112, 114 (1909), holding the Compulsory Arbitration Act of 1893 unconstitutional as depriving individuals of the right of jury trial without regulating or prohibiting any act detrimental to the public welfare and hence within the police power.

56. Powell v. Commonwealth, 114 Pa. 265, 7 Atl. 913 (1886); Commonwealth v. Beatty, 15 Pa. Super. 5 (1900); Commonwealth v. Wormser, 260 Pa. 44, 103 Atl. 500 (1918).

57. Pa. Laws 1937, no. 294, § 2 (e).

58. The purpose expressed in the Act is to eliminate inequality of bargaining power resulting in sweat shops, greater disparity between production and consumption, and aggravated recurrent business depressions. *Id.* § 2 (a).

59. *Id.* § 5.

60. See Note (1929) 3 TEMP. L. Q. 421, 422 (to the effect that the privilege of collective bargaining developed as a result of changed political, social, and economic conditions after the development of the common law). See also PA. STAT. ANN. (Purdon, 1931) tit. 43, §§ 199, 200; Commonwealth v. Hoffman, 103 Pa. Super. 433, 157 Atl. 221 (1931).

61. Pa. Laws 1937, no. 294, § 6 (e).

62. See Committee on Education and Labor, SEN. REP. No. 573, 74th Cong., 1st Sess. (1935) 12; Bendix Products Corp. v. Beman, 14 F. Supp. 58, 69 (N. D. Ill. 1936); Note (1936) 3 U. OF PITTSBURGH L. REV. 33, 46.

63. See Note (1937) 37 COL. L. REV. 816, describing methods of employer interference and decrying the lack of adequate legislative protection of labor.

64. A statute of 1897 making it a misdemeanor for corporate employers to coerce employes by discharge or threats of discharge because of union affiliations, was held unconstitutional. PA. STAT. ANN. (Purdon, 1931) tit. 18, § 1299; Commonwealth v. Clark, 14 Pa. Super. 435 (1900).

dog" contracts, formerly enforced by the Pennsylvania courts,[65] is one type of activity outlawed by the Act,[66] and this provision is bolstered by a more sweeping stipulation in the Labor Anti-Injunction Act to the effect that such contracts are contrary to public policy and henceforth unenforceable at law or in equity.[67] Such coercive devices as lockouts [68] and discharge of employes because of union membership [69] are no longer legally available to Pennsylvania employers.[70] The Act also prohibits, either expressly or by implication, employer dominated company unions,[71] labor espionage,[72] and blacklisting,[73] thus removing any doubt as to the legal consequences of such practices. Even strikebreaking, which has not been thoroughly discouraged by the courts of Pennsylvania,[74] is prohibited by the spirit if not the letter of the Act.[75] It is doubtful, however, to what extent Pennsylvania law has been changed by the clause providing that closed shop agreements shall not constitute an unfair labor practice.[76] Earlier decisions indicate that the Pennsylvania courts were clearly inimical to the closed shop,[77] even to the extent of enjoining a threatened strike, the purpose of which was to obtain a closed shop,[78] although a later case seems to modify that extreme position.[79] The validity of closed shop contracts remains unsettled,[80] and it would seem that the provision that such agreements are not precluded by the Act has done little to settle the confusion.[81] However, it would appear that, in view of the apparent legislative intent not to outlaw such agreements, the courts would be unjustified in declaring them contrary to public policy; hence they would probably be enforceable in law, if not in equity. Thus the legislature has contributed much to the cause of organized labor in this state by granting the employe new legal rights and at the same time counteracting the formerly unsympathetic attitude of the courts which has left distinct traces in the labor law of today.

Scope of the Act

Probably the most serious and disturbing problem which will arise in the administration of the Pennsylvania Labor Relations Act will be the determination

65. Flaccus v. Smith, 199 Pa. 128, 48 Atl. 894 (1901); Kraemer Hosiery Co. v. American Federation of Full Fashioned Hosiery Workers, 305 Pa. 206, 157 Atl. 588 (1931). The concurring opinion in the *Kraemer* case declared that there was no contract because no consideration. The dissenting opinion went further and declared that such contracts were contrary to public policy and void.

66. Pa. Laws 1937, no. 294, § 6 (c).

67. *Id.* no 308, § 5. For a discussion of the validity, under the Federal Constitution, of state anti-injunction acts of the Norris-LaGuardia type, see Note (1937) 46 YALE L. J. 1064.

68. Cote v. Murphy, 159 Pa. 420, 28 Atl. 190 (1894) (sustaining the right of employer to lock out employes).

69. Bradley v. Pierson, 148 Pa. 502, 24 Atl. 65 (1922).

70. Pa. Laws 1937, no. 294, § 6 (c).

71. *Id.* § 6 (b).

72. *Id.* § 6 (a).

73. *Ibid.* See Bradley v. Pierson, 148 Pa. 502, 24 Atl. 65 (1922) (denying recovery to workman for failure to obtain employment as a result of blacklisting by manufacturers' association).

74. See Legis. (1937) 85 U. OF PA. L. REV. 406, 413, n. 61.

75. S. L. Allen & Co., 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,257 (N. L. R. B. 1936); Note (1937) 37 COL. L. REV. 816, 837.

76. Pa. Laws 1937, no. 294, § 6 (c).

77. Purvis v. United Brotherhood, 214 Pa. 348, 63 Atl. 585 (1906).

78. Erdman v. Mitchell, 207 Pa. 79, 56 Atl. 327 (1903).

79. Kirmse v. Adler, 311 Pa. 78, 166 Atl. 566 (1933).

80. See Note (1929) 3 TEMP. L. Q. 421, 430.

81. See Latham, *Legislative Purposes and Administrative Policy Under the National Labor Relations Act* (1936) 4 GEO. WASH. L. REV. 433, 447 (to the effect that the Wagner Act leaves the status of the closed shop untouched).

of the scope of its applicability.[82] The Act clearly excludes from its zone of influence any employer subject to the Federal Railway Labor Act or the National Labor Relations Act.[83] For obvious reasons, the line between interstate and intrastate commerce has never clearly been drawn.[84] Thus it is inevitable that a confusion similar to that arising from the allocation of the spheres of applicability of the federal and state employers' liability acts may arise.[85] This result will be felt in an undue amount of uncertainty and costly litigation,[86] but it could hardly be avoided in view of our federal system of government.[87]

It would be idle to attempt to allocate the zones of jurisdiction of the national and state labor relations boards. That an allocation based on analogy to decisions concerning other federal legislation would be inaccurate, especially where the question involved is the limit of the federal power over interstate commerce, is apparent from a cursory examination of Supreme Court decisions.[88] It seems clear that what the court may label interstate for one purpose may be called intrastate for another.[89] However, a few generalizations may be made by way of prediction. There can be little doubt of the tendency on the part of the Supreme Court to stretch the commerce clause to its limit where federal regulation of the activity involved is economically and socially more desirable than regulation by the several states.[90] The Court is not loath to regard practical considerations;[91] the Interstate Commerce Commission decisions[92] and the anti-trust cases[93] clearly indicate this fact. It can hardly be disputed that federal regulation of unfair labor practices is a necessity if effective regulation is to exist. An individual state cannot alone encourage labor at the expense of the employers without driving industry into other states.[94] Despite the fact that the largest and most

82. Of course, if, as has been suggested, the jurisdiction of the federal and state boards were held to be concurrent, a system of comity between the boards could undoubtedly be arranged as in the case of the state and federal courts. See Harkin v. Brundage, 276 U. S. 36, 43 (1928); 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,119 (1937).

83. Pa. Laws 1937, no. 294, § 3 (c).

84. See Garrison, *Government and Labor: the Latest Phase* (1937) 37 COL. L. REV. 897, 900; WILLIS, CONSTITUTIONAL LAW (1936) 287 (who, in attempting to define commerce, remarks, "The decisions of the United States Supreme Court are irreconcilable. They leave us in doubt whether commerce is trade or intercourse, whether it must be for profit or may be without profit, whether it is confined to tangibles or may include intangibles.").

85. Compare Louisville & Nashville R. R. v. Parker, 242 U. S. 13 (1916), with Raymond v. Chicago, M. & St. P. Ry., 243 U. S. 43 (1917). See also Note (1928) 12 MINN. L. REV. 492.

86. See RIBBLE, STATE AND NATIONAL POWER OVER COMMERCE (1937) 135.

87. *Id.* at 137.

88. See Note (1935) 35 COL. L. REV. 1072, 1090, reaching this conclusion after examining the anti-trust cases.

89. Schechter Poultry Corp. v. United States, 295 U. S. 495 (1935) (holding the N. R A. unconstitutional); Carter v. Carter Coal Co., 298 U. S. 238 (1936) (holding the Guffey Act unconstitutional); *cf.* National Lab. Rel. Bd. v. Jones & Laughlin Steel Corp., 301 U. S. 1 (1937); National Lab. Rel. Bd. v. Friedman-Harry Marks Clothing Co., 301 U. S. 58 (1937); National Lab. Rel. Bd. v. Fruehauf Trailer Co., 301 U. S. 49 (1937), 85 U. OF PA. L. REV. 733 (upholding the constitutionality of the Wagner Act).

90. See Gibbons v. Ogden, 9 Wheat. 1, 203 (U. S. 1824); Llewellyn, *The Constitution as an Institution* (1934) 34 COL. L. REV. 1, 15, 40.

91. A notable exception to the practical view appeared in the child labor cases which outlawed federal control of child labor: Hammer v. Dagenhart, 247 U. S. 251 (1918); Bailey v. Drexel Furniture Co., 259 U. S. 20 (1922). But a return to a more practical attitude is indicated in the Court's sustaining a statute regulating interstate transportation of convict-made goods. Kentucky Whip & Collar Co. v. Illinois Central R. R., 299 U. S. 334 (1937), 85 U. OF PA. L. REV. 529.

92. Houston & Texas Ry. v. United States, 234 U. S. 342 (1914); Swenson, *The Passing of the State Commerce Power* (1933) 8 TEMP. L. Q. 53, 64 *et seq.*

93. See Phillips, *The Growth and Development of the Federal Commerce Power* (1937) 11 TEMP. L. Q. 517, 536.

94. See CORWIN, THE COMMERCE POWER VERSUS STATES RIGHTS (1936) 262.

valuable industries in the various states will fall within the scope of the Wagner Act, only New York, Massachusetts, Pennsylvania, Utah, and Wisconsin have enacted auxiliary legislation. Thus it seems probable that the Supreme Court will so interpret the commerce clause, for the purpose of preventing unfair labor practices, that the jurisdiction of the National Labor Relations Board will be far greater in each state than that of the state board.[95] Furthermore, the federal jurisdiction will be of greater significance since disputes are more apt to arise in large plants falling under the interstate commerce classification than in smaller plants.[96] Although the Pennsylvania Labor Relations Board might serve a more useful public purpose if some scheme of federal state cooperation were developed as in the case of the commerce commissions,[97] it, nevertheless, will perform an important and necessary function by filling the gaps left by the Wagner Act.

An Evaluation of the Act

Considerable thought and energy has been expended in attacking and defending the merits of unfair labor practice legislation. Most of the criticism leveled at the difficulties of statutory interpretation [98] and administration [99] has been answered by the decisions and activity of the National Labor Relations Board which points the way for the Pennsylvania Labor Relations Board. Some of the other grounds of attack are unimpressive. Ostensibly concerned with the rights of minorities,[100] employers condemn the majority rule,[101] although it is obviously a necessary adjunct to effective collective bargaining.[102] Completely disregarding practical considerations, labor deplores the fact that the Act fails to include agricultural laborers, domestic servants, or persons employed by parent or spouse.[103] Far more impressive is the suggestion that the power of the Board to determine the appropriate bargaining unit should be left in the hands of the employes so that they may choose for themselves between craft and industrial unionism.[104] Under the Wagner Act, preference of employes is only one of

95. See Swenson, *supra* note 92, at 67.

96. See Johnson, *The Labor Crisis* (1937) 27 YALE L. REV. 1, 8.

97. See Lindahl, *Cooperation Between the Interstate Commerce Commission and the State Commissions in Railroad Regulation* (1935) 33 MICH. L. REV. 338, 339.

In the case of unfair labor practice legislation, the state boards could cooperate (1) by following as far as possible the statutory interpretations of the National Labor Relations Act in the interests of uniformity and certainty, (2) by attempting to follow the policies of the National Labor Relations Board wherever practicable, and (3) by consulting the National Labor Relations Board to determine what policy to pursue where local and national interests may conflict.

98. See Legis. (1936) 30 ILL. L. REV. 884, 886-900.

99. See Wolman, *Issues in American Industrial Relations* (1937) 52 POL. SCI. Q. 161, 169; Latham, *supra* note 81, at 468 (emphasizing the difficulty of *forcing* employers to cooperate).

100. See Houde Engineering Corp., 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,353.1 (N. L. R. B. [Old] 1934) (indicating that the fairness of majority rule was unquestioned until employes began to shift from company unions to outside unions); Rieve, *What Labor Demands of Government* (1935) 178 ANNALS 123, 126.

101. See Note (1936) 15 ORE. L. REV. 329, 335.

102. See Garrison, *The National Labor Boards* (1936) 184 ANNALS 138, 144; Mason, *The Limits as to Effective Federal Control of the Employer-Employee Relationship* (1936) 84 U. OF PA. L. REV. 277, 292; Legis. (1936) 22 CORN. L. Q. 151, 154.

103. *State Labor Relations Acts* (1937) 1 LABOR BULL. no. 7, p. 5.

104. See Wolman, *Issues in American Industrial Relations* (1937) 52 POL. SCI. Q. 161, 172, to the effect that, should the board choose a craft unit not limited to one employer, an employer may be forced to deal with a representative not elected by a majority of his own employes; see Legis. (1936) 30 ILL. L. REV. 884, 895. See also Huth & James Shoe Mfg. Co. and United Shoe Workers of America, 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶ 15,625 (N. L. R. B. 1937), demonstrating that the choice of an appropriate unit may

many factors considered in determining the appropriate unit.[105] For one reason or another, most commentators agree that the one-sidedness of the legislation is undesirable.[106] It is considered improper and unwise that illegal practices by labor unions—sabotage, sit-down strikes, coercive picketing, and violence—should not be listed among the unfair labor practices.[107] The convincing answer to this contention is that the employer is so well protected by the courts that he does not need the aid of the Labor Relations Board.[108] Be that as it may, unions must have the respect of the general public to be strong,[109] and as a consequence they must refrain from extra-legal practices which, unlike those traditionally used by the employer, obtain from their very nature wide publicity.[110] It is not true that the "bugaboo" of labor racketeering is more apparent than real,[111] and it has been found that existing laws are inadequate to prevent this abuse of unionism[112] which not only arouses public prejudice against labor, but at the same time weakens the structure of the existing labor organizations. If the government is to encourage collective bargaining units, it must effectively regulate them for their own good. But at the same time it is extremely doubtful that unions nurtured and regulated by the federal and state governments can ever attain the strength of the English unions which, with little legislative aid, have fought their own battles and emerged with the respect, if not the complete approbation, of both the employer and the general public.[113] However, since the odds against which labor has been forced to battle in the United States have probably been greater than those in England, governmental intervention seems more necessary.[114] At any rate, it is obvious that having taken the initial step in the control of the employer-employe relationship, the government must extend the scope of its regulation if the best interests of the general public are to be served.[115] There are two schools of thought respecting the time when government regulation will be necessary. One group suggests that the purpose of unfair labor legislation similar to the Pennsylvania Act is to obtain unionism of all employes, and that that purpose is best served by refraining from government regulation until the aim is achieved.[116] An equally tenable view, weakened in the eyes of labor parti-

decide whether the A. F. of L. or the C. I. O. is to have sole bargaining power. An indication of the conflicting aims of these two unions may be found in Lewis, *Towards Industrial Democracy* (1936) 45 CURRENT HISTORY no. 1, p. 33; Green, *The Majority Must Rule* (1936) 45 CURRENT HISTORY no. 1, p. 41.

105. See 1 Prentice-Hall Labor and Unemployment Ins. Serv. ¶¶ 15,375-15,391 (1937).

106. See Mason, *supra* note 102, at 305; Wolman, *supra* note 99, at 167. But see *Is the Wagner Labor Law Unfair?* (1937) 91 NEW REPUBLIC 348.

107. Lund, *Labor Organizing by the Congress and Lawmaking by the Labor Board* (1935) 178 ANNALS 95, 106.

108. The use of the Sherman Anti-Trust Act to restrict the activity of labor rather than capital is a good example. See Mason, *Labor and Judicial Interpretation* (1936) 184 ANNALS 112, 115.

109. Kiplinger, *The Political Role of Labor* (1936) 184 ANNALS 124, 128.

110. Of particular significance in this respect is the sit-down strike. See Garrison, *supra* note 24, at 904, suggesting that state labor relations boards could be used to advantage in aiding the courts to handle this problem.

111. See Legis. (1937) 37 COL. L. REV. 993, 994 *et seq.* But the prevalence of labor racketeering must not be overemphasized.

112. See Legis. (1937) 37 COL. L. REV. 993, 1001.

113. Mason, *supra* note 102, at 286, 306 *et seq.;* Kiplinger, *The Policital Role of Labor* (1936) 184 ANNALS 124, 127.

114. See Murphy, *The Shaping of a Labor Policy* (1937) 8 SURVEY GRAPHIC 411, 450; Rieve, *What Labor Demands of Government* (1935) 178 ANNALS 123, 124.

115. See Slichter, *The Government and Collective Bargaining* (1935) 178 ANNALS 107, 122.

116. See *Is the Wagner Labor Law Unfair?* (1937) 91 NEW REPUBLIC 348.

sans by the fact that it has been voiced by persons not having the interests of labor at heart, is that one hundred per cent unionism, or its approximation, will never be attained so long as trade union abuses continue; that thus the purposes of the legislation would be served best by provisions for governmental regulation of unions to curb, if not prevent, abuses.[117] Whatever view may be adopted, it still cannot be predicted accurately whether regulation by the government of the conflict between capital and labor will be a sufficiently flexible means of accomplishing that end in the face of rapidly changing economic conditions.[118] But for the present, at least, society is benefitted by federal-state cooperation in the enactment of unfair labor practice legislation to reduce or eliminate, if possible, the causes of industrial strife.[119]

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117. See Mason, *supra* note 102, at 305, n. 93.
118. See Slichter, *supra* note 115, at 108; Wolman, *supra* note 99, at 168.
119. See Garrison, *supra* note 24, at 909, emphasizing the importance of cooperation by the states in dealing with unfair labor practice problems.