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A SURVEY OF MISSOURI LABOR LAW†

AUSTIN F. SHUTE*

Apologia

This paper attempts an over-all survey of the Missouri appellate courts' handling of cases involving labor and labor-management relations. The discussion, because of time and space, has been restricted mainly to those cases dealing with labor unions, although cases dealing with labor in other capacities have been included where deemed necessary. There is no attempt to deal with the myriad of cases involving Unemployment or Workmen's Compensation law. With these exceptions, however, the reader should find included herein a fairly complete survey of the labor movement in Missouri as reflected in decisions by our appellate courts.

I. ANTI-TRUCK LEGISLATION

One of the earliest types of protective labor legislation passed by the Missouri legislature was that known as "anti-truck" or "store-order" legislation. The original act was passed in 1881, amended in 1885, and included in the Revised Statutes of 1889. The statute was specifically directed at corporations, persons, or firms engaged in mining and manufacturing, and made it a misdemeanor for them to pay their employees as wages any script or paper which was not redeemable in lawful money of the United States. If the employee so desired, however, the script or paper issued could be made exchangeable for goods at the company store.

There was a definite need for legislation of such a character, since the existence of the system whereby the same persons or firms determined the employee's wage as well as the price for his groceries and household goods had operated to the detriment of the individual worker. By always keeping

†This study was made under the direction of Professor Robert L. Howard at the suggestion of the Committee on Labor Law of the Missouri Bar.


1. Laws 1881, p. 73.
2. Laws 1885, p. 83.
prices just a trifle higher than wages, the employer could keep his workers in continual debt to him.\footnote{4}

Indeed, the truck system had reached such proportions by 1881, that the Labor Commissioner of Missouri in his report for that year stated that it had "impoverished and diminished the resources of the laborer to such a degree that, after years of toil, if he desired to leave, he would have to leave as a tramp, or if unable longer to maintain himself, would have to accept life as a charity from others."\footnote{5}

The first case involving the constitutionality of this legislation was \textit{State v. Loomis} (1893).\footnote{6} There, a corporation engaged in mining coal had issued a book of coupons to an employee as payment for wages earned, said coupons being redeemable at the company store for goods and merchandise. The employee was already indebted to the store for previous months purchases. Instead of exchanging the coupons for goods, the employee indorsed the book over to another party for cash. After a series of negotiations, it was finally presented to the defendant for payment. He refused to pay the value of the coupons, maintaining that they were not meant to be redeemable in cash. This prosecution followed.

At the first hearing before the Missouri Supreme Court, the act was held constitutional.\footnote{7} When transferred to the court \textit{en banc}, however, the act was held unconstitutional as class legislation and as violative of the constitutional guaranty of due process.\footnote{8}

A vigorous dissent by Justice Barclay asserted that the "plain purpose is to put some restraint upon that sort of freedom which would permit the employer to contract for labor, payable in goods, and then place his own prices on the goods delivered in payment."\footnote{9} . . . Statutes designed to prevent that sort of overreaching have been universally regarded as proper exertions of the police power.\footnote{10}

The legal liberals of those days did not appreciate the majority decision. The language used by one writer in respect to the opinion is refreshing enough in the present day of linguistic subtleties to be worth quoting here.

"Those American judges who have spat so contumeliously upon certain

\footnote{5}{Report of Labor Commissioner of Missouri, 1881, pp. 15-16.}
\footnote{6}{115 Mo. 307 (1893).}
\footnote{7}{20 S.W. 332 (1892).}
\footnote{8}{\textit{Supra}, note 6; and see 27 AM. L. REV. 141 (1895).}
\footnote{9}{115 Mo. 307, 324.}
\footnote{10}{\textit{Id.} at 330.}
freedom of contract and was willing to deal with such in an intellectual vacuum. And at this period of the labor development, it was the judiciary that won out.

II. LABOR UNIONS AS SUABLE ENTITIES

A constant problem which has arisen to vex the Missouri courts has been whether labor unions, being voluntary, unincorporated associations, are such legal entities that they may sue or be sued in their association name. In general, the Missouri courts have denied such a power. At common law, such an association was thought to have no legal existence separate and distinct from that of its members. Suit had to be brought and liability enforced against the individual members as partners.  

When applied to labor unions, this common law theory has often resulted in injustice for both the suers and the sued. The federal courts early came to the conclusion that the common law should be revamped in this respect so as to make it correspond to the realities of the situation. Thus, in United Mine Workers of America v. Coronado Coal Company, Chief Justice Taft held that under the federal law, labor unions were suable entities.

This idea was codified in Section 301 (b) of the Taft-Hartley Act, where it is provided that "Any labor organization which represents employees in an industry affecting commerce ... may be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization ... shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

Thus, so far as proceedings brought in the federal courts are concerned, labor unions may sue and be sued in their association name. In Missouri, although the first cases involving the problem seemed to uphold the power of unions to sue and be sued as entities, the majority of the cases indicate that the shades of the common law hang over us yet.

In Wiedtuchcher v. Miller (1918), suit was between members of rival musicians' unions and had been brought in a representative capacity on

17. For a general discussion of the problem, see: DANGE AND SHRIBER, LABOR UNIONS § 454 et seq. (1941).
18. 259 U.S. 344 (1922).
20. 276 Mo. 322, 208 S.W. 39 (1918).
acts of the legislatures of their own States, and declined to protect that serving though helpless class of people, common laborers, from the greed of mining and manufacturing corporations, by requiring such corporations to pay their laborers at stated periods, might, if their ignorance had not been as great as their zeal to protect corporate interests, have noted the fact that such legislation long antedated in England the passing of such acts in America.\textsuperscript{11}

By dint of such verbal roasting of the judiciary and public feeling in general, the legislature in 1895 again passed practically the same act.\textsuperscript{12} This time, however, it applied to all persons, firms and corporations, and not just to those engaged in mining and manufacturing.

In two cases, \textit{State v. Benn}\textsuperscript{13} and \textit{State v. Balch},\textsuperscript{14} the statute in its revised form was again before the court. In neither case was the constitutionality of the act examined. In the former case, the court of appeals held that since the statute was the offspring of necessity and expressed the public policy of the state, it could neither be waived nor contracted away by the employee. In the latter case, the supreme court, by way of dictum, stated that the act was not class legislation, since it now applied to all persons, firms and corporations alike.

The circle was finally completed the following year by the case of \textit{State v. Missouri Tie and Timber Co.} (1904),\textsuperscript{15} where the act was again held unconstitutional on the grounds that it was an unlawful interference with liberty of contract. Citing \textit{State v. Loomis} as authority, the court stated that "... the statute must be held unconstitutional upon the ground that it interferes with or abridges the right of persons competent to contract with each other in respect to the manner in which defendant's employee were to be paid for their services."\textsuperscript{16}

Apparently, this case ended any attempt by the Missouri legislature to deal with the truck-store problem. The series of cases and statutes do point up the interesting picture of the struggle between a somewhat progressive legislature and a somewhat conservative judiciary. The legislature was concerned with the economic and social problem of the welfare of the state's laboring citizens. The judiciary was concerned with the legal concept of

\begin{thebibliography}{99}
\bibitem{11} Truck-Store Legislation, 28 \textit{Am. L. Rev.} 72 (1894).
\bibitem{13} 95 Mo. App. 516, 69 S.W. 484 (1902).
\bibitem{14} 178 Mo. 392, 77 S.W. 547 (1903).
\bibitem{15} 181 Mo. 536 (1904).
\end{thebibliography}
behalf of the individual members of the union. The court held that the action might have been brought in the union name.

Certain statutory provisions aided the court in coming to this conclusion. Section 2963 of the Revised Statutes of 1909 (which is now Article XI, Section I, Missouri Constitution of 1945) provided that the term "... corporation ... shall be construed to include all joint stock companies or associations having any powers or privileges not possessed by individuals or partnerships." Section 7109 of the Statutes granted certain powers and privileges not possessed by partnerships and individuals to benevolent associations. And in Laws of 1915, page 225, 21 a method of service was provided for benevolent associations the same as if they were corporations.

The court reasoned that the legislature would not have provided for such a method of service had it not also intended to give such associations power to sue and be sued as entities. Since the local union could have brought this suit in its own name, then, held the court, plaintiffs were not the real parties in interest and hence could not maintain the suit. 22

Further, held the court, since this was an action at law (damages for alleged libel) and not a suit in equity, plaintiffs could not bring a representative suit or class action. Each individual member would have to be made a party plaintiff. 23

The Wiehtuechter case was followed in Bruns v. Milk Wagon Drivers’ Union, Local 603 (1922). 24 Plaintiff sued as next of kin for certain death benefits due the deceased from the union. The court stated that "... our statute, Section 1186, R.S. 1919, provides how writs may be served upon voluntary or unincorporated associations, and such an organization as this is a legal entity, and entitled to sue and be sued the same as corporations." 25

That part of the aforesaid statute which held unincorporated associations to be legal entities was held to be unconstitutional by Mayes v. United Garment Workers (1928). 26 The whole statute was not held bad, however, the court declaring it valid "... to the extent that it prescribes the manner of serving process upon such associations and organizations, if any there be, as are otherwise constituted suable entities." 27

22. 208 S.W. 39, 40.
23. Id. at 41
24. 242 S.W. 419 (Mo. App. 1922).
25. 242 S.W. 419, 421.
26. 320 Mo. 10, 6 S.W. 2d 333 (1928).
27. 6 S.W. 2d 333, 337.
Syz v. Milk Wagon Drivers' Union, Local 603 (1930)\textsuperscript{28} again involved a suit by beneficiaries to recover death benefits. The court recognized that Section 1186 had been held unconstitutional in so far as it constituted voluntary or unincorporated associations suable entities. But the court held that the defendant union was a suable entity without the aid of the service statute, since it was a voluntary association having powers and privileges not possessed by individuals or partnerships.\textsuperscript{29} Thus, the union was within the statutory definition of a corporation.\textsuperscript{30}

At this point, then, it would seem that the concept of unions as legal entities was winning out over the common law theory. And it was at this time that the leading case of Clark v. The Grand Lodge of Brotherhood of Railway Trainmen (1931)\textsuperscript{31} was decided. This was an action brought on certain insurance policies issued by the Brotherhood to its members.

The supreme court recognized the rule that an unincorporated association has no legal entity distinct from its members, and cannot, at common law, sue or be sued in its own name. But since, under Missouri law, defendant union was allowed to enter into insurance contracts with its members, the court held that it should be made liable for suit on the policy issued. The policies were issued in the name of the Brotherhood. Thus, since the Brotherhood was a legal entity when making the insurance contracts, the court reasoned that it must retain such entity status when being sued on such contracts.

As a further basis for holding that suit was rightfully brought against the Brotherhood as such, the court estopped defendant from denying it was a suable legal entity.

The court carefully restricted its reasoning to the problem presented by the case, i.e., a suit to recover on an insurance policy issued by a union in the union name. Suits by or against labor unions on other matters were differentiated.

This distinguishing feature was brought out the following year in Ruggles v. International Association Iron Workers.\textsuperscript{32} There, plaintiff sought both actual and punitive damages for an alleged wrongful suspension from defendant union. The suspension deprived plaintiff of certain death benefits

\begin{enumerate}
\item 28. 24 S.W. 2d 1080 (Mo. App. 1930). For same case in supreme court, where jurisdiction was denied, see 323 Mo. 130, 18 S.W. 2d 441 (1929).
\item 29. Id. at 1082.
\item 31. 328 Mo. 1084, 43 S.W. 2d 404 (1931).
\item 32. 331 Mo. 20, 52 S.W. 2d 860 (1932).
\end{enumerate}
and old age payments and of his pay as business agent of a local of defendant. Plaintiff relied on the Clark case. Defendant alleged that, as a labor union, it was not a suable entity.

Judge, then Commissioner, Hyde excluded the rule laid down in the Clark case from applicability here since insurance contracts were not being sued on. He stated: "Even a voluntary association which is carried on for the mutual benefit of its members or for benevolent purposes cannot sue or be sued as an entity in the absence of some statutory authorization or grant of power." 33

In Corbett v. Milk Wagon Drivers Union, Local 603, 34 the court was faced with what seemed to be a similar situation to that involved in the Clark case. Plaintiff, widow of a deceased union member, sued to collect death and sick benefits from the local. No policies of insurance had been issued by the defendant, however, the insurance contract being contained in the union by-laws.

Plaintiff maintained that, on the basis of the Clark case, a voluntary, unincorporated organization having a lodge system and doing an insurance business was a suable entity. Defendant local denied this.

The court felt that the plaintiff had not alleged enough facts to show that defendant was in the insurance business. Apparently, this was based on the fact that defendant issued no policies. Thus, stated the court, the contract of insurance was between deceased and a group of individuals comprising the local. 35

Plaintiff also alleged that defendant was a suable entity since it possessed powers and privileges not possessed by individuals or partnerships. 36 As to this, the court refused to infer such a legal conclusion when plaintiff failed to allege any facts showing the exercise or possession of such powers and privileges. 37

The entity question arose again in Graham v. Grand Division Order of Railroad Conductors. 38 Plaintiff sued for an injunction against both the Grand Division and the local lodge from interfering with his seniority rights as set out in the union by-laws. The line on which plaintiff worked had been absorbed by another. In such a situation, the by-laws provided that the ab-
sorbed line's employees should retain their seniority as heretofore. Despite this, plaintiff was discharged.

Plaintiff alleged that defendants were suable as entities since, under the definition of corporation, they possessed powers or privileges not possessed by individuals and partnerships. Further, plaintiff maintained that defendants should be estopped to deny they were legal entities since they had issued policies of insurance to Missouri citizens. Plaintiff also argued that defendants had entered into collective bargaining agreements with the railroad as entities. Since this agreement, along with the seniority provisions, was binding on the union and the railroad, plaintiff alleged defendants should be estopped to deny suability when sued on the collective bargaining contract.

The court refused to carry over to collective bargaining contracts the theory they had laid down in the Clark case as to insurance contracts, saying: "The rule is well established in this state that an unincorporated voluntary association is not a suable entity."30

In Forest City Manufacturing Company v. International Ladies Garment Workers Union,40 (1938) an injunction was held not to lie against defendant local since it was not a legal entity. In reviewing the whole problem of suing a trade union as a legal entity, the court concluded that the union must be shown to possess powers or privileges not possessed by individuals and partnerships. And such powers or privileges must be such as are conferred by local, and not federal, statute if the union is to be regarded as a suable entity in this state:

"... otherwise there would be the anomalous situation presented of a corporation or suable entity created in Missouri within the meaning of our Constitution and laws, not, however, by virtue of a grant of such power or status by this state itself, but by a grant of power by the federal government as a sovereignty separate and distinct from the local government."41

This court felt that had the legislature wished to make labor unions suable entities, it would have done so in clear language. The determination of whether or not unions should be treated as legal entities was thought to be a legislative and not a judicial function.

The Forest City decision was followed in Aalco Laundry and Cleaning
Company v. Laundry Union, Local 366. An injunction issued against defendant was dissolved as to the local because it was not a suable entity. The injunction suit had been brought because of a strike, and certain individuals had been joined with defendant local.

In the second Aalco case, which arose when one of the individuals joined in the first Aalco case was cited for contempt, the court held that as the restraining order had been leveled against the union as such and was void ab initio as to it, it was also void as to the members of the union.

In this second Aalco case, however, we do find the first discussion in the cases of the possibility of representative suits by and against unions. The individual defendants here were held not to have been representatives of the class, but had they been, apparently the restraining order would have been valid as to all members of the union.

As to this, the court said: “If the contemnor, as a member of a labor union, who was not made a party to the suit and was never served with process therein, may be deprived of his liberty, without being accorded the right of trial by jury as guaranteed by the Constitution, by virtue of a mass restraining order issued against the members, the procedure essential to that end ought at least to be substantially pursued. Injunctive relief must be accomplished by judicial process, not by judicial proclamation.”

However, in National Pigments and Chemical Company v. Wright, the court of appeals held an injunction void as to the union, but valid as to three appealing members of defendant union. The court held that the three appealing members had no standing to raise a defense solely available to the voluntary association.

A late case involving the entity problem, and one which, because of its complexity, goes a long way toward arguing the advisability of a law or judicial holding that unions may sue and be sued as entities, is that of State ex rel Allai v. Thatch, Judge. This was a prohibition proceeding brought on the relation of the president of District 14, United Mine Workers, to test the validity of an injunction issued by defendant judge.

Relator argued that as labor unions are voluntary associations incapable of suing or being sued in the association name, the injunction issued against them was void. The supreme court stated that both the Ruggles and Clark...
cases conceded that voluntary associations could be sued at law where such authority had been conferred by statute. Further, said the court, the Clark case specifically held that immunity of such a voluntary association must be affirmatively pleaded by way of answer. A demurrer or motion to quash the summons would not be sufficient to raise the issue of immunity.

The court then proceeded to give what would have been its answer had the question of immunity been properly raised. The injunction suit was a class action authorized by what is now Section 507.070 of the 1949 Revised Statutes and Rule 3.07 (d) of the Missouri Supreme Court Rules. Thus, the court would have held the injunction binding not only on the local union and the members thereof, but also on the national and district unions and the members thereof, insofar as affected. And this, whether they were served with process or not.47

The pertinent part of Section 507.070 reads:

“If persons constituting a class are very numerous or it is impracticable to bring them all before the court, such of them, one or more, as will fairly insure adequate representation of all may, on behalf of all, sue or be sued, when the character of the right sought to be enforced for or against the class is . . .

“(3) several, and there is a common question of law or fact affecting the several rights and a common relief is sought.

“Nothing in this section shall be construed to affect the rights or liabilities of labor unions to sue or be sued.”

Supreme Court Rule 3.07 (d) reads: “No class suit shall be maintained under Sect. 19 (a) (3) [Section 507.070] unless the judgment or decree will be binding upon all members of the class.”

The court read the word “affect” in the last paragraph of Section 507.070 (3) as “change” and came out with the construction that nothing in the section should be construed as changing the rights or liabilities of labor unions to sue or be sued as those rights and liabilities existed before the adoption of the Code in 1943. And since the doctrine of representative suits had been approved by the court prior to the adoption of the Code,48 a class action would be permissible in such a situation.

There would seem to be a problem here, however, as to whether the Missouri court can bind persons and organizations outside the court’s juris-

47. Id. at p. 8.
A recurrent source of dispute between employer and employee in Missouri has been based on the service letter statute. Passed in 1905, this statute requires every corporation doing business in Missouri to issue to every employee who leaves the corporation after ninety days service a service letter. Issued upon request of the employee, this letter must be signed by the superintendent or manager of the corporation. It must set forth the duties performed by the employee, his length of service, and truly state the cause for the employee's leaving. Failure to issue such a letter upon request is a misdemeanor punishable by fine and imprisonment.

The statute was enacted to off-set the custom of blacklisting employees. As long as an employee's name was on the blacklist, he could not obtain work elsewhere. Of this system, the court in Cheek v. Prudential Insurance

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diction by an order in a proceeding to which they have neither been made parties nor served with process. It may well be that the entity argument can be obviated by the use of the class action. As to the union hierarchy and members outside of Missouri, however, such an attempted solution may raise more jurisdictional problems than it solves.

And in Communications Workers of America, Local #6325 v. Brown, the union was suing one of its members for the amount of a fine which had been assessed against said member for an alleged violation of the union's constitution and by-laws. Plaintiff union maintained that defendant union member was estopped to deny the existence of the union as a suable entity. It was alleged that a person is estopped to deny the corporate existence or suable entity existence of an association in a suit upon a contract between the person and the association.

Defendant's motion to quash a constable's return was sustained by the trial court. The plaintiff appealed to the supreme court, but jurisdiction was denied by that court since, it said, the appeal did not involve construction of the state constitution as would be required to give the supreme court jurisdiction over the appeal.

It is submitted that a decision in line with the Coronado Coal Company case is long overdue in Missouri. The realities of the situation demand that labor unions be declared to be suable entities.

III. SERVICE LETTER CASES

A recurrent source of dispute between employer and employee in Missouri has been based on the service letter statute. Passed in 1905, this statute requires every corporation doing business in Missouri to issue to every employee who leaves the corporation after ninety days service a service letter. Issued upon request of the employee, this letter must be signed by the superintendent or manager of the corporation. It must set forth the duties performed by the employee, his length of service, and truly state the cause for the employee's leaving. Failure to issue such a letter upon request is a misdemeanor punishable by fine and imprisonment.

The statute was enacted to off-set the custom of blacklisting employees. As long as an employee's name was on the blacklist, he could not obtain work elsewhere. Of this system, the court in Cheek v. Prudential Insurance

49. 274 S.W. 2d 815 (Mo. 1952).
Company (1917) remarked: "This custom became so widespread and affected such vast numbers of laboring people it became a public evil, and worked great injustice and oppression upon large numbers of persons who earned their bread by the sweat of their faces."

In the Cheek case, the constitutionality of the service letter statute was upheld against allegations that it was discriminatory, class legislation, violative of free speech, and deprivative of liberty of contract without due process of law. The court held that the statute became a part of any contract of employment the employer and employee might enter into.

To the argument that the superintendent and not the corporation should be liable for violating the statute, the court said that the statute "makes it the duty of the corporation acting through its superintendent or other proper officer to issue the letter, and not the duty of such officer in his individual capacity."

Thus, the statute and plaintiff's right or recovery thereunder was upheld by the supreme court.

In Soule v. St. Joseph Railroad, Light, Heat, and Power Company, the statute was held penal in its nature. The issuance of a proper service letter upon request of the employee was held to be mandatory. But since plaintiff had introduced no evidence to show how defendant's refusal to issue the letter had caused him damage, he was restricted to nominal damages.

In Walker v. St. Joseph Belt Ry., plaintiff was discharged because of his unwelcome activity as a member of the St. Joseph Belt Railway Engine Man's Grievance Committee. The service letter did not meet the requirements of the statute. Lyons, a fellow member of the Grievance Committee, was also fired under similar circumstances. The trial court allowed plaintiff one dollar actual damages and five thousand dollars punitive damages.

The court stated: "The plaintiff was entitled to a letter stating the true cause of his discharge so that he might thereby prevent blacklisting by the defendant. . . . He was entitled to a letter which showed upon its face its official character and showed that it was written for the defendant corporation by some person having authority to do so."
The award of punitive damages in this type case, even though actual damages are merely nominal, was upheld by the supreme court in *State ex rel St. Joseph Belt Ry. v. Shaim* (1937).61

In *Van Sickie v. Katz Drug Co.*,62 defendant gave plaintiff service letters on two separate occasions before suit was filed. Neither letter set forth the reasons for plaintiff having been discharged. The day before suit was filed, a third and proper service letter was mailed to plaintiff. Defendant argued, and the evidence appeared to bear him out, that reasons for plaintiff’s discharge had not been given in the first two letters because it was felt they would have lessened plaintiff’s chances of future employment. This argument was rejected.

The issue of actual malice was submitted to the jury for their consideration in respect to punitive damages. Since the evidence tended to negative any malice or ill will on the part of defendant as would be the basis of punitive damages, the court held that the submission to the jury of an instruction for punitive damages was prejudicial error.

The case of *Davenport v. Midland Building Company*63 brought out the issue of malice. The service letter did not truly state the reasons for plaintiff’s discharge. The trial court had submitted the question of both actual and legal malice to the jury over defendant’s objection that there was evidence of neither. The appellate court held that in Missouri legal malice and actual malice have uniformly been differentiated. “. . . legal malice exists where a wrongful act is intentionally done without just cause or excuse. . . . Actual or express malice exists when one with a sedate, deliberate mind and formed design injuries another, as where the person is actuated by spite and ill-will in what he does and says, with a design wilfully or wantonly to injure another.”64 And, in Missouri, a proof of legal malice alone will support a judgment for punitive damages.

The evidence showed that defendant had been forced to discharge plaintiff because of union demands. The union had demanded that plaintiff either join the union or stop doing union work. The discharge was made reluctantly, and only after all attempts of defendant to avoid having to do so had failed. Thus, from the evidence, defendant would not seem to have been guilty of actual malice (although obviously guilty of legal malice).

61. 108 S.W. 2d 351 (Mo. 1937).
62. 235 Mo. App. 952, 151 S.W. 2d 489 (1941).
63. 245 S.W. 2d 460 (Mo. App. 1951).
64. Id. at p. 461.
When considered with the instruction on legal malice, the instruction on actual malice was held by the court to have been "confusing, misleading and prejudicial." The case was remanded for a new trial.

A late case is that of Heuer v. John R. Thompson Co. Plaintiff, for some undisclosed reason, had incurred the displeasure of one of the petty officials of defendant company. Because plaintiff had done nothing to give this official a justifiable reason for firing her, the evidence disclosed that he trumped up a charge of stealing against her. She was fired, and no service letter was given her. When plaintiff's attorney wrote to the defendant company demanding that a service letter be issued, a letter was sent in which it was stated that plaintiff had been fired because she had failed to perform her duties in a satisfactory manner.

The jury awarded plaintiff both nominal and punitive damages. The court said: "It is true that plaintiff proved no actual damage, but having proved an invasion of her legal right, it was not necessary that she prove actual damages in order to be entitled to a verdict for $1 nominal damages." Although the appellate court overruled the trial court's verdict for plaintiff on the basis of an erroneous instruction, and remanded the case for a new trial, this case is important because of certain dicta. The court said that since the service letter statute is silent as to the time within which a service letter must be issued, the law remedies this and provides for a reasonable time. After a reasonable time has elapsed without the discharged employee receiving a service letter, then a cause of action exists. The subsequent issuance of a service letter cannot bar or destroy this cause of action, but would merely serve to interrupt and prevent the further accrual of damages after the date of its delivery to the plaintiff. This cause of action exists whether or not the subsequently issued letter correctly or incorrectly states the cause for discharge. Thus, one who proceeds on the theory that a service letter has not been issued within a reasonable time is merely injecting additional burdens on himself by also alleging that the service letter does not correctly state the cause for discharge.

The service letter statute, and these cases under it, clearly set out the employer's duty. There would seem to be no reason why the statute should not be complied with. If the statute is not obeyed, however, then the cases seem to revolve around the issue of malice, legal or actual, as applied to

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65. Id. at p. 467.
66. 251 S.W. 2d 980 (Mo. App. 1952).
67. Id. at 985.
recovery of punitive damages. The wisest policy for a corporation would appear to be to issue these letters in compliance with the statute.

IV. LABOR TACTICS—THE LABOR INJUNCTION

CONSPIRACY, PICKETING, AND BOYCOTTS

Most numerous of all labor cases handled by the Missouri appellate courts have been those where an injunction is sought against the use of certain labor tactics. Closely allied to these cases are those dealing with the damage remedy or contempt action for alleged violations of an injunction.

For easier discussion purposes, the cases have been sub-divided into, first, a few cases dealing with the theory on which the labor injunction has been issued, second, cases involving conspiracy, third, those dealing with picketing, and last, those having to do with labor boycotts. The reader must keep in mind that these categories are not mutually exclusive. For example, an injunction may be issued against a labor boycott or picketing on the theory that such constitutes an unlawful conspiracy.

The question as to why labor unions use certain tactics is often a difficult one to answer. It is well to remember, however, that there is a reason behind the strike or the picket or the boycott. A few words written by a far-seeing author some sixty years ago would seem to be as appropriate today as they were then as an explanation of these reasons.68

“Political economists often regard labor as a mere commodity which should be bought and sold as other commodities are, believing that the law of supply and demand will of itself regulate the prices to be paid. It is true that labor is a commodity; but it is a commodity of a peculiar kind. The laborer, by his contract of hiring, not only transfers his labor, but he surrenders a part of his personal liberty. As compared with most sellers of commodities, he is under many disadvantages. He is single, while capital, which is the result of many laborers, may be said in its force to be collective. Usually the laborer’s case will brook no delay—he must have work or he and his family must starve. Capital, however, can wait until approaching famine compels a surrender. The sale of a laborer is a forced sale; and at forced sales, commodities usually bring only ruinous prices . . . and it is partly to remedy this inequality that trades unions are formed, the chief object being to withhold labor from the market in time of urgent pressure until remunerative prices are offered.”69

68. Rose, Strikes and Trusts, 27 Am. L. Rev. 708 (1893).
69. Id. at p. 717.
1. The Labor Injunction

The leading Missouri case on the labor injunction is that of *Hamilton Brown Shoe Company v. Saxey*, decided in 1895. There, an injunction was sought against defendant and others to restrain them from attempting, by force and intimidation, to induce plaintiff's employees to quit work. Defendants numbered fifteen. Plaintiff employed between eight and nine hundred employees. The injunction issued, although the court admitted the power on the part of plaintiff's employees to quit work whenever they saw fit to do so. And further, defendants might use fair persuasion to induce others to join them in their cause.

Defendants had demurred in the trial court on the theory that if the allegations in the bill as to force and intimidation were true, then defendants were guilty of a crime. Since equity had no jurisdiction over the criminal law, then equity would have no jurisdiction to issue the injunction. The supreme court admitted that equity traditionally is not a court of criminal jurisdiction and does not usually have jurisdiction to enjoin crimes but stated: "When we say that a court of equity will never interfere by injunction to prevent the commission of a crime, we mean that it will not do so simply for the purpose of preventing a violation of a criminal law. But when the act complained of threatens an irreparable injury to the property of an individual a court of equity will interfere to prevent that injury, notwithstanding the act may also be a violation of a criminal law. In such case the court does not interfere to prevent the commission of a crime, although that may incidentally result, but it exerts its force to protect the individual's property from destruction, and ignores entirely the criminal portion of the act."71

The supreme court adopted the opinion of the trial court without citing the statutory or case authority, if any, upon which the trial court had relied. Thus, this case would seem to be an example of new law being born as far as the Missouri state courts were concerned.

In *Swaine v. Blackmore,* plaintiffs and defendants were members of rival unions. Plaintiffs wished to enjoin defendants from interfering with their employment as carpenters. The injunction issued. Shortly thereafter plaintiffs alleged a violation of the injunction and sought to get defendants

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70. 131 Mo. 212, 32 S.W. 1106 (1895).
71. 32 S.W. 1106, 1108.
72. 75 Mo. App. 74 (1898).
cited for contempt. The court found defendants guilty and fined them ten dollars each.

The court found that there was no authority to support the proposition that "one man or a multitude of organized men have the right by threats or intimidation to prevent anyone from accepting employment, or to force his discharge after being employed, as was done in this instance."\(^7\)

Both plaintiffs and defendants cited the *Hamilton Brown Shoe* case as authority for their respective viewpoints, and that case was the only Missouri authority cited by the court for its decision.

In *Gast Bank Note and Lithograph Co. v. Fennimore Association*,\(^7\) the supreme court refused jurisdiction of an appeal from a dissolved injunction. Plaintiff had alleged no damage to his property or business by reason of the strike, but had simply asked for an injunction.

The court said: "In cases of this character it is not the value of the property which fixes the jurisdiction of the appellate courts, but the probable damage thereto if the pending or threatened wrong be not restrained, or the damages resulting to defendants if the restraining order be improvidently issued, and as there is no allegation in the pleading in respect to either, our conclusion is that this court is without jurisdiction of the appeal."\(^7\)

In *National Pigments and Chemical Company v. Wright (1938)*,\(^7\) the court stated that one asking for injunctive relief must allege and prove the inadequacy of the legal remedy. Since plaintiff's petition alleged violence, trespass, and intimidation on the part of the union, the court felt that the nature of the injury to plaintiff was an irreparable one, and one which could not be adequately taken care of by any legal remedy.

As to the equity court's jurisdiction to prevent or punish the commission of a crime, the court said that "... it will issue an injunction to enjoin persons from attempting, by intimidation and other unlawful means, to threaten irreparable injury to property rights, notwithstanding such acts may also be in violation of the criminal law."\(^7\)

Thus, we see by these cases that the theory of the labor injunction is fairly well entrenched in Missouri law. The equity court traditionally protected property from irreparable injury, and it was not difficult to extend

\(^7\) Id. at p. 77.
\(^7\) 147. Mo. 557 (1899).
\(^7\) Id. at p. 560.
\(^7\) 118 S.W. 2d 20 (Mo. App. 1938).
\(^7\) 77. 72. at 24.
this theory to cover irreparable injury done to property rights through the actions of labor unions.

2. Conspiracy Cases

The common law doctrine of conspiracy has played its part in several Missouri labor cases. The first of these is *Walsh v. The Association of Master Plumbers of St. Louis* (1902).\(^7^8\) Plaintiff, a registered master plumber, sued three hundred or more persons or firms carrying on the trade of master plumber. A conspiracy on the part of defendants against plaintiff and all other master plumbers similarly situated was alleged.

Plaintiff did not belong to and refused to join the Association. This group had such a hold on the firms selling master plumber supplies that no one not belonging to the Association could purchase supplies. Any dealer found selling to a non-member of the Association would be boycotted and fined.

Plaintiff based his cause of action on Section 8978 et seq., *Revised Statutes* of 1889,\(^7^9\) said section making combinations in restraint of trade illegal. In holding that the Association's activities constituted a conspiracy in restraint of trade, the court said:

"A capitalist has the right to employ his capital or to hide it away and refuse to use it, so long as he does not become a public charge, and a man without capital may labor or refuse to labor, so long as he keeps out of the poorhouse. So also have capitalists the right to combine their capital in productive enterprises and by lawful competition drive the individual producer and the smaller ones out of business. And laborers and artisans have the right to form unions and by their united effort fight competition by lawful means. And courts will not lay their hands upon either to restrain them, however fierce the competition, so long as their methods are lawful. But if either steps without the pale of the law and by fraud, ... hinders one in his business ... as an artisan or laborer, courts have not hesitated to interfere and to afford remedial relief, either by awarding compensatory damages in an action at law or, where the injury is a continuing one, by granting injunctive relief."\(^8^0\)

In *Carter v. Oster*,\(^8^1\) the theory of the *Walsh* case was carried one step further by allowing plaintiff, a non-union member, to recover not only his pecuniary loss from the concerted action of the defendant union to keep him

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78. 97 Mo. App. 280 (1902).
80. 97 Mo. App. 280, 289.
81. 154 Mo. App. 146, 112 S.W. 995 (1908).
out of employment, but also for "mental pain and suffering due to fear, anxiety, wounded feelings and distress of mind caused by defendant's tortious conduct."\(^8\)

In *Burke v. Fay*,\(^8\) plaintiff sued defendant union for money had and received to recover two hundred dollars defendant allegedly extorted from him. Plaintiff had agreed to employ only members of defendant union on his gas-fitting jobs. It was disputed whether the two hundred dollars was a fine levied on plaintiff for violating this agreement, or whether it was to reimburse defendant for expenses incurred in sending investigators outside the state to discover if plaintiff was violating the agreement. Plaintiff paid the sum when his workers struck. The trial court directed a verdict for defendants.

The appellate court stated that any combination, even though its origin be lawful and its aims praiseworthy, which gives up its lawful purpose even temporarily and agrees on conduct solely for the purpose of inflicting injury on a third party, becomes at that instant a civil conspiracy, and any damages sustained may be recovered.\(^4\) The court reasoned that plaintiff could claim to have been coerced into paying this money only if he could show that he either had to pay or be unable to perform outstanding contracts. Since plaintiff failed to allege that he could not have performed his contracts by hiring other employees, then he failed in his allegations of an actionable conspiracy.

The next conspiracy case was that of *Clarkson v. Laiblan* (1913).\(^8\) This case resulted in two other cases, *Clarkson v. Garvey*,\(^8\) and *Clarkson v. Laiblan*.\(^8\) In all three cases, plaintiffs and defendants were the same.

Plaintiff had formerly been a member of defendant union but, upon going into business as an employer, was automatically dropped from membership. As an employer plaintiff hired only union workmen on his roofing contracts. Plaintiff's business was finally absorbed by a larger roofing concern and plaintiff made a foreman therein. The union's business agent, one Garvey, on discovering this told plaintiff's employer that plaintiff being non-union, he would either have to be fired or the union men would walk off the job. The union refused to allow plaintiff to re-join. Plaintiff then went

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82. 112 S.W. 995, 997.
83. 107 S.W. 408 (Mo. App. 1908).
84. Id. at 409.
85. 178 Mo. App. 708, 161 S.W. 660 (1913).
86. 179 Mo. App. 9 (1913).
87. 202 Mo. App. 682, 26 S.W. 1029 (1919).
into sub-contracting work, but Garvey found out and told plaintiff's contractor that a strike would be called if plaintiff was awarded any contracts.

In the first Clarkson case, plaintiff was allowed an injunction against the union's activities. The court stated that a man's occupation partakes of the character of property and that he is entitled to have it protected by injunction when others conspire against him in such a manner as to cause him substantial injury.

In the second Clarkson case, plaintiff sued to recover actual and punitive damages suffered because of defendant's activities. Recovery was allowed in the trial court, but there was a dispute over whether his recovery should be against all the members of the union, or against Garvey, the business agent, alone. The court placed the burden of proof on plaintiff to show that the other members of the union had conspired with Garvey to cause the injuries suffered. There was some evidence that the other defendants did not authorize Garvey's acts nor ratify them after they were done. The court also felt that the twenty-five hundred dollars punitive damages allowed plaintiff was too much.

The third Clarkson case resulted in a final verdict in favor of the plaintiff. The evidence showed Garvey's acts were within the scope of his authority. And the court could see no reason for not holding all the members of the union liable for the wrongful acts of their agent so long as he had authority to act and did so act within the scope of his authority. In the event he chose to perform his duties in an unlawful manner, the court would hold all the members of the union equally responsible with him.

In Root v. Anderson, the court quoted from Hunt v. Simonds, to the effect that: "In an action on the case in the nature of a conspiracy, the gist of the action is not the conspiracy (as it is in an indictment, and was in the old writ of conspiracy), but the damage done to the plaintiff. The only use in charging the conspiracy is to make the defendants responsible for the acts of each other done in pursuance of the common design.

The court in the case of W. E. Stewart Land Co. v. Perkins, in discussing combinations, included trade unions among the few exceptions of combinations which may be formed and the purposes carried out in such a way as to injure another without creating a liability upon the combiners,

88. 207 S.W. 255 (Mo. App. 1918).
89. 19 Mo. 583 (1854).
90. 207 S.W. 255, 257.
91. 224 S.W. 593 (Mo. 1921).
provided always that such purposes be carried out in a lawful manner. But even a labor union, said the court, cannot conspire to break up their late employer's business.\textsuperscript{92}

The leading modern cases on conspiracies and combinations in restraint of trade are the two cases of Rogers v. Poteet\textsuperscript{93} and Hobbs v. Poteet.\textsuperscript{94} In the Rogers case, plaintiff was an independent milk hauler who owned his own truck and hauled milk from the producing area around Kansas City to the processing plants within the city. The hauling was done under contract with the Pure Milk Producers Association of Greater Kansas City. The Milk Drivers and Dairy Employees, Local Union 207 (A. F. of L.), a subsidiary of the Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, maintained closed shop contracts with all processing plants in Kansas City. In an expansion program, the union wanted to bring the rural milk haulers within the union. The union admitted that producers who hauled their own milk, and who did not haul any other producer's milk, did not have to belong to the union. The Milk Producers Association admitted that their employees should belong to the union. The issue, then, was as to whether independent haulers such as plaintiff had to join.

To enforce their demand that plaintiff, and others similarly situated, should join the union, the members of the Local who worked in the processing plants were instructed to refuse to unload any two trucks a day that were driven by non-union haulers. By refusing to unload only two each day, the haulers would be kept guessing as to whose milk was going to be refused on any particular day. As a result of this tactic, plaintiff's truck, containing milk produced by himself and twenty-seven other producers, was refused, and the whole load spoiled. Plaintiff then sought an injunction against the union or its members from interfering with the unloading of his milk.

The union maintained that it wished to unionize the rural haulers because the disparity between the earnings of the rural haulers and the unionized employees had a tendency to cut down on the wages and working conditions which the union had won for its members.

The court cited what is now Section 416.010 of the Revised Statutes, which makes conspiracies in restraint of trade illegal. Defendant's conspiracy fell within the statute. The court said: "An actionable conspiracy . . . may

\textsuperscript{92} See Berry Foundry Co. v. International Moulders Union, 177 Mo. App. 84, 164 S.W. 245 (1914).
\textsuperscript{93} 355 Mo. 986, 199 S.W. 2d 378 (1947).
\textsuperscript{94} 357 Mo. 152, 207 S.W. 2d 501 (1947).
have two aspects; it may consist of an executed agreement either to do an unlawful act, or to do a lawful act in an unlawful manner, whereby the plaintiff is damaged. And so, here, even though the appellants were not guilty of violence, threats, intimidation, malice or breach of contract, and conceding that they might have done as individuals all that they did do, yet when all the union members at all the milk plants in the area confederated to reject the milk, the action was conspirative, if the respondent's milk hauling business thereby would have been destroyed... It will not do to say without limitation that any group of individuals legally may combine to do acts which will destroy the business of another, merely because the elimination of that other will better their condition in life, hours of work and income.95

The court did not believe that any actual malice toward the plaintiff personally had to be proved in order to prove an actionable conspiracy. If the direct object of the conspiracy be to destroy or restrain existing trade or competition, as denounced by the statute, that would be enough to prove the conspiracy.96

Thus, the injunction issued. It was modified, however, so as to allow peaceful picketing and advancement of the union cause along lawful lines.

The next step taken by the union as a counter-measure against their being enjoined was brought out in Hobbs v. Poteet. The plaintiffs in this case were in the same position as the plaintiffs in the Rogers case. After the court issued the injunction against defendant's activities, one Jackson, secretary of the union, told the union men in the receiving plants to take in all milk from non-union haulers. He then told officials of the dairies that if any milk was accepted from non-union haulers the plants would be declared unfair and a picket line thrown around them.

Defendants maintained that they did not come within the rule of Rogers v. Poteet, for they had abandoned their jurisdictional campaign. They claimed that the Producers Association and the dairy managers, not the union, were the conspirators for refusing to handle plaintiff's milk.

The court followed the Rogers case and held that the defendants had violated the statute, for they had not abandoned their campaign but merely changed their operational methods. The court felt that they were attempting to accomplish by indirection the very thing that the circuit court had forbidden them to do. The threat of a picket line, then, which was what

95. 199 S.W. 2d 378, 386.
96. Id. at p. 387.
coerced the dairies and the Producers Association into refusing to unload plaintiff's milk, was held to be an actionable conspiracy under the statute.

In approaching the problem presented in these two cases from the standpoint that the union was attempting to destroy the rural haulers' business, the court was justified in the conclusion it reached. It is submitted, however, that any idea of destruction of business was strictly secondary to the true purpose of the union's actions. Defendants wanted to unionize the rural haulers so that they would be in a better bargaining position when it came to dealing with management about wages and working conditions of the dairy employees as a whole. This would seem to be a legitimate goal for the union to seek.

If the threat of a picket line which causes management to refuse to handle non-union products constitutes an actionable conspiracy, then the picket line itself, peaceful though it might be, would also seem to constitute a violation of the statute. And yet, if the purpose of the picketing was to increase defendants' membership and give them greater bargaining power, the picketing would seem to be perfectly valid.

Under the decisions in these two cases, it is difficult to comprehend just what effective method the union could use to unionize the rural contract haulers. Apparently the picket line, the boycott, and, on similar principles, the strike would be eliminated. As the law stands today, then, and as we shall see more by the picketing cases which will be discussed next, effective union activities are pretty well restricted by the Missouri law today. Whether this is good or bad is a question which will be left for future generations to venture an answer.

3. Picketing Cases

The Missouri Supreme Court early recognized the right of employees to strike and, in furtherance of such strike, to establish a picket line. In City of St. Louis v. Gloner (1908), a city ordinance against loafing on the streets was declared unconstitutional as applied to the facts. Defendant was doing picket duty outside the store against which a strike was in force. There was no violence, and the arresting officer testified that defendant was arrested solely because of his picketing.

The court said that while the city undoubtedly had the right to regulate the use of its streets, it had no right to do so in a way which interfered with the personal liberties of citizens as guaranteed by Missouri law. "The
defendant had the unquestioned right to go where he pleased and to stop
and remain upon the corner of any street that he might desire, so long as he
conducted himself in a decent and orderly manner, disturbing no one, nor
interfering with anyone's right to the use of the street."

The court further held that arguments and peaceable persuasion were
lawful means to prevent laborers from working for an employer against
whom a labor union had ordered a strike.

The right of peaceful picketing in connection with a strike was again
affirmed in *Berry Foundry Co. v. International Moulders Union*. The
plaintiff had asked for an injunction against defendant union members beat-
ing up certain "scabs" which plaintiff had employed. The injunction was
granted, the court holding that employees in connection with their strike
and picketing had no right to break the law by using force, intimidation and
threats.

In *Ex Parte Heffron*, the issue of picketing was raised in a habeas
corpus proceeding. The petitioners had been on the wrong end of an injunc-
tion granted to a St. Louis catering firm. The injunction was sweeping in
its terms and, in effect, prohibited picketing by the defendants in any man-
ner whatsoever. For violation of the injunction, defendants were cited for
contempt, fined and imprisoned.

The injunction apparently had issued on the theory that defendants
were engaged in an unlawful boycott. The appellate court stated that a
boycott involves the idea of an unlawful conspiracy, but that there was noth-
ing in the record which would allow the court to sustain the injunction
on that ground.

Even had a conspiracy been found, the court went on to say, the trial
court was without power to enjoin the conspirators on that ground alone
from peaceful picketing unless the injunction connects the picketing with
the unlawful conspiracy and forbids it in furtherance thereof. Since the trial
court had no power to forbid peaceful picketing, then the injunction was
void to this extent; and, the evidence showing that defendants had been
engaged merely in peaceful picketing, then their contempt punishment under
the void injunction was likewise void. In allowing petitioners' writ of
habeas corpus, the court said:

98. 210 Mo. 502, 509.
99. Id. at p. 512.
100. 177 Mo. App. 84, 164 S.W. 245 (1914).
101. 129 Mo. App. 639, 102 S.W. 632 (1914).
"So much of the injunction as inhibits the defendants from preventing or attempting by the use of force, violence, threats, menaces, or intimidation to prevent any person from patronizing plaintiff's place of business is certainly valid and within the power of the court. So, too, is that portion of the order which forbids petitioners from compelling or attempting to compel by threats, intimidation, or acts of force or violence any of the employees of plaintiff to fail to perform their duties as such employees."\(^{102}\)

Picketing, in the case of *Hughes v. Kansas City Motion Picture Machine Operators, Local 170*,\(^{103}\) was commenced against plaintiff for firing a union projectionist, for operating his own projecting machine, and for employing a non-union projectionist. The picketing was peaceful, except for one occasion when plaintiff's wife was knocked down and another occasion when she threw a roll of tickets at one of the pickets.

Plaintiff, a former member of the union, was a part owner of several movie houses. Union rules forbade the owner of a movie house from operating his own machine and from using non-union projectionists. In one of his houses, plaintiff had employed a so-called "student." Evidence was conflicting as to whether this non-union "student" actually operated the machine or not.

The court treated the union demand that plaintiff hire a union projectionist as arbitrary and unlawful. The picketing, being aimed at coercing compliance with this unlawful demand, violated plaintiff's legal rights, worked continuous damage to his business, and entitled him to relief, both by way of injunction and money damages.

Defendants contended that their picketing was peaceful, thus lawful, and that to enjoin it would deprive defendants of their freedom of speech and their use of the public streets. To this, the court said: "... we dissent from the proposition that picketing is lawful, as a matter of course, simply because it is not accompanied by assaults, threats or other methods of intimidation. ... In numerous cases, but not upon uniform reasoning or principles, relief, and by injunction, has been afforded against picketing of that character, which, in reality amounts to a boycott."\(^{104}\)

In distinguishing this case from *St. Louis v. Gloner*, the court said: "The case did not involve, and in no way touched upon, the question of

\(^{102}\) 162 S.W. 652, 659.
\(^{103}\) 282 Mo. 304, 221 S.W. 95 (1920).
\(^{104}\) 221 S.W. 95, 97.
whether a person whose business is beset to the extent of creating a nuisance may have relief by injunction.\textsuperscript{105}

Since the court felt that the picketing had nothing to do with the advancing of the betterment of the working classes, but rather to intimidate and coerce plaintiff, the purpose and method used were both declared illegal.

As to defendant's claim of freedom of speech, the court held that speech is not an absolute freedom. Speech could not be exercised by defendant for no legitimate purposes in any place and manner and with the intention to annoy and damage plaintiffs. Thus, on a nuisance theory, the injunction against peaceful picketing was upheld. The vigorous dissenting opinion of Judge Blair would seem to point up the anti-labor viewpoint of the majority opinion.\textsuperscript{106}

The nuisance theory of labor injunction was again pleaded in \textit{F. C. Church Shoe Co. v. Turner} (1926).\textsuperscript{107} Plaintiff corporation had entered into a closed shop agreement with the Boot and Shoe Workers Union (A.F. of L.) and, as a result, some members of the United Shoe Workers Union were dropped from employment. Picketing by the United Shoe Workers followed. Plaintiff alleged that picketing in such close proximity to his plant was a private nuisance and greatly destroyed and impaired the plant's value.

It seems that the majority of plaintiff's employees at the time of the closed shop contract were United Shoe Worker members. The employees were locked out for three days following the agreement, and, during this period, both non-members and members of the United Shoe Workers Union perfected picketing plans. These pickets told prospective employees of the lock-out and peaceably persuaded most of them not to work for plaintiff. The picketing lasted for some months until the restraining order issued, and, though the petition for the restraining order alleged violence on the part of the pickets, policemen stationed at the scene denied that there had been any violence.

Plaintiff further alleged that due to defendants' activities, his working force had been kept at less than half the usual number, thereby causing him to fail to meet many contractual obligations. Defendants maintained that any such obligations were undertaken before the plant was shut down, and that had the plaintiff not engaged in his lock-out, the orders would have been filled. Thus, any loss plaintiff suffered through this was not due to the union

\textsuperscript{105} Id. at 99.
\textsuperscript{106} Id. at 122.
\textsuperscript{107} 218 Mo. App. 516, 279 S.W. 232 (1926).
activities, but rather to plaintiff's own voluntary act in disrupting his organization.

The trial court found for defendants and dissolved the restraining order. The appellate court, in distinguishing this case from the Hughes case, pointed out that there the relationship of employer and employee had never existed between the picketing and the picketed. Here, defendants had been employed by plaintiff, and even though their picketing might result in plaintiff having to abrogate his contract with the Boot and Shoe Workers Union, the court held that defendants were perfectly within their rights. 108

As to the nuisance theory, the court held that picketing is not unlawful per se, and said, "Picketing, in absence of violence, threats, or intimidation, and for the purpose of peaceable persuasion, argument, or entreaty, is lawful." 109 Thus, the question of whether picketing amounts to a nuisance was held by the court to be more a question of fact than of law. In this particular case, defendants' picketing was held to have been lawful, and the case was remanded for assessment of damages to defendants on plaintiff's injunction bond.

In the case of Joe Dan Market, Inc. v. Wentz, 110 defendants picketed plaintiff's meat shop. The evidence showed violence, threats and intimidation on the part of the pickets. The union wanted a closed shop agreement with plaintiff. The court held that the picketing in this case was not peaceful and thus constituted a nuisance against which an injunction would lie. The injunction prohibited all picketing, both peaceable and otherwise. To defendants' objection that the scope of the injunction was too broad in that it prohibited peaceful picketing, the court stated: "Picketing conducted as this was, accompanied by intimidation, threats, violence, and coercion, soon becomes current in the neighborhood, so that a continuation of the picketing, even though conducted peaceably, would probably, if not necessarily, result in intimidation." 111

Purcell v. Journeymen Barbers and Beauticians International Union, Local 192-A, (1939) 112 added a new twist to picketing law. Defendants were the union and the Hairdressers Guild, the latter being an organization of

109. 279 S.W. 232, 236.
110. 223 Mo. App. 772, 20 S.W. 2d 567 (1929).
111. 20 S.W. 2d 567, 569.
112. 234 Mo. App. 643, 193 S.W. 2d 662 (1945).
beauty shop owners. The Hairdressers Guild wanted certain minimum prices to be charged for hair dressing, and, apparently, the union was picketing plaintiff's beauty shop in order to coerce plaintiff into charging these prices. There was no labor dispute between plaintiff and her employees. The evidence showed that plaintiff's employees were operating longer hours than the union thought desirable, but that they were making more money than the union operators. In addition, the union had no set wage and hour scale. On plaintiff's refusal to charge the minimum prices demanded by the Guild, the union commenced picketing.

The court said that if the picketing was the result of a labor dispute between plaintiff and the union as to wages, hours and working conditions, and if the picketing was peaceful, then the defendant union was within its rights. But since the demand for minimum prices came not from the union but from the Guild, it was difficult for the court to see how the picketing was meant to benefit union members.

The court stated: "Subject to the right of labor to insist upon proper working conditions and upon what it deems to be reasonable hours and a fair return for the work of its hands, plaintiff has the right to conduct his business, free from interference, in any lawful manner she sees fit and to charge such prices as she may determine. This has frequently been held to be a property right which the courts will protect under proper circumstances by injunctive relief."

Since no bona fide labor dispute existed between the picketing and the picketed, plaintiff's employees being neither on strike nor complaining, an injunction issued to restrain the picketing.

In *Fred Wolferman, Inc. v. Root*, defendant union had attempted to get plaintiff to enter into a closed shop contract with it to hire only members of the Amalgamated Meat Cutters and Butcher Workers, Local 576. At a meeting of plaintiff's butchers, to see if they wished to be represented by defendant union, the union was rejected by a vote of twelve to three. Plaintiff then refused to enter into a closed shop agreement with the union, saying that the National Labor Relations Act forbade its doing so. Plaintiff further maintained that it could enter into no collective bargaining agreement with defendant because the union did not represent a majority of plaintiff's employees.

113. 133 S.W. 2d 662, 670.
114. 356 Mo. 976, 204 S.W. 2d 733 (1947).
115. 29 U.S.C.A. § 158(a) (3).
Defendant union then threw a "recognized" picket line around plaintiff's shops. A "recognized" picket line is one sanctioned by the Central Trade Union, the Teamsters Joint Council, and the Building and Construction Trades Council of Kansas City, and no union member of any trade will cross such a line. All supply and delivery of merchandise were cut off from and to plaintiff. Since plaintiff's truck drivers were all union men, they, of course, had to recognize the picket line.

When the picketing first started, the pickets carried signs stating that a strike was on. But these were later changed to say that plaintiff's butchers were non-union. The appellate court, feeling that the picketing was being carried on in an attempt to coerce plaintiff into recognizing the union as the bargaining representative of his butcher employees, held that the picketing as originally started was unlawful for the purposes set forth by plaintiff.

Defendants maintained, however, that they had renounced any unlawful purpose they might have had at first, and that they were now picketing solely to inform the public that plaintiff's butchers were non-union. The court, in examining the evidence, found that defendant had not renounced its original unlawful purpose. The application of economic pressure through the recognized picket line, thought the court, was to force plaintiff to bow to their unlawful demands. And even though part of the purpose for the picketing was lawful, i. e., to inform the public of the dispute, the court felt that the unlawful picketing mixed with the lawful picketing made the whole unlawful.17

Defendants relied mainly on *Thornhill v. Alabama*, 118 *Carlson v. California*,119 and *American Federation of Labor v. Swing*,120 in support of their contention that peaceful picketing though for an unlawful purpose is not itself unlawful and may not be enjoined.

While the Missouri court has long recognized the connection between peaceful picketing and freedom of speech,121 the court here said: "... there is nothing in those cases to support the proposition that freedom of speech includes the right, by picketing, to persuade or induce an employer to violate the statute by engaging in an unfair labor practice, and thus to set at

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117. 204 S.W. 2d 733, 736.
118. 310 U.S. 88 (1940).
120. 312 U.S. 321 (1941).
121. 204 S.W. 2d 733, 733; and see Howard, *Freedom of Speech and Labor Controversies*, 8 Mo. L. Rev. 25 (1943).
naught the declared public policy of the Commonwealth, the foundation of the statute itself.\textsuperscript{122}

A somewhat similar situation was involved in \textit{Caldwell v. Anderson},\textsuperscript{123} where plaintiff refused to enter into a contract with defendant union to hire only union men on his construction work. A picket line was applied, and plaintiff sought an injunction. The issue became whether or not the picketing was unlawful simply because there was no labor dispute between the picketing and the picketed.

One of the pickets had been prosecuted under Section 8 of the Madison Act,\textsuperscript{124} said section making it a misdemeanor for anyone to picket when there was no labor dispute between the picketed and his employees. The picket applied for a writ of habeas corpus and, in Ex parte \textit{Hunn} and Ex parte \textit{Le Van} (1948),\textsuperscript{125} Section 8 was held unconstitutional as violative of freedom of speech. The court there quoted from \textit{Carlson v. California}\textsuperscript{126} that peaceful picketing as an incident of free speech is a constitutional right. Further, said the court, "a state is without power to ban peaceful picketing by an individual on the sole ground that no labor dispute exists between the picket and the establishment picketed."\textsuperscript{127}

On the basis of these decisions, the court, in \textit{Caldwell v. Anderson}, refused to issue the injunction.

Probably one of the most well-known Missouri cases involving picketing was tried on the conspiracy theory and is that of \textit{Empire Ice and Storage Co. v. Giboney} (1948).\textsuperscript{128} Plaintiff, a seller of ice at wholesale to independent retail sellers, refused to give in to a demand by the union that he cease selling ice to non-union peddlers. A picket line, apparently "recognized," was thrown around plaintiff's warehouse and stopped eighty-five per cent of plaintiff's business. Plaintiff sued for an injunction, maintaining the defendants activities constituted a combination in restraint of trade, and as such, violated the statute prohibiting such conspiracies.\textsuperscript{129} Picketing in pursuance of such an unlawful combination was in itself unlawful, maintained the plaintiff. Defendants alleged their right to picket under freedom of speech concepts. The court enjoined the picketing, and said:

\textsuperscript{122} 204 S.W. 2d 733, 736.
\textsuperscript{123} 212 S.W. 2d 784 (Mo. 1948).
\textsuperscript{124} Laws 1947, p. 355.
\textsuperscript{125} 207 S.W. 2d 468 (Mo. 1948) (en banc).
\textsuperscript{126} \textit{Supra}, note 119.
\textsuperscript{127} 207 S.W. 2d 468, 470.
\textsuperscript{128} 210 S.W. 2d 55 (Mo. 1948) (en banc).
“Following the principle laid down in the Rogers case\textsuperscript{130} we must hold here that the picketing is unlawful because a combination of union truck drivers involving most of the delivery service transportation in Kansas City comes equally within the condemnation of” the statute “when it abandons its legitimate sphere of collective bargaining and other properly related dealings with its employers, and seeks to dictate the terms under which an establishment will be either permitted or denied local transportation service.”\textsuperscript{131}

One of the defendants testified that his union had made agreements with other wholesale ice companies in Kansas City under which the companies agreed not to sell ice to non-union peddlers. The court held that a combination for the purpose of refusing to sell to certain persons is in direct violation of the statute. Since the court felt that defendant’s picketing was for the purpose of coercing plaintiff to join this combination, the picketing was for an unlawful purpose and could be enjoined.

It is submitted, however, that the purpose of the picketing was to better the wages and working conditions of the ice peddlers as a whole, and that any idea of a combination in restraint of trade would seem to be strictly incidental to the main purpose.

The United States Supreme Court, in \textit{Giboney v. Empire Storage and Ice Co.},\textsuperscript{132} stated: “Agreements and combinations not to sell to or buy goods from particular persons, or to dictate the terms under which transportation will be supplied, are well recognized trade restraint practices which both state and national legislation can and do prohibit.”\textsuperscript{133}

Since Missouri has not chosen to exempt labor unions from the scope of their anti-trade restraint law, the Supreme Court did not feel that it should do so.

The union contended that the injunction prohibiting all picketing adjacent to Empire’s place of business was unconstitutional as abridging freedom of speech because the pickets were attempting peacefully to publicize truthful facts about a labor dispute. The Court refused to treat the picketing in isolation from the rest of the union conduct, and said: “It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech and writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.”\textsuperscript{134}

\textsuperscript{130} Rogers v. Poteet, 355 Mo. 986, 199 S.W. 2d 378 (1947), \textit{supra} note 93.
\textsuperscript{131} 210 S.W. 2d 55, 57.
\textsuperscript{132} 336 U.S. 490 (1949).
\textsuperscript{133} \textit{Id.} at 495.
\textsuperscript{134} Id. at 498.
The court felt that the basic issue of the whole case was whether the State of Missouri or the labor union had supreme power to regulate trade practices. The state's power to govern in this field was held to be paramount, and the constitutional guarantee of speech and press were held not to prevent the state from applying its anti-trade restraint law to defendant union.

These cases seem to carry further the trend of reaction from the liberal doctrine of picketing established by the Missouri court in *Caldwell v. Anderson*135 and *Ex Parte Hunn*136 and by the federal Supreme Court in *Thornhill v. Alabama* and companion cases.137 Whether or not picketing is going to be declared for an unlawful purpose and thus illegal seems to depend basically upon what any particular judge or justice feels is a lawful purpose toward which labor unions may strive.

And yet, in *Gruet Motor Car Co. v. Briner*,138 the St. Louis Court of Appeals recently reaffirmed the doctrine of *Caldwell v. Anderson*. Defendants picketed plaintiff because he employed non-union workman. Plaintiff alleged a conspiracy under the same section as in the *Giboney* case. The evidence showed that there may have been an unauthorized attempt to boycott plaintiff, but if so, that the union had renounced any such idea. The only purpose of the picketing, the union asserted, was to inform the public that plaintiff employed non-union workmen. Union members who refused to cross the picket line did so apparently of their own volition. Further, certain companies who had been doing business with plaintiff ceased sending him work on their being informed by the union of his employing non-union workmen.

The court distinguished this case from *Rogers v. Poteet*, for here there was no contention that plaintiff's business was being destroyed by the picketing. The case was distinguished from the *Wolferman* case, because here defendants had expressly renounced any unlawful intentions. And it differed from the *Giboney* case, said the court, for there it was clearly a case of a secondary boycott. The court said:

"Under the guaranty of freedom of speech a labor union has the right to publicly state its grievance by picketing where such picketing is not en masse or otherwise conducted in such a manner as to go beyond the point of peaceful persuasion, and this is true even though those picketing do not stand in the relation of employee to..."
the party picketed. . . . It is equally true that one may exercise a free choice as to whom he will do business with or from whom he will withhold his patronage providing his action in exercising his choice is not motivated by a prohibited conspiracy with others. It follows that if the patrons or companies that had previously done business with the Gruet Co., by their own free choice, did no longer deal with the company, after it had been publicized by the pickets that the company was non-union, then such action is not a conspiracy. The purpose of picketing is to persuade such patrons to the union's cause and the right to picket is not lost because its purpose becomes effective.139

In State ex rel Allai v. Thatch,140 discussed in connection with the entity cases, picketing was enjoined (1) where the picketing was a public nuisance in that a public way was obstructed by the pickets, and (2) when its alleged purpose was to influence the mining company into getting its employees to join the union. The latter, of course, would be violative of Section 8 (a) (1) of the National Labor Relations Act.141

And in Kincaid-Webber Motor Co. v. Quinn,142 the court enjoined picketing which started the day after plaintiff's employees had rejected the defendant union as their bargaining representative under a Board sponsored election. The court assumed that the picketing was to coerce the plaintiff into recognizing the union as the exclusive bargaining representative of its employees despite the result of the election. It reasserted the doctrine of the Wolferman case that freedom of speech does not include the right to picket to persuade an employer to violate a valid statute.

Picketing was involved to a certain extent in the case of Missouri Cafeteria, Inc. v. McVey (1951).143 An effective picket line was established around plaintiffs' restaurant and bakery. In distinguishing this case from the Giboney case as far as the picketing aspects was concerned, the court said: "... first, the illegal combination was abandoned before trial and the picketing at the time of the trial was for a lawful purpose; and, second, the picket line in the instant case was not placed at the plant of the supplier, as in the Giboney case, but at the business establishments which defendants were attempting to organize."144
The case was dealt with mainly on the issue of a boycott and will be discussed further thereunder.

In *Katz Drug Co. v. Kavner* (1952), plaintiff Katz sued to enjoin members of the Warehouse and Distribution Workers Union from picketing its warehouses and stores. The picketing was for the ostensible purpose of informing the public that plaintiff's St. Louis stores were non-union. The court took the view that, although this might well be true, the further purpose of the picketing was to coerce Katz into recognizing their union as the exclusive bargaining representative of the St. Louis employees.

The facts were that although most of Katz's employees were unionized, the St. Louis members were not. The union, apparently, only claimed a minority of these St. Louis employees.

Picketing for the purpose of coercing plaintiff into signing a collective bargaining contract was restrained so long as defendants did not represent a majority of the St. Louis employees. The reasoning followed the *Wolferman* case. The court recognized the fact that peaceful picketing is generally permissible under the First and Fourteenth Amendments to the Federal Constitution when such picketing is for a lawful and proper purpose. Yet, said the court, "... such picketing may be enjoined when the purpose is unlawful."146

Thus, although the union had specifically renounced any unlawful purpose in their picketing, said picketing was enjoined. The query under such circumstances might well be whether picketing would ever be held to be for a lawful purpose, and thus allowable. And if, as this court did, the picketing is assumed to be for an unlawful purpose, *i.e.*, to coerce the employer into a collective bargaining contract, what then becomes of the established case rule that peaceful picketing may not be enjoined?

As this article goes to the printers, the latest case involving picketing is that of *Adams Dairy Co. v. Dairy Employees Union*.147 Adams Dairy had had a practice of delivering milk to customers by truck, and, in addition, had some customers which picked up the milk at the plant in their own trucks. The milk which Adams delivered themselves was delivered by members of the defendant union. The contract in force between the union and the company provided, among other things, that "... it is mutually agreed

145. 249 S.W. 2d 166 (Mo. 1952).
146. *Id.* at p. 170.
147. 250 S.W. 2d 181 (Mo. 1952).
any major changes in the present working conditions or rules must be mutually agreed to by the Union, employees, and Employer. . . ."

While this collective bargaining agreement was in operation, the company decided to give up the practice of making deliveries themselves, and to enter into contracts with independent contractors to so deliver. This was done. Some of the union employees who had formerly driven the trucks purchased the trucks, thus becoming, as the company claimed, independent contractors. Some of the other former drivers were given different positions. When the union heard about this, it threatened picketing and a strike unless all the drivers were reinstated. The company then brought this petition for an injunction, upon which the union brought a cross-bill to enjoin the company from violating the union contracts.

The court found that under the contracts between the company and the truck drivers, the relationship of contractor and independent contractor existed. Thus, the argument of the union that the relationship of employer and employee still existed was overruled.

The court further held that a change-over from one technique of marketing to another, i.e., from retail deliveries by employees to wholesale selling to independent contractors, was not a major change in the working conditions and rules. Thus, it was held that there was no breach of the collective bargaining contract by the company. Since there was no breach, any picketing or striking in protest to the company’s action would be considered as being for an unlawful purpose. And, as is well established in Missouri law, picketing or striking for an unlawful purpose is itself unlawful and may be enjoined. The action of the trial court in issuing the injunction prayed for by the company and dismissing the union’s cross-bill was thus affirmed.

This technique of making independent contractors out of employees appears to be a new development on the labor-management scene, and may well bear watching in the future. Its dangerous implications for trade unionism are apparent. When a union pickets or strikes in protest to such a move, can it be truly said that such is for an unlawful purpose. If so, then the courts would seem to be barring a union from speaking freely against a technique which could very well prove to be the death of the union.

One only has to wade through the mass of material presented in this section to realize that the question of picketing in Missouri is anything but clear. We can see that effective union picketing tactics have been checkmated by the courts to a considerable extent. Despite the citing of precedent for any particular holding, it is submitted that the cases have been decided
more on the particular judge's attitude toward labor or management, and on a piece meal basis, than on precedent. How far unions should be allowed to go in their picketing tactics, or how much they should be restricted by the courts, is a difficult question to answer, and, fortunately, one which is not within the scope of such a survey as this.

4. Boycott Cases

The first labor case found involving a boycott as such was that of Marx and Haas Jeans Clothing Co. v. Watson (1902).\textsuperscript{148} Plaintiff sought to enjoin the Knights of Labor and a local of the United Garment Workers Union from enforcing a boycott against him. Defendants had printed circulars telling of their grievances and sent them to plaintiff's customers requesting such customers to cease dealing with plaintiff until their grievances were settled. The trial court dismissed plaintiff's petition.

In upholding the trial court's action, the supreme court first quoted from the Missouri Constitution\textsuperscript{149} that "... no law shall be passed impairing the freedom of speech, no matter by what means communicated; that every person shall be free to say, write or publish, or otherwise communicate whatever he will on any subject, being responsible for all abuses of that liberty. ..."\textsuperscript{150}

The court then went on to say that this section "... makes no distinction, and authorizes no difference to be made by courts or legislatures, between a proceeding set on foot to enjoin the publication of a libel, and one to enjoin the publication of any other sort of nature, however injurious it may be, or to prohibit the use of free speech or free writing on any subject whatever; because, wherever the authority of injunction begins, there the right of free speech, free writing, or free publication ends. ... If the defendants are not permitted to tell the story of their wrongs, or, if you please, their supposed wrongs, by word or mouth, or with pen and print, and to endeavor to persuade others to aid them by all peaceable means in securing redress of such wrongs, what becomes of free speech and what of personal liberty? The fact that in exercising that freedom they thereby do plaintiff an actionable injury does not go a hair toward a diminution of their right of free speech, etc., for the exercise of which, if resulting in injury, the constitution makes them expressly responsible. But such responsibility is utterly

\textsuperscript{148} 168 Mo. 146, 67 S.W. 391 (1902).
\textsuperscript{150} 67 S.W. 391, 393.
incompatible with authority in a court of equity to prevent such responsibility from occurring."\textsuperscript{151}

The judiciary did not long continue such a liberal philosophy, and the case of \textit{Lose Patent Door Co. v. Fuelle}\textsuperscript{152} found the reaction setting in. There, the United Brotherhood of Carpenters and Joiners of St. Louis declared a boycott against plaintiff for employing non-union labor and for not meeting the union wage and hour scale. Builders who bought their materials from plaintiff were warned of a strike by their union workmen if they continued to patronize plaintiff.

The court, without citing any Missouri authority for the proposition, admitted the right to form labor organizations to promote the interests of the laboring classes, and denied the power of injunction to enjoin the workers from peaceably striking.\textsuperscript{153} A union, the court held, as an organization is not inherently a monopoly or a combination in restraint of trade. But when the union members combine to operate a boycott, then, says this court, a conspiracy arises and may be enjoined.

The court defined a boycott as "... a combination of several persons to cause a loss to a third person by causing others against their will to withdraw from him their beneficial business intercourse through threats that, unless a compliance with their demand be made, the persons forming the combination will cause loss or injury to him; or an organization formed to exclude a person from business relations with others by persuasion, intimidation, and other acts which tend to violence, and thereby cause him through fear of resulting injury to submit to dictation in the management of his affairs. Such acts constitute a conspiracy and may be restrained by injunction."\textsuperscript{154}

In restraining boycotts, the court stated that it proceeded on the theory that they are unlawful interferences with property rights. However, since a strike, which this court has held to be lawful, would also be an interference with property rights, it would appear that there may have been a more basic reason for the court's holding. This reason may well have been because there was no contractual relationship between the plaintiff and the union. This would be akin to the idea, now rejected, that there could be no picketing where the pickets were not in an employee relationship to the picketed.

\textsuperscript{151} Id. at 395.
\textsuperscript{152} 215 Mo. 421, 114 S.W. 997 (1908).
\textsuperscript{153} 114 S.W. 997, 1002.
\textsuperscript{154} Id. at 1003.
This court stated that it would let an individual do with impunity what the union did, since the individual’s coercive power would be so slight as not to interfere with the builders continuing to deal with plaintiff. Yet, when the individuals banded together for their mutual benefit and protection, and when their bargaining power began somewhat to approach that of the plaintiff, then this court stepped in, declared the union’s activities illegal and enjoined them.

The court admittedly did not understand the Clothing Company case, and said: “The clear object of this case is to prohibit the defendants from continuing the boycott in force heretofore declared, or to enjoin the defendants from declaring a threatened boycott against plaintiff’s business, and not to enjoin its publication. If the boycott itself is enjoined, there would be no occasion for complaint against its publication.”

The case of Crescent Planing Mill Co. v. Mueller (1939) was decided thirty-one years later than the Patent Door case, but once again the defendants were the members of the United Brotherhood of Carpenters and Joiners of America.

In 1935, the District Council started a peaceful campaign against mills such as plaintiff’s which did not pay the union wage or operate according to union regulations and trade rules. The District Council of the Brotherhood is composed of delegates selected by and from the membership it serves and represents, and is the governing body for the local branches of the union. Such mills as the plaintiff’s were distinctly disadvantageous to mills employing union labor, because they could bid lower on construction jobs than could the union mills. The first step in the campaign was to attempt to induce plaintiff’s employees to join the union. Along with this, the Council attempted to come to a working agreement with the plaintiff. Apparently, defendants had some success in organizing plaintiff’s employees, for when he refused to cooperate, a strike was called. During the strike, peaceful picketing was commenced; but on plaintiff’s starting this injunction suit, the picketing ceased.

The second step was the promulgation of a trade rule, which was adopted by the members of the district, that members of the union engaged in the building and construction part of the industry would not thereafter handle or erect millwork that did not bear the union label of the Brotherhood. Plaintiff and others similarly situated were notified of this trade rule.

155. Id. at 1012.
156. 234 Mon.App. 1248, 123 S.W.2d 193 (1939).
The trial court had awarded a permanent injunction on the conspiracy theory of boycott. The injunction enjoined defendants from interfering in any way with plaintiff in his business, either by calling a strike, continuing the boycott, or even by advertising the cause of the union's complaint.

On appeal, the supreme court transferred the case to the court of appeals because of lack of jurisdiction. The court of appeals dissolved the injunction, feeling that under the theory of the Patent Door case, plaintiff had made out no cause for relief. The court said that there was no malicious intent on the part of defendants to damage plaintiff as a concern, since plaintiff's mill was only one of several open-shop mills with which defendant was seeking a working agreement. The purpose of the boycott, thought the court, was to benefit the union members and not to harm plaintiff or any other millowner. The court stated: "... and if plaintiff was harmed by the rule, as we have no doubt it was, it was only so because harm to plaintiff was unavoidable if the union was to accomplish its primary purpose of benefitting itself."158

In the companion case to the Crescent Planing Mill case, Frank Schmidt Planing Mill Co. v. Mueller,159 the court further explained the boycott theory. The facts were the same as in the Crescent case, and the court upheld the right of defendants to engage in this boycott.

A boycott, held the court, may be either lawful or unlawful depending on the means used. The essence of the unlawful boycott is the malicious intent to cause loss or injury to a third person.160

The court said: "An act done in good faith, by fair and proper means, and for a lawful purpose, is not to be restrained; and if the members of a craft are to be permitted and encouraged to organize and bargain collectively for the purpose of securing for themselves the better wages, shorter hours of labor, and better working conditions which an enlightened public opinion concedes to be their due, then, absent malice, fraud, violence or defamation, their right, by voluntary act, to refuse to install non union made material should follow logically and as a matter of natural course."161

It must be remembered that these cases were decided in what may be called the liberal period of labor disputes. A few years later, during the react-

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157. 117 S.W. 2d 247 (Mo. 1938).
158. 123 S.W. 2d 193, 196.
159. 154 S.W. 2d 610 (Mo. App. 1941). And see Carondelet Mfg. Co. v. Mueller, 154 S.W. 2d 616, tried with and ruled by Schmidt case.
160. 154 S.W. 2d 610, 614.
161. Id. at 615.
tion from this liberal trend, the court in *Rogers v. Poteet* (1947)\(^\text{162}\) again invoked the conspiracy theory of labor boycotts.

This case, discussed previously under the conspiracy cases, recognized that the ultimate reason for the boycotting of plaintiff's milk was to obtain more wages, shorter hours, and better working conditions. "But as a means to that end their direct and immediate intent was to coerce the non-union haulers into their Union, and consequently destroy their contract hauling businesses."\(^\text{163}\)

The two *Planing Mill* cases were mentioned but not expressly overruled. As the court read the decision in the *Patent Door* case, it expressly denounced boycotts as an illegal exercise of labor's rights under the common law. And, ruled the court, under the conspiracy statute, their rights are no broader. Thus, the boycott was enjoined.

And in the latest boycott case, discussed previously under the picketing cases, *Missouri Cafeteria Inc. v. McVey*,\(^\text{164}\) the union managed to stop most deliveries of goods to plaintiff's restaurants and bakery. As a result, plaintiffs were put to a considerable expense and inconvenience to haul their own supplies. The court stated that under the *Patent Door* case, defendant's action before trial in attempting to cut off supplies from plaintiff by economic pressure amounted to an unlawful secondary boycott. This boycott was expressly renounced by the union on the day the injunction suit was started, but the court, once having taken jurisdiction, retained it despite the renunciation. In remanding the case for a retrial, the court said if the evidence showed there was an illegal boycott for a short period prior to the stipulation and renunciation, then the trial court should award plaintiffs such damages as they may have suffered on account of the illegal boycott conspiracy.\(^\text{165}\)

In summing up, then, it is difficult to surmise where the courts will go from here in their holdings as to what constitutes a conspiracy, what is lawful as contrasted to unlawful picketing, and when a boycott is legal or illegal. The cases discussed do indicate a shifting from right to left and left to right down through the years, the shift apparently being in response to the general attitude prevailing at the time as to the rights of labor.

Certainly the decisions in Missouri for the past few years, and down to

\(^{162}\) 355 Mo. 986, 199 S.W. 2d 378 (1947).

\(^{163}\) 199 S.W. 2d 378, 387.

\(^{164}\) 242 S.W.2d 549 (Mo. 1951) (*en banc*).

\(^{165}\) Id. at 554.
1950 particularly, cannot be disassociated from the public attitude reflected in such laws as the Taft-Hartley Act and, in Missouri, the King-Thompson Act. And it can be said that the courts, for the most part, have been more interested in protecting the tangible property interest of the employer over that of what may be called the intangible property interest at which the union's activities are aimed, i.e., increased bargaining power. Since tangibles are more easily dealt with than intangibles, this is an easily understood attitude.

But it is to be hoped that the Missouri courts, as some have done in the past, will seek a deeper understanding and appreciation of the labor movement within their state. Boycotts and picketing have a substantial reason for being and are usually not aimed at the destruction of property rights. The right of the laboring man to earn a decent wage, to work decent hours, and to work under such conditions as will enable him to take pride in his economic and social position are, almost without exception, the basis for such union activities.

V. COLLECTIVE BARGAINING AGREEMENTS

The interpretation of collective bargaining agreements came before the Missouri Supreme Court early in this century in the case of *Burnetta v. Marceline Coal Co.*166 Plaintiff was a miner suing for wages earned but which, under an agreement between the coal company management and plaintiff's union, were not payable when plaintiff demanded them.

Defendants maintained that the suit was prematurely brought, in that plaintiff, as a union member, was bound by the union contract with defendant. Plaintiff claimed that he was not bound, and that the only contract which existed was the contract implied by law on his part when hired to perform labor. When hired, plaintiff had stated that he understood the rules of employment.

The court determined that there was no showing that plaintiff had adopted the union contract as part of his contract of employment with defendant, and said: "That the Miners' Union, as an organization, cannot make a contract for its individual members in respect to the performance of work and the payment for it, . . . is too clear for discussion. . . . A contract on the part of an individual that he will perform certain work under

166. 180 Mo. 241, 79 S.W. 136 (1904). For a penetrating analysis of the problem here covered, the reader should see Hamilton, *Individual Rights Arising from Collective Labor Contracts*, 3 Mo. L. Rev. 252 (1938); also 9 Mo. L. Rev. 286 (1944).
the rules of an organization is not to be inferred from the simple fact that he is a member of that organization. Persons work for themselves and are free and independent.\textsuperscript{167}

The next case involving collective bargaining agreements was \textit{Hall v. St. Louis-San Francisco Ry.} (1930).\textsuperscript{168} This case involved a discharge alleged to be wrongful because in violation of a collective bargaining agreement in force between plaintiff's union and defendant. The agreement provided that no employee would be discharged with due cause and guaranteed an investigation as well as a right of appeal. Plaintiff received neither the investigation nor the appeal prior to his discharge.

Plaintiff alleged that the collective bargaining agreement in force between his union and his employer was also part of the employment contract between him and the defendant. The court held: "We can see no impropriety in any person or corporation who employs a large number of men who are members of a labor union making and being bound by an agreement made with the representatives of a labor union for and on behalf of the members of that union, such as was entered into between defendant and the union of which this plaintiff was a member. We hold that the agreement referred to was binding, and the plaintiff was entitled to the benefit of its provisions relative to a discharge by defendant."\textsuperscript{169}

In \textit{McCoy v. St. Joseph Belt Ry.},\textsuperscript{170} plaintiff's seniority status was governed by a collective bargaining agreement in force between defendant railroad and the local union of which plaintiff was a member. Plaintiff's seniority status was sought to be changed after the management of the railroad was taken over by another railroad, such change not being in accordance with the terms of the agreement. Plaintiff sued for the violation of his seniority rights.

The court distinguished this case from one where a contract is entered into between the union and employer, and there is nothing to show that the individual union employee authorized the contract or that the contract was made for his benefit. The evidence showed here that the plaintiff did authorize the contract. Further, reasoned the court, the plaintiff here would have been allowed to sue on the third party beneficiary theory. Since collective bargaining agreements are primarily for the individual benefit of the

\begin{footnotes}
\item[167] 79 S.W. 136, 139.
\item[168] 28 S.W. 2d 687 (Mo. App. 1930).
\item[169] Id. at 689.
\item[170] 77 S.W. 2d 175 (Mo. App. 1934).
\end{footnotes}
union members, the rights secured by these contracts are the individual rights of the individual members of the union, and may be enforced directly by them.

Thus, we see from these few cases that the rule has been established that the collective bargaining agreement between the union and the employer is also part of the contract of employment between the union employee and the employer. And, for breaches of this agreement, the individual employee aggrieved may seek damages.

In Reed v. St. Louis, South-Western Ry., a new facet was added to collective bargaining law. The collective bargaining contract there provided for certain grievance procedures to be followed when an employee felt that he had been wrongfully discharged. Without following this procedure, plaintiff came into court seeking damages for the alleged wrongful discharge. Defendants maintained that so long as plaintiff had failed to exhaust his remedy as provided within the collective bargaining agreement, he could not come into court.

The court agreed and said: "The evident purpose of including the provisions in the contract of employment specifying the method of action in hearing the charges preferred against employees is to discourage litigation as a means of settling controversies. . . . It is well settled that, where contracting parties either agree or are required by law to resort to a designated tribunal for the adjustment of controversies, they must exhaust such remedy before resorting to the court for redress."

Once in court, however, after having exhausted such remedy, McCrory v. Kurn held that the question of whether or not plaintiff was wrongfully discharged under the terms of the collective bargaining agreement was for the jury to decide.

McGee v. St. Joseph Ry. was a case which vexed the Kansas City Court of Appeals on at least three separate occasions. Plaintiff McGee was in the same position as plaintiff McCoy v. St. Joseph Ry., supra. In the first McGee case (1936) plaintiff was allowed to recover on his suit for damages based on a violation of his seniority rights as set forth in the collective bargaining agreement entered into between plaintiff's union and defendant. McGee was allowed to recover in damages the amount he would have earned.

171. 95 S.W. 2d 887 (Mo. App. 1936).
172. Id. at 889.
173. 101 S.W. 2d 144 (Mo. App. 1936).
174. Supra note 170.
175. 93 S.W. 2d 111 (Mo. App. 1936).
by wages had his seniority rights not been wrongfully interfered with, less what earnings plaintiff had or should have earned while he was laid off.

In the second McGee case, plaintiff again sued for damages. He alleged that the collective bargaining agreement was still in force between his union and defendant. Further, plaintiff's name was still on the seniority list but was further down than was warranted under the terms of the agreement. Thus, he alleged, each day that he was not called back to work in accordance with his true seniority standard, another breach of the collective bargaining agreement occurred as to him.

The court said: "Defendant did not terminate the contract and plaintiff was not required to treat it as having been terminated. The posting of an altered seniority list by defendant was no more than a refusal by defendant to recognize plaintiff's rights so long as the list existed, which might have been changed at any time. Plaintiff, still being in defendant's employ, was not required to seek work elsewhere, but could hold himself in readiness for work at defendant's call." 177

The important point, as far as our present discussion is concerned, is that the agreement between the union and defendant was still in force at the time of each suit. Thus, even though McGee had recovered damages in his first suit down to the time of filing suit, he was allowed to recover here damages suffered since that filing down to the time of this second suit. The first recovery was held not to be a bar to the second recovery.

McGee came back again in the third McGee case. 178 This time, the defense was that McGee had been discharged and that thus defendant was not liable. McGee had not been informed of his discharge, defendant merely having posted the seniority list with his name missing therefrom. The jury found that this was not sufficient to discharge plaintiff. Since he was still in defendant's employ, and since defendant was still violating the collective bargaining agreement in respect to McGee's seniority, he was again allowed to recover.

And, to wind up this triumphant triumverate, in State ex rel St. Joseph Belt Ry. v. Shain, 179 the supreme court held that the trial court in the third McGee case had rightly allowed the jury to determine whether the posting of the seniority list by relator, with McGee's name missing therefrom, con-

176. 110 S.W. 2d 389 (Mo. App. 1937).
177. Id. at 391.
178. 133 S.W. 2d 675 (Mo. App. 1939).
179. 145 S.W. 2d 131 (Mo. 1940) (en banc).
stituted a discharge of McGee so as to prevent him from recovering for the breach of the collective bargaining agreement.

_Ferras v. Terminal Ry. Assoc. of St. Louis_ was also an action for damages for an alleged violation of plaintiff's seniority rights. Plaintiff was a member of the extra board of switchmen. A member of the extra board was one whose seniority status was not high enough to entitle him to work every day on the same regular crew. The depression had resulted in there being more extra men than regular and, since the collective bargaining agreement in force between defendant and the Brotherhood of Railway Trainmen required all extra men to report for work at least once a day, a situation arose where the extra men were getting in the way of the regular crew's performance of their work.

The Brotherhood and defendant then made an amendment to the agreement whereby the extra men were furloughed indefinitely. This agreement provided that for the first six months after the furlough system was established, the men would be called back to work in their regular seniority order. After this period, any return of the men to service would be subject to negotiations between the parties. At the end of the six month period, however, economic conditions were worse than they had been at the beginning. Several years later, conditions still being bad, it was agreed by the Brotherhood that only certain named men on the furloughed list would be returned to work, and the others would be permanently removed from the seniority roster. Plaintiff was among those permanently removed.

Plaintiff maintained that his seniority rights were not lost by reason of the subsequent modification of the agreement. The court did not agree with this argument, for the Brotherhood, in the original collective bargaining agreement first establishing plaintiff's seniority status had reserved the right to modify the agreement. Since the evidence showed no bad faith, fraud, or arbitrary action either on the part of defendant or the Brotherhood, the plaintiff, as a member of the union, was bound by the modification agreement.

The court felt that since plaintiff had accepted the benefits of the agreement without question, he could not now be heard to complain about the burdens of the agreement.

A companion case to this was _Noles v. Terminal Ry. Assoc. of St. Louis_. The facts were the same, but the court here went a step further and said that "... from the very nature of an agreement made by a labor
union for the benefit of its members, reservation of power in the union to modify the agreement would seem to be implied."\(^{182}\)

In *Baron v. Kurn*,\(^{183}\) plaintiff sued the trustee of the St. Louis-San Francisco Railway for damages for allegedly failing to return plaintiff back to work in accordance with his seniority status. Plaintiff worked at the Springfield yards and his seniority was governed by the "Yardmen's Schedule," said schedule being expressed as part of the collective bargaining agreement between the Brotherhood and the railroad.

The court felt that plaintiff's rights were dependent upon two contracts, the first being the one which fixed his status as an employee, and the second being the "Yardmen's Schedule." In upholding the claim of the plaintiff, the court said: "If language found in *Burnetta v. Marceline Coal Co.*... is to be construed that an employee may not acquire rights under a labor contract with his employer independent of his individual contract of employment, we think it out of line with the trend of modern authority and should not be longer followed in that respect."\(^{184}\)

*Sparks v. Thompson*\(^{185}\) again involved an alleged violation of seniority rights. Plaintiff, a journeyman boilermaker, was laid off by the Missouri-Pacific Railroad in 1931. In 1932, contrary to the terms of a collective bargaining agreement in force between plaintiff's union and defendant, persons with less seniority than plaintiff were reinstated. On numerous occasions between that time and 1938, plaintiff attempted to get back on, but was refused. At no time during this period, however, was he discharged.

Defendant contended that the five year statute of limitations barred plaintiff's claim, since the breach of the contract occurred more than five years before suit was filed. The court overruled this contention, holding that since plaintiff was never discharged, defendant had a continuing duty to return him to service in the order of his seniority status. Since the collective bargaining agreement provided further that no employee would be discharged without a hearing, and since plaintiff had no hearing, there was no reason why he should have thought he was discharged. The court felt that plaintiff had the right to hold himself in readiness for work during this period.

One of the most interesting Missouri cases involving collective bargain-

\(^{182}\) *Id.* at 609.

\(^{183}\) 344 Mo. 1202, 164 S.W. 2d 310 (1942).

\(^{184}\) 164 S.W. 2d 310, 311.

\(^{185}\) 161 S.W. 3d 977 (Mo. App. 1942).
ing agreements is that of Continental Bank Supply Co. v. International Brotherhood of Bookbinders, Local #243.\textsuperscript{186} This was a suit in equity to set aside an arbitration award. Plaintiff corporation and defendant union submitted a controversy as to wages, seniority, and closed shop to a board of three arbitrators. The company and the union each selected one arbitrator, and since these two could not agree on a third, one was appointed by the United States Conciliation Service, as provided by their collective bargaining agreement. This third member was to preside over the hearings and had the power of an umpire as to any dispute to which a majority of the arbitrators could not agree.

After three days of hearings and some discussion of the evidence presented by the arbitrators, it was decided that the member appointed by the United States Conciliation Service should write up a summary of the evidence, and then submit this summary to the company and union arbitrator to pass on. Apparently, this was not done. The award was presented signed by the third arbitrator alone, and it was stated therein that both the union and the company arbitrator dissented in part.

Plaintiff challenged the award, but was overruled by the War Labor Board. It was maintained by the corporation that the award was invalid because the company arbitrator had not been consulted as to the award, because the award was not signed by all the arbitrators, and because the United States Conciliation Service member had acted in excess of his authority.

The court first cited what is now Section 435 of the 1949 Missouri statutes regarding arbitration of certain controversies between parties. This particular arbitration statute was first adopted in 1835,\textsuperscript{187} but its use had been restricted to what may be called commercial arbitration, as contrasted with arbitration of labor disputes.

It was pointed out that both the statutory and common law methods of arbitration exist in Missouri as distinct and concurrent remedies. If the award here was a statutory, rather than a common law award, it could not be upheld, for such a labor controversy could not be considered within the scope of the statute. The statute allows parties to submit to arbitration "any controversy which may be existing between them, which might be the subject of an action,"\textsuperscript{188} i.e., a controversy over which the courts of the state are

\textsuperscript{186} 201 S.W. 2d 531 (Mo. App. 1947).
\textsuperscript{187} Mo. Laws 1835, § 1, p. 71.
\textsuperscript{188} Mo. Rev. Stat. § 435.020 (1949) (italics added).
given jurisdiction. The whole purpose of the arbitration here being to bring into existence a contract setting forth the rights and obligations of the parties, no controversy then existed for the adjudication of which either party could have had recourse to the courts and, under the statute, arbitration can deal only with controversies which are open to judicial cognizance.

Since the controversy could not be submitted under the statute, the court held that it necessarily became a common law arbitration award. As to this, the court said: "At common law it is necessary that all arbitrators must sign the award in order to make it valid, unless it is agreed in the submission that a less number than all shall sign it and, where a written award is not required by the submission, as in this case, the general rule is that if the award is in writing it must be signed by all the arbitrators whose concurrence is essential to its rendition."

The award was also held to be invalid because it had never been submitted to the company or union arbitrator. The court said: "It has been held to be misconduct on the part of an arbitrator to refuse to allow his associates to take part in the proceedings . . . . It is well settled that an award may be impeached for fraud, mistake or misconduct on the part of the arbitrators, or any one of them, and irregularities in the proceedings."

While the problem of arbitration of labor disputes is an interesting one, a discussion of it is out of the scope of the present paper. Suffice it to say that there is in Missouri today no statutory provisions for labor arbitration, although there have been some attempts to secure such a law.

The problem of a municipality's power to enter into collective bargaining agreements with its employees came up in the case of City of Springfield v. Clouse. The court decided that although city employees had the right to join unions, yet they could not use this union for purposes of collective bargaining with the municipality. Wages and hours of public employees, being fixed by statute or ordinance, were held not to be a fit subject for collective bargaining. The court felt that to allow collective bargaining on such subjects would be to allow the union to usurp governmental powers.

Of course, a union becomes little more than a social club if it is to be stripped of its power to bargain collectively. It may be that there is a need to eliminate public employees from union activities such as collective bar-
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gaining, and yet, when a union is bargaining on wages or hours with a city or
state, it would seem to present an analogous situation to a union bargaining
with a private employer. Rather than usurping governmental functions, it
may well be that if city and state employees were allowed to bargain col-
lectively with city councils and legislative committees, it would aid the law
makers in passing wiser wage and hour laws as to the particular group
concerned. It has been argued that to allow such would be to endanger the
the state from crippling strikes by its public employees. But in such situa-
tions, it is common for the union to forego all right to strike and merely to
present their demands and negotiate for their favorable consideration.93

In Williams v. Atchison T. and S. F. Ry., 194 the dispute was again over
seniority. Plaintiff sought damages for an alleged violation of his seniority
rights as a locomotive fireman. He had followed the grievance procedure set
out in the "Schedule of Rates, Rules and Regulations for Locomotive Fire-
men," including an appeal to the president of the Brotherhood of Railroad
Trainmen. The schedule was part of the collective bargaining agreement in
force between the Brotherhood and defendant. The National Railroad Ad-
justment Board refused to hear an appeal by plaintiff from the president's
decision as to plaintiff's seniority status, apparently affirming the president's
decision.

The court held that since the schedule was a part of the collective bar-
gaining agreement between defendant and its firemen, plaintiff was bound
by the method of determining disputed seniority rights contained therein.
Citing Elgin, J. and E. Ry. v. Burley 95 as authority that "if a disputed ques-
tion were presented to the Labor Adjustment Board and the parties were
represented in person or by an authorized agent, the action of the board
would not be subject to judicial review," the court said: "We hold that
Williams, having participated in the proceedings until final disposition and
then having presented his claim to the National Railroad Adjustment Board,
which board decided against him, cannot now litigate the same question in
the courts." 96

An arbitration award was again the subject of controversy in Fleming v.
KCKN Broadcasting Co. 97 The agreement in force between plaintiff union
and defendant corporation provided that defendant was to recognize the

356 Mo. 967, 204 S.W. 2d 693 (1947), cert. denied, 333 U. S. 854 (1948).
327 U.S. 661 (1946).
204 S.W. 2d 693, 697.
233 S.W. 2d 815 (Mo. App. 1950).

93. King v. Priest, 206 S.W. 2d 547 (Mo. 1947).
94. 356 Mo. 967, 204 S.W. 2d 693 (1947), cert. denied, 333 U. S. 854 (1948).
95. 327 U.S. 661 (1946).
96. 204 S.W. 2d 693, 697.
97. 233 S.W. 2d 815 (Mo. App. 1950).
American Federation of Radio Artists as the exclusive bargaining agent for their members. It further provided that any controversies which could not be settled between the parties should be submitted to a board of arbitrators, one selected by defendant and one by the American Federation of Radio Artists, and if these two could not settle the matter, then the two to agree on a third. The three should compose a board of arbitrators, and their disposal of the matter would be final.

The arbitration award, upholding the company in the firing of a union employee, was signed by all three arbitrators, but one dissented. Plaintiffs maintain that the award being agreed to only by a majority of the arbitrators was invalid, as there was no provision in the collective bargaining agreement for a majority finding. The court said: "If it had not been the intention of the parties that a majority of the arbitrators could make an award, binding upon the parties, then there would have been no need of selecting the third arbitrator . . . . because the disagreement of the two originals would make a unanimous award impossible. We cannot assume that the contracting parties would put a foolish provision in the contract. Clearly it was their intention that if two arbitrators could not agree, and the third arbitrator was added, that a majority of the board thus formed could make a legal and binding award."

The court did not decide whether this was a statutory or common law arbitration award, merely citing the Continental Book Supply Co. case for the proposition that, in Missouri, they are concurrent remedies. Under either, said the court, the majority could have made the award when the contract expressly or by inference so provided.

This decision shows an appreciation by the Missouri court of the principles upon which collective bargaining agreements are based. Had the court wished to literally interpret the contract, they could have held that there being no specific provision for a majority finding in the agreement, then any other than a unanimous finding was invalid. But such an agreement as this is entered into in the first place to establish better labor-management relations. The court, by a literal interpretation of contract provisions, might often create antagonisms which would go a long way toward upsetting peaceful labor relations. By looking for the intent of the parties and recognizing that the arbitrators selected by the parties, and not the court, are the persons that both labor and management have agreed would make the award,
the Missouri court has followed what would seem to be the intelligent course.

In *Wilson v. St. Louis-San Francisco Ry.*, plaintiff sued for damages for an alleged breach of the collective bargaining contract then in force between defendant and plaintiff's union. Plaintiff's dismissal was appealed to the National Railroad Adjustment Board by the union, but plaintiff alleged that he had not given the union officials authority to dispute his dismissal. On the contrary, plaintiff maintained that he had definitely told one union official that he, plaintiff, would handle the matter himself, and that the union should drop any proceedings they may have instigated.

The court agreed with plaintiff that, although his dismissal was within the jurisdiction of the National Railroad Adjustment Board, yet plaintiff had the alternative remedy to either proceed before the Board or to file his own suit for breach of contract. The pursuance of one remedy to a conclusion detrimental to the complainant, however, would bar his seeking recovery through the other.

The court did not feel that plaintiff had so irretrievably authorized the union to proceed with his claim through the medium of the Adjustment Board that he was barred from his common law remedy here.

It was also held that even though under the Federal Employers Liability Act plaintiff had recovered a verdict against the defendant for personal injuries resulting from the collision out of which his dismissal arose, yet he was not estopped to bring this suit against the defendant for breach of the union contract. Both causes of action were held to be separate and distinct.

A brief summary of the collective bargaining cases would seem to indicate a reluctance on the part of the Missouri court to interfere with the grievance remedies provided by the collective agreement. Before seeking aid from the court, the aggrieved union employee should exhaust his remedy within the bargaining agreement. Even having done so, the court, as in *Williams v. Atchison, T. & S. F. Ry.*, may deny a further hearing before the court. However, probably the most important point to be derived from these cases is the fact that the Missouri court has recognized that the employee is serving under two contracts of employment: (1) the original contract of employment which brought about the employer-employee relationship, and (2) the contract as evidenced by the collective bargaining agreement. And

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199. 247 S.W. 2d 644 (Mo. 1952).
200. *Id.* at p. 646.
201. *Id.* at p. 651.
the individual employee may invoke the jurisdiction of the court for his own individual benefit for a violation of this agreement.

VI. INTERNAL UNION DISPUTE CASES

Internal union disputes present some of the most interesting labor cases, perhaps because family squabbles seem to be a more inviting subject for conversation than family harmony. Be that as it may, the Missouri courts early took jurisdiction over suits between labor unions and their members.

The first of these cases was Froelich v. Musicians Mutual Benefit Association.\(^2\) It seems that in 1900 the employees of the St. Louis Transit Co. were on strike. Plaintiff's union, at a meeting which plaintiff did not attend, voted in a by-law that any member of defendant union who rode the busses during this period would be fined. Plaintiff rode the busses, and on his refusal to pay the assessed fine, expulsion proceedings were brought against him by the union.

Plaintiff then sought and received a temporary restraining order against the expulsion proceedings. On appeal, the injunction was dissolved. Curiously enough, the union pleaded that plaintiff had no standing to sue because the by-law under which plaintiff was fined was never legally adopted, and thus the fine was invalid. Further, alleged the union, since the union was an unlawful one, having for its object the restraint of trade, the courts would not aid one to retain his membership in such an association. To these arguments the court stated: "So long as an association remains a voluntary one the courts will not interpose between it and a member except for the sole purpose of protecting an interest the member may have in the property of the association."\(^2\) This property interest was found in certain death benefits accruing to plaintiff from membership in the union.

On re-hearing, the court made it clear that it was not holding trade unions as such illegal. "But when a so-called trade union becomes both a tyrannical master over its members and monopolizes a trade for the protec-
tion of which it was ostensibly organized, it puts itself beyond the pale of
the protection of the courts and outside of the statutes authorizing trade
unions, and no member of such union can have any standing in a court of
equity where he seeks to enforce the monopolistic features and objects of the
organization.\footnote{204}

The idea of non-interference with the internal disputes of voluntary as-
associations was re-emphasized by the court in \textit{Crutcher v. Order of Railway
Conductors}.\footnote{205} Plaintiff sought an injunction against defendant’s interfering
with his rights and privileges as a member of defendant union. The argument
arose out of an insurance policy held by plaintiff and issued by defendant
union, which provided for the avoidance of the policy should plaintiff cease
to be a member of the union.

The court held that it could not undertake to regulate the internal
affairs of voluntary associations. Only where property rights were involved
would the court take jurisdiction at all. Even then, said the court, it would
only pass upon questions affecting the internal affairs of the association in-
sofar as it became necessary to protect the property rights directly involved.
If it should appear that the party had a complete remedy within the society
as provided by its laws, either by appeal or otherwise, the court would not
undertake to adjudicate those matters until the plaintiff had exhausted his
remedies within the association.

This case would seem to have been decided on the equitable maxim that
if the legal remedy, \textit{i.e.}, the grievance procedure established by the union’s
constitution and by-laws, is adequate, then jurisdiction of the equity court
cannot be invoked.

Of course, there is the problem presented if, instead of equitable relief
by way of injunction, the plaintiff wants damages. This was the situation in-
volved in the case of \textit{Mullen v. Seegers}.\footnote{206} There, plaintiff’s union called a
strike at a plant owned by the same manufacturer that plaintiff worked for
but at a different plant. When plaintiff was ordered out on strike, she refused
to go, alleging that the strike was invalid because not called in accordance
with the provisions of the union’s by-laws.

Plaintiff was fined by and suspended from the union, referred to in
posters distributed by the union as a “scab,” and prevented by the union
from getting further employment in St. Louis. The trial court allowed plain-

\footnote{204. \textit{Id.} at 392.}
\footnote{205. 151 Mo. App. 622, 132 S.W. 307 (1910).}
\footnote{206. 220 Mo. App. 847, 294 S.W. 745 (1927).}
tiff $400 actual damages and $250 punitive damages from defendant Seegers alone, he being the general organizer for the United Garment Workers and primarily responsible for plaintiff's suspension.

In upholding the trial court's ruling, the appellate court stated that if everything had been legal about the strike and the consequent ordering out of plaintiff, then it would not have allowed plaintiff to recover. The court recognized the rule that courts do not undertake to regulate the internal affairs of voluntary associations where no property rights are involved; but there is an exception to the rule that one seeking the aid of the courts must first have exhausted his remedy, whether by appeal or otherwise, within the union to which he belongs:

"One who is wrongfully expelled from a union need not exhaust his remedies within the union before bringing suit for damages against those whose wrongful acts caused the expulsion. The reasons applicable to suits to compel restoration of membership of one wrongfully suspended or expelled do not apply, it is said, to suits by a member wrongfully expelled to recover damages resulting from such expulsion."\(^2\)

This would seem to be the correct decision, for plaintiff would appear to have no damage remedy within the union itself. Since she did not wish to rejoin the union, her damage remedy within the court system would seem to be all that would be left to her. Of course, on the basis of the Crutcher case, had she wished to be reinstated in the union, before equity would take jurisdiction, she would have had to first exhaust her remedy within the union.

In Hall v. Morrin,\(^2\) a local of the International Association of Bridge, Structural and Ornamental Iron Workers of America was involved with said parent organization in an election squabble. Certain members of the local had filed a protest with the International Union over the election of plaintiff to the presidency of the local. Plaintiff, they alleged, had not been a member in continuous good standing for at least one year prior to being elected to office as required by the union by-laws. Thus, it was argued, he was not entitled to hold office.

Among other things, the union by-laws provided for a rather complete quasi-judicial review of disputed grievance cases. The general executive board, consisting of the president of the International, the secretary-treas-
urer, and one vice-president who was selected by the president and secretary-treasurer, had original jurisdiction over charges brought either against a local or against an individual within the local. The three defendants held these positions at the time of suit. Appeal from the general executive board’s decision was to the general executive council, said body consisting of the president, the secretary-treasurer, and the nine vice-presidents of the International. Appeals from decisions of the general executive council were taken before the regular convention of the union.

The election was declared void at a subsequent meeting of the local over which meeting plaintiff presided. Then, certain of the officers filed a protest with the general executive board, alleging that although the election might have been invalid as to those officers elected who had not been members in continuous good standing for at least a year prior to the election, yet it was not invalid as to those that had. A new election was ordered by the Board.

Before the date set by the general executive board for the holding of the new election, the members of the local met, decided to refuse to obey the board’s orders, and directed plaintiff to take such steps as he deemed necessary to protect the local. Defendant Morrin, who was not only a member of the local but also president of the International, ordered the local suspended and directed that the books and property of the local be turned over to the International.

The authority which had been vested in plaintiff by the local was rescinded before he had an opportunity to start suit. Plaintiff and other members of the union thereafter instituted proceedings, but were dismissed at the trial court level because of refusal to secure costs. Thereafter, plaintiff and the others who had been plaintiffs in the injunction suit were tried before the general executive board. It was found by the board that certain statements made by the plaintiffs in their petition in the injunction proceeding about defendant Morrin were untrue and malicious. They were fined, and disqualified from membership benefits, other than disability, pension, and death benefits, for a period of five years.

Again, the local refused to go along with the decision of the board, invested plaintiff with power to look after their rights, and again was suspended. Then, before suit was started by plaintiff, the local again revoked the authority, and applied to the International for reinstatement. Before the International ruled on the local’s application, plaintiff filed this suit requesting an injunction against the International’s interference with the
local and with his position as business agent thereof and to order the International to reinstate the local.

The trial court dismissed plaintiff's bill on the union's statement that plaintiff had his remedy within the union itself and should have availed himself of it. The appellate court agreed, holding that as plaintiff had not exhausted his remedy within the association, this suit was prematurely brought.

The court said that the relationship existing between a voluntary association and its members is contractual, and that the constitution and by-laws, if any, constitute the contract. As to the statements in plaintiff's petition in the first injunction suit which were the basis of his having been fined and suspended, the court had this to say: "While it is doubtless true that such averments in plaintiff's petition were privileged in law, in that they could not have been made the basis of an action against him for libel, the constitution, for the alleged violations of the provisions of which he was tried, having been assented to by him as a member of the International Association, was binding on him as a contract, and he therefore is in no position to complain that such provision was unreasonable as being in contravention of what might otherwise have been regarded as his common rights."209

The court found that plaintiff's trial had been conducted in a fair and impartial manner and in accordance with the union's constitution and by-laws. Thus, the decision rendered therein was valid, and the court refused to overturn it.

As to the duty of a member of a voluntary association to first pursue his remedy within the association before seeking redress from the courts, the court recognized this rule, but grafted another exception on it: "... the failure of a member to have availed himself of the remedies within his order is not a bar to his resort to the courts for the enforcement of his claims, when to have appealed within the order would clearly have been a vain and useless step."210

Thus, we now have three instances when a union member or a local can come into the courts to seek redress: (1) when the "legal" remedy within the association has been exhausted; (2) when, although the remedy within the union has not been exhausted, plaintiff can clearly show that for some reason the pursuance of such remedy would be a vain and useless step;
and (3), in any case when all that the plaintiff seeks is damages, as for an alleged wrongful discharge, and not injunctive relief.

In *Webster v. Rankins*, defendants were the International Hod Carriers Building and Common Laborers Union of America, members of the Laborers' District Council of St. Louis, and officers of Local #319 of the Brick Masons' Tenders' Union, a local of the aforementioned International. Plaintiffs were members of the local, and they prayed for an injunction to issue restraining the defendants from interference with their holding an election for local officers. The injunction was issued by the trial court and upheld by the supreme court even though plaintiffs had not exhausted their remedy within the union.

It seems that the by-laws of the local provided that officers should be elected for the term of one year, said election to be held at the last meeting in June of each year. The by-laws of the International, to which the local had assented, provided for the vesting of supreme ruling power over the locals in the International. Shortly prior to the June, 1930, election date set by the local's by-laws, the International sent them a letter advising them to postpone the election for another year. The reason for the postponement was allegedly because of the local's delinquency in certain payments due the International.

The officers of the local informed the members, and there was immediate objection. The meeting was adjourned over these objections, but the members stayed behind and determined to hold an election on their own. Two meetings later, each of which had been adjourned by the officers to prevent an election being held, an election finally was held. The International refused to recognize this election and sent a vice-president to take over the local. The District council attempted to get members of the local discharged from their jobs, alleging to the contractors employing them that the local was not in good standing with the International.

The court said that it could find nothing in the laws of the International empowering them to arbitrarily set at naught the by-laws of the local to prevent it from electing its officers in accordance with its by-laws so as to retain the incumbents in office. Since the court felt that the International had not acted strictly within the scope of its powers, the doctrine of exhaustion of union remedy was not applied here.

This case illustrates the imposition of what may be called a judicial
code of ethics on to a voluntary association. It is submitted that until the members of the local had pursued their remedy within the union, a remedy which by becoming a member of the International they had agreed to follow and be bound by, there was no reason for the court to interfere.

It must be remembered that one reason for the increased bargaining power of a local is because of its International affiliations. Just as corporations can produce more for less by having mass production methods set up in a series of plants across the country, so too can a union achieve greater bargaining power by and through affiliation with other locals over the country. As far as bargaining power is concerned, absent International affiliation, the local of today is in much the same situation as the individual workman of half a century ago. Its greater bargaining power is achieved through national organization through which a given corporation is faced not with the trifling problem of one local in one of their plants, but of many locals in all of their plants, all locals being welded together by the national organization to act as a group. Since, then, the local derives its benefit from the National association, it would seem to be little enough to ask that they abide by their contract with the International and follow the rules of procedures governing grievances as provided by their International's constitution. After that, if they have been deprived of some property right, or the court feels that there is some justifiable controversy, let the court assume jurisdiction and grant the relief which seems warranted.

In Streib v. International Brotherhood of Boilermakers and Iron Shipbuilders and Helpers of America, plaintiff, a former business agent for a St. Louis Local of defendant International, sued for back wages due for services rendered the local lodge as such business agent. The local lodge was joined, but judgment was rendered only against the International by the trial court. On appeal, judgment against the International was reversed, and the local was held accountable.

The custom of the International was to send the local seventy-five dollars per month as its contribution for the business agent's salary. This payment had always been sent. The rest was to be paid by the local treasury into which the International's contribution went. Because the local could not afford to pay plaintiff his whole salary, he had agreed to accept part, letting the balance accrue until such time as it could be paid off. Then, with this debt still owing, because of some question as to the accuracy of

212. 67 S.W. 2d 806 (Mo. App. 1934).
213. 88 S.W. 2d 319 (Mo. App. 1931).
plaintiffs accounts as business agent, he was suspended from membership in both the local and the International.

Plaintiff based his cause of action on an alleged contract of employment with both the local and the International. The court found, however, that as an officer elected by the local, his contract was at all times with the local, and he must thus look to it alone for any compensation due him under his contract.

Plaintiff's next tactic was to sue the International for damages for unlawfully expelling him from membership in the union and the privileges thereof. Although the trial court awarded him damages, the supreme court reversed since, on the theory presented in Ruggles v. International Association Iron Workers, the International, as such, was not a suable entity.

One of the most interesting cases involving internal union disputes was that of Robinson v. Nick (1940). This case was originally appealed to the supreme court, but jurisdiction was refused and the case remanded to the St. Louis Court of Appeals.

Plaintiff was Local #143 of the St. Louis Moving Picture and Projecting Machine Operators Union. Defendants were the officers and representatives of the parent union, the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators. The local had been chartered in 1908; and down to 1935, when certain members of the local sued to restrain the local's officers from granting wage concessions to non-air-conditioned movie houses, the local had never been in any difficulty with the International. The suit over the wage concessions was settled within the local itself.

Apparently because of this suit, however, Nick and Weston, representative and vice-president respectively of the International, came in and took over the local, removed the officers, suspended the local's by-laws and constitution, and took charge of all the local's assets. As a part of this blitzkrieg, Nick threatened to suspend from the union anyone who questioned his authority. He made it clear that appeals from their action would be useless, since the officers of the International, to whom the appeals would be taken, would supposedly side with Nick and Weston.

The evidence showed that Nick and Weston made deals with various
movie houses that, in return for substantial payments to them, their labor troubles were over. It was alleged by plaintiffs that numerous hoodlums were issued membership cards in the local without being voted in. It was shown that Nick organized a sound system corporation, and from then on, the projectionist could no longer touch the sound system. Only hand picked "graduates" of Nick's "school" were allowed to do this. The evidence showed that the local treasury paid out one thousand dollars for rental of a sound truck for two days. The truck was rented from the West Craft Boat Co. The evidence showed that this company and Weston were one and the same. All the evidence seemed to point to a systematic milking of the local's assets by Nick and Weston.

Shortly before filing this suit, the local had petitioned the International to restore their local autonomy, but had received no answer.

Plaintiffs asked that defendants be removed from control of the local; for a court supervised election at which only bona fide members of the local should vote; for an accounting and audit of the local's books and accounts; and that a receiver be appointed.

The court upheld the right of plaintiffs to sue in a representative capacity, and said: "The underlying principle upon which the rule proceeds is that those few who become parties to the suit, in representing themselves, also represent the others of the class from which they come, and because of such community of interest, in protecting their own interests, will likewise be expected to protect the interests of the others."218

Further, the court said: "... not only do plaintiffs have the right to sue on behalf of themselves and such other of the members of the local union as may wish to join with them, but in doing so, and having secured personal service upon defendants Nick and Weston who are concededly officers and representatives of the International Alliance, they have brought, not only Nick and Weston, but also the officers and members of the latter association within the jurisdiction of the court for the purposes of this proceeding. The test of representation is to be determined from the relationship of those sued to the parent body, and with this the case, if Nick and Weston represent the International Alliance for the purpose of exercising that association's control over the local union and its members, then they represent it none the less when they are served as defendants in a suit such
as this, which has for its purpose their ouster from such control, and the return of local autonomy to the local union."\textsuperscript{219}

(The reader should compare this statement with the case of \textit{State ex rel Allai v. Thatch},\textsuperscript{220} discussed under the entity case heading.)

As to plaintiff's failure to exhaust his union remedy, the court excepted the situation presented here from the general rule. Besides the fraud, bad faith, and general oppression, the court found that any appeal within the union would have been a vain and useless undertaking.

Here was an instance where the court was just about forced to grant relief, even though it meant interfering with the internal disputes of a voluntary association. Yet, one can hardly complain of the result reached. Problems such as those presented seldom arise, fortunately, but when and if they do, it would seem that the court is justified in granting the relief requested.

The latest case is that of \textit{State ex rel Alden v. Cook, Circuit Judge}.\textsuperscript{221} This was a mandamus action to compel defendant judge to set aside his order dismissing a class action brought in his court by the eighty-five relators. The relief sought in the trial court was similar to that requested in the \textit{Robinson} case. Here, however, the by-laws of the International expressly provided that no member should seek court relief on a matter until he had exhausted the remedy provided by the by-laws of the local and International. Plaintiffs maintained that this would do no good, since some of the officers who would hear any proceeding they might bring were interested parties. But the by-laws expressly provided that if this were so, such interested parties would have to disqualify themselves. There had been no attempt by plaintiffs to follow their union remedy.

The court felt that the circuit judge erred in dismissing relator's suit, since the question of whether or not plaintiffs had an adequate legal remedy within the union was debatable. Defendants claimed that their remedy there was adequate. The court, if it found plaintiff's union remedy was adequate did not have to grant relief, but this fact did not deprive the circuit court, a court of general jurisdiction, of jurisdiction over the case. Thus, mandamus was properly brought by relators to compel the circuit judge to exercise his discretion and to determine whether or not the remedies within the union were adequate.

The cases discussed herein probably illustrate no more than the fact

\textsuperscript{219} \textit{Ibid.}
\textsuperscript{220} 234 S.W. 2d 1 (Mo. 1950), \textit{supra} note 46.
\textsuperscript{221} 360 Mo. 252, 227 S.W. 2d 729 (1950).
that labor unions, like all big families, occasionally get fed up with each other and start quarreling. Certainly, the court, unless the quarrel becomes an out and out free for all (as in the Robinson case), should tamper with the family relationship only with the utmost caution. In the final analysis, internal disputes between the local and the parent, or between various segments of the local, must be settled by the union members themselves. After all, the local must live with the parent association if it wishes the benefits and increased bargaining power to be derived from national organization. The Missouri court has wisely recognized the fact that most problems which arise on this point must be settled by the disputants themselves.

VII. COMPULSORY ARBITRATION AND MISSOURI'S KING-THOMPSON ACT

Although this paper is intended primarily to be a survey of Missouri labor cases, it would not be complete unless a discussion of Missouri's anti-public utility strike law were included. This, of course, is the King-Thompson Act.²²² Passed in 1947, in the aftermath of a crippling telephone strike, it was the purpose of the act to prevent future strikes in essential services, such strikes being deemed inimical to the public welfare.

Missouri was not the only state to pass a law restricting the right to strike. The following table will show that the general trend of opinion over the country was similar to that in Missouri.

STATE LAWS PROVIDING COMPULSORY ARBITRATION, SEIZURE, OR BOTH IN PUBLIC UTILITY LABOR DISPUTES

<table>
<thead>
<tr>
<th>State</th>
<th>Date approved or filed</th>
<th>Seizure</th>
<th>Compulsory Arbitration</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Florida</td>
<td>June 4, 1947</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>2. Indiana</td>
<td>March 14, 1947</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>3. Kansas</td>
<td>1920</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>4. Massachusetts</td>
<td>June 27, 1947</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>5. Michigan</td>
<td>October 11, 1947</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>6. Missouri</td>
<td>May 19, 1947</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>7. Nebraska</td>
<td>May 31, 1947</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>8. New Jersey</td>
<td>April 22, 1947</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>9. North Dakota</td>
<td>1943</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>10. Pennsylvania</td>
<td>June 30, 1947</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>11. Virginia</td>
<td>January 29, 1947</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>12. Wisconsin</td>
<td>July 22, 1947</td>
<td>No</td>
<td>Yes²²³</td>
</tr>
</tbody>
</table>

It will be noticed from the foregoing that only two states, New Jersey and Kansas, have provisions for both compulsory arbitration and seizure. Since the Wolff Packing Co. cases the Kansas legislation for all practical purposes seems to be defunct. The rest of the states have contented themselves with either seizure, depending on the parties to continue voluntary bargaining and, or, state supervised mediation during the period of the seizure, or with compulsory arbitration taking the place of seizure.

Before going into the King-Thompson Act, it would, perhaps, be advisable to set up some background material for this type of statute and to define just what it meant by the term "compulsory arbitration." It has been defined by one author as "any system whereby the parties to a labor dispute are forced by the government to submit their dispute to final settlement by some third party." This definition is broad enough to cover most of the field of what is commonly called compulsory arbitration and includes the element of compulsion by the state plus the settlement of two parties' dispute by a third party.

There is nothing new about this type of arbitration, nor is it confined to the United States. The Scandinavian countries and Australia, particularly, have had a form of compulsory arbitration from a comparatively early date. In the United States, compulsory settlement of labor disputes can be said to have been first recognized by the passage of the Adamson Law. This law resulted from what threatened to be a nation-wide railroad strike and, on President Wilson's asking Congress to pass a law which would prevent the tie-up, the Adamson Act resulted.

This act set up the eight hour day without wage reduction for the railroad employees, and also appointed a commission to study the effects of the act. The act was tested and held constitutional in the case of Wilson v. New. The court said: "... from the point of view of inherent power the act ... was clearly within the legislative power of Congress to adopt,

224. See the Chas. Wolff Packing Co. v. Court of Industrial Relations Cases, 262 U.S. 522 (1923) and 267 U.S. 552 (1925).
226. Braun, The Settlement of Industrial Disputes (1944); Spielmans, Labor Disputes on Rights and on Interests, 29 Am. Econ. Rev. 299 (1939); Settlement of Industrial Disputes in Seven Foreign Countries, 63 Mo. Lab. Rev. 224 (1946); Evatt, Control of Labor Relations in the Commonwealth of Australia, 6 U. of Chi. L. Rev. 529 (1939); Higgins, A New Province for Law & Order, I, 29 Harv. L. Rev. 13 (1915); II, 32 Harv. L. Rev. 189 (1919); III, 34 Harv. L. Rev. 105 (1920).
228. 243 U.S. 332 (1917).
and that in substance and effect it amounted to an exertion of its authority under the circumstances disclosed to compulsorily arbitrate the disputes between the parties by establishing as to the subject matter of that dispute a legislative standard of wages operative and binding as a matter of law upon the parties. . . . If it be conceded that the power to enact the statute was in effect the exercise of the right to fix wages where by reason of the dispute there had been a failure to fix by agreement, it would simply serve to show the nature and character of the regulation essential to protect the public right and safeguard the movement of interstate commerce, not involving any denial of the authority to adopt it.  

The State of Kansas, in 1920, set up the first example of compulsory arbitration on the state level.\(^\text{230}\) Over the vigorous protests of labor, the act was passed which set up a court of industrial relations. This court was composed of three judges appointed by the governor, with the advice and consent of the Senate, acted similarly to a public commission and had jurisdiction over industries affected with a public interest. Such industries included the following: manufacture of food and food products, manufacture of clothing and all manner of wearing apparel in common use, mining or production of fuel, transportation of all food products or articles or substances entering into wearing apparel or food from the place of production to the place of consumption, and public utilities and common carriers.

In the first Wolff Packing Company case,\(^\text{231}\) the United States Supreme Court declared unanimously the unconstitutionality of the act in so far as it authorized the compulsory fixing of wages in the food industry. The Court said that the food industry was not one affected with a public interest nor was there, as there was in Wilson v. New, an emergency situation with which to deal. The Court held that to enforce continuity and efficiency of the business by compelling employer and employees to submit controversies over wages to state arbitration, and in requiring the employer to pay the wages so fixed, and in forbidding the employees to join in strikes against them, the Kansas act exceeded the limit of permissible regulation. Such action was held to deprive the employer of property and both the employer and employee of liberty of contract without due process of law in violation of the Fourteenth Amendment.

In the second Wolff case\(^\text{232}\) that part of the statute which allowed the

\(^{229}\) Id. at 351.


\(^{231}\) 262 U.S. 522 (1923).

\(^{232}\) 267 U.S. 552 (1925).
industrial court to fix hours was held unconstitutional. This decision was likewise placed on the act’s interference with freedom of contract between employer and employee.

Born in the turbulent years following World War I, only to suffer an ignominious early death in the Wolff cases, it took more turbulence in the years following the end of World War II to bring back to life the theory of state intervention in labor relations. Perhaps one of the reasons compulsory arbitration was more easily accepted in 1946 and the years following was because during the war years a comparable system had been put into effect by the National War Labor Board. Thus, both labor and management had allowed their collective bargaining machinery to get rusty.

Missouri’s King-Thompson Act is to be found in Chapter 295 of the 1949 Missouri Revised Statutes and is entitled “Labor Relations.” The policy of the act is set forth, declaring that “heat, light, power, sanitation, transportation, communication, and water are life essentials to the people.” These industries are clothed with a public interest, and “the state’s regulation of the labor relations affecting such public utilities is necessary in the public interest.”

A state board of mediation is provided for, appointed by the governor, with two representatives who are employers of labor, two representatives of union employees, and a fifth disinterested party, neither employee nor employer, to serve as the board chairman. The board has the power to issue subpoenas requiring the attendance of witnesses and the production of evidence relating to any investigation before it.

When the board is informed of any labor dispute by the parties to such the disputants must keep the board informed of the progress of negotiations. When either party to the dispute requests, or, on its own initiative, the board may order the parties to the dispute to appear before it to confer on the issue involved. The board “shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.”

In view of the manner in which the King-Thompson Act has actually worked out, it is important to note that the above section refers to meetings between the mediation board and the disputants which take place before a

234. Id. § 295.030.
235. Id. § 295.070.
236. Id. § 295.080 (1).
237. Id. § 295.080 (2).
previously existing agreement has expired. The figures of the State Board of Mediation show that down to April, 1951, two-hundred and sixty-four cases had been docketed with the board. Of this number, two hundred and fifty-three were settled amicably, either through voluntary mediation with the board as provided in Section 295.080, or by the parties settling it through voluntary arbitration on their own.

It is next provided that collective bargaining agreements must be reduced to writing and to continue for a period of not less than a year from the expiration of the previously existing agreement.\textsuperscript{238} The agreement so entered shall be presumed to continue in force and effect from year to year after the date fixed for its original termination, unless one party or the other gives sixty days notice of its desire to change the agreement. This notice must state the specific changes desired, and a copy must be filed with the mediation board.

The Attorney-General of Missouri in his opinion rendered on March 19, 1951, and in which he held the King-Thompson Act unconstitutional, cited this section as an example of the conflict between Missouri’s act and the National Labor Relations Act.\textsuperscript{239} It was pointed out that the national act makes no requirement as to the duration of collective bargaining agreements. Strictly speaking, this is true, but it is doubtful if this would create such a conflict between the two acts that the Missouri act would have to fall.

The Attorney-General goes on to say that this section implies that the contract shall continue without change for the entire one year period, and that this is in conflict with Section 158 (d) of the federal act. Section 158 of the Taft-Hartley Act is entitled “Unfair Labor Practices.” Section 158 (d) sets out the requirements of the bargaining procedure, stating that a written agreement should be executed if agreement is reached. Once a collective bargaining agreement has been reached, it shall not be terminated or modified unless the party desiring such “serves a written notice ... of the proposed termination or modification sixty days prior to the expiration date thereof.” The “expiration date” referred to is obviously that of the collective bargaining agreement entered into.

Thus, there would seem to be no conflict on this point, and the King-Thompson Act, just as the Taft-Hartley Act, proceeds on the theory that

\begin{itemize}
\item \textsuperscript{238} Id. § 295.090.
\item \textsuperscript{239} 49 STAT. 449, ch. 372, 29 U.S.C. 151 et seq. (1935); as amended, 61 STAT. 136, Ch. 120, 29 U.S.C. § 141 et seq. (Supp. III).
\end{itemize}
the parties to a collective bargaining agreement are going to live up to its terms for the contract period. 240

Another conflict is stated by the Attorney-General in that: “The legal effect of the Missouri act, which extends the contract without the consent of the parties, is to deny to the parties thereto the right to bargain collectively after the expiration date set forth in the contract, in contravention of Section 157 of the National Act.” 241

This is difficult to see. All that Section 295.090 of the Missouri act requires is that if changes in the collective bargaining contract are desired, one party or the other must give sixty days notice (1) before the original termination date, (2) before the end of any yearly renewal period of the original contract, or (3) before any termination date desired by the parties after the termination date of the original contract. Just so long as this sixty days notice is given to the other party and to the mediation board, the parties may engage in collective bargaining all they wish. Thus, the Missouri act and the federal act both provide for a sixty day cooling off period.

The next section of the King-Thompson Act provides for the setting up of a public hearing panel if the parties have not come to mutual agreement through collective bargaining at the expiration of any existing contract, agreement or understanding. 242 Within five days after the expiration date, both parties must designate one representative and these two a third, said persons to compose the public hearing panel. In the next fifteen days following the setting up of the panel, hearings will be held, with notice and full opportunity to be heard being extended to the parties. If any party should fail to appear before the panel, this would not act to deprive the panel of jurisdiction to hold the hearing and make reports thereon. Within five days after the public hearings are completed, the panel shall file with the governor a written report “...setting forth a statement of the controversy, a resume of the evidence submitted to it and its recommendations based thereon.” 243 This report is a finding of facts alone, and is not binding on the parties.

In the event both labor and management fail to appoint a representative to the public hearing panel, the mediation board must submit a list of five names to each, from each list one representative being selected by each

240. See also id. § 158 (d) (4).
243. Id. § 295.150.
party. Should this means still fail to get the representatives appointed, the mediation board may itself appoint the representatives.244

The next section of the act is a confusing one. It says: “Compulsory arbitration, as provided in this chapter, shall not be effective where voluntary arbitration is a part of the contract between the disputing parties. In the event that through the voluntary arbitration disputing parties cannot agree, the state board of mediation shall then enforce the compulsory arbitration as provided.”245

If we recall the definition of compulsory arbitration as given earlier in this paper, i. e., “any system whereby the parties to a labor dispute are forced by the government to submit their dispute to final settlement to some third party”—it will be seen that the use of the term “compulsory arbitration” as used in this section is a misnomer. A more accurate term which might have been used would have been compulsory mediation, for that is exactly what the act provides for.

Probably the most important part of the act is that section which provides for seizure by the state.246 The seizure situation arises when either the utility, as defined, or the employees, refuse to abide by the recommendations of the public hearing panel and because of this refusal, a strike or lockout or work stoppage occurs during the sixty day cooling off period. In cases where it is determined the public interest, health or welfare is threatened, the governor is authorized to seize the plant, equipment or facility for the use and operation by the state in the public interest. The utility so seized must be returned to its private owners as soon as possible after the settlement of the labor dispute.

Out of this seizure provision arises the section which is the crux of the whole act.247 The first sub-section of the unlawful acts section reads: “It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demand against the utility or against the state.”

Of this section, the Attorney-General says: “It may be well to point

244. Id. § 295.160.
245. Id. § 295.170; and see Public Utilities Fortnightly, August 12, 1948, p. 205.
246. Id. § 295.180.
247. Id. § 295.200 (1).
out that the Missouri Act prohibits strikes by public utility employees both before and after seizure.²⁴⁸

Mr. Wallace Cooper, state representative from Johnson County, had this to say as to the state's power to seize and prohibit strikes in public utilities: "I see no reason why the state does not have the right to operate the utility under its sovereign power, bearing in mind, however, that the application of the law should not impinge on the right and duty to bargain collectively for the settlement of labor disputes or the right to strike peacefully against the privately operated utility."²⁴⁹

Mr. Charles L. Carr, attorney for the Kansas City Public Service Company, said this of the section: "Section 21 of the King-Thompson Act (Mo. R. S. 1949, Sec. 295.200) makes it unlawful for public utility employees by concerted action to refuse to work 'for the state after any plant, equipment or facility has been taken over by the state under this Act,' and provides penalties with respect thereto.

"Clearly, such Missouri state legislation is not inconsistent with the Federal legislation and the Federal legislation has expressly given the State of Missouri authority to enact such legislation."²⁵⁰

Thus, we have three views by Missouri attorneys on the matter of seizure and prohibition of strikes. The particular section concerned is confusing. It could be interpreted to prohibit both peaceful strikes against the privately operated utility and peaceful strikes against the state after the utility had been taken over.

Of course, if this section does prohibit peaceful strikes against the privately owned utility, it would seem to be invalid, at least as to those utilities which come under the scope of the federal Constitution's commerce clause. Such a provision would be clearly bad, since Section 7 of the National Labor Relations Act expressly safeguards for employees in such industries the "... right ... to engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection." Any state legislation in conflict with these federally guaranteed rights would have to be declared invalid.²⁵¹

If the section is read as prohibiting strikes only after the state has

seized, then a more difficult problem is posed and one which has not, as yet, been answered by the courts. If it is assumed that the relationship which exists after the seizure is that of employer on the part of the state (at least for purposes of continuing production and distribution), then there is a way in which such seizure could be held as not in conflict with the federal act.\footnote{252}

The federal legislation specifically excludes from its scope employees of the United States or a United States agency or of a state or political subdivision of a state. The state or any political subdivision thereof is also specifically excluded from being an employer within the meaning of the Taft-Hartley Act.\footnote{253} Thus, if we view the state as an employer and the public utility employees as employees of the state, then the situation is arguably clear of the Taft-Hartley Act, and legislation against strikes, lock outs, and work stoppages during such period of state seizure might very well be held valid on such an argument.

There is no question but that such a contention is fraught with problems, not the least of which is that the state might become more of an employer, in the strict sense of the word, than it might wish. Who is going to be liable for torts committed by the "state employees" during the period of seizure? Who is going to have the final say as to complex managerial problems, the state political employee or the informed management representative?

A possible answer to the tort problem is to be found in the case of United States v. United Mine Workers.\footnote{254} There an injunction had issued against striking coal miners in spite of the anti-injunction provisions of the Clayton Act\footnote{255} and the Norris-LaGuardia Act,\footnote{256} the mines having previously been taken over by the Federal Government.

The issue was whether or not the injunction should have issued. The court said that Congress "... did not intend to withdraw the Government's existing rights to injunctive relief against its own employees."\footnote{257}

The union maintained that the miners in reality were still employees of the private employers and not employees of the Federal Government. To this, Chief Justice Vinson stated that the mine employees stood in an entirely different relationship to the Federal Government with respect to their

\footnotesize{\begin{itemize}
\item[252.] The Missouri Act does not provide for this relationship, but see New Jersey Rev. St., Cummm. Supp (Laws of 1945-46-47) ch. 13 B-19.
\item[253.] 29 U.S.C. § 152 (2) (3) (Supp. III).
\item[254.] 330 U.S. 258 (1947).
\item[255.] 38 STAT. 730, 738, § 20; 29 U.S.C. § 52 (1914).
\item[256.] 47 STAT. 70, 29 U.S.C. § 101 (1932).
\item[257.] 330 U.S. 258, 280.\end{itemize}}
employment from that which existed before the seizure was effected. Congress intended, he stated, that by virtue of Government seizure, a mine should become, for purpose of production and operation, a Government facility in as complete a sense as if the Government held full title and ownership. Thus, for the purposes of issuing injunctions against the striking miners, the relationship of employer and employee was held to exist between the Federal Government and the mine employees.  

Whether or not the majority decision in this case can be validly applied to the Missouri situation is a moot question. But, at least, this is an example of the Federal Government having proceeded along quite similar lines.

To proceed further with the provisions of the King-Thompson Act it is provided that any employee who violates the anti-strike provisions must lose his seniority. Such loss is mandatory. (It might be asked whether or not the state is here taking away from an employee his property without due process, since his seniority status can be in no way connected with a privilege granted by the state.) Any union violating the anti-strike measure is subject to a fine of ten thousand dollars per day for any strike which it has “called, incited, or supported.” Any officer of a labor union who violates this section is subject to a fine of one thousand dollars.

If any utility engages in a lockout “... which brings about a work stoppage,” such utility is fined ten thousand dollars per day during the lockout. For a failure to bargain collectively in good faith with its employees, the board of mediation shall certify such facts to the public service commission which may revoke the utility’s certificate of convenience and necessity. (This is a meaningless section, since the whole basis of state seizure is predicated on the continuing of the utility’s services, not on their ceasing.) The last section of the act provides that no employee will be required to work without his consent.

It is submitted that the King-Thompson act badly needs re-writing and amendment. Perhaps a comprehensive labor code, such as New York has, would be a good thing for Missouri to adopt. The rights and duties

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258. Id. at p. 286; and see Howard, Some Recent Labor Cases; 1941-47, 12 Mo. L. Rev. 235, 266 (1947).
260. Id., Sub-Sec. (3).
261. Id., Sub-Sec. (4).
262. Id., Sub-Sec. (5).
263. Ibid.
of employees should be established, just as should the rights and duties of employees. If the state, through seizure, is going to cripple the labor union from the use of its most important collective bargaining weapon, then the employer, through some deprivation of profits during the period of seizure should likewise be encouraged to come to an agreement. State seizure should not be used as an anti-labor device, nor as a pro-labor device for that matter. Above all else, it must be remembered that it takes two people or groups to make an argument; under ordinary circumstances, these disputing factions resent the interference of a third party, the state, where such interference has not been requested. Labor disputes must be solved by the groups originating them and not by some outside agency which may, or may not, have the general public interest in mind rather than that of one party or the other to the dispute.

The whole problem of the constitutionality of the King-Thompson Act arose when the Supreme Court handed down their decision in the case of Amalgamated Association, etc. v. Wisconsin Employment Relations Board. 266 Wisconsin enacted a rather comprehensive labor code 267 similar in some respects to the Missouri act. Unlike the Missouri act, however, the Wisconsin act provides for compulsory arbitration of labor disputes, rather than state seizure, as a means of obtaining industrial peace. 268 Stripped of all excess verbiage, the act allows the parties to indulge in collective bargaining until such has reached a stalemate or impasse. Then, a conciliator is appointed to attempt to bring the parties together. If he fails, an arbitrator, or arbitrators, decide what should be done, and this order is binding on the parties for the period of one year. 269 Strikes and lockouts are forbidden at all times and under all circumstances. There is no provision for state seizure.

Before discussing the Supreme Court decision which held the Wisconsin act unconstitutional, let me say that there are just two similarities between that act and the Missouri act. Both acts have as their basis the same policy factors, i. e., to continue production and distribution in essential industries during periods of labor-management disputes. In both acts, the definition of terms are, for all practical purposes, the same. Otherwise, the acts in their working effect are as different as possible.

On appeal to the United States Supreme Court, all issues other than
that of alleged conflict with the federal legislation were dropped, since the Court was able to dispose of the case on that issue. The Court first cited from Section 7 of the national act, which safeguards for employees in industries in or affecting interstate commerce the "right . . . to engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection." 270

The Court admitted that the right to strike is not unqualified and proceeded to list some of the restrictions on this right which are found in the act itself. 271 But as for the regulation of peaceful strikes for higher wages, the Court stated that Congress had occupied this field and closed it to concurrent state regulation. 272

It has been argued that Congress intended that in granting the right to strike a distinction should be made between public utility employees and those otherwise employed. In other words, public utilities being essential industries should be treated differently as far as the rights covered in the Taft-Hartley Act are concerned. This argument was rejected by Senator Taft when he addressed the Congress in favor of the passage of the Labor Management Relations Act, and in which message he specifically denied that utilities should be treated any differently from other industries. 273

Wisconsin pointed out that the federal act had carved out special procedures in the event of a national emergency, and claimed that on the doctrine of congressional silence, the states were left free to deal with local emergencies. The Court denied that the Wisconsin act was emergency legislation, bringing out the point that it applies to all strikes under all circumstances.

"And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however, serious, it is manifest that the state legislation is in conflict with federal law." 274

(The foregoing may be important if and when the Missouri act is tested, since our act is (1) clearly an emergency measure in which seizure and consequent denial of the right to strike is left to the discretion of the gover-

271. Id. § 8 (d), 8 (b) (4).
nor, and (2) our act may be interpreted as not denying the right to strike during the period of private ownership of the utility.)

The Court pointed out that the 1947 act showed that Congress knew how to code jurisdiction to the states over labor relations. Section 10 (a) of the Taft-Hartley allows state agencies to assume jurisdiction only when the state law is consistent with the federal act. But it excepts from this cession the following industries: mining, manufacturing, communications and transportation except where predominantly local in character. With these exceptions read in, very little would seem to be left for the state.

Specific conflicts between the Wisconsin act and the federal act were shown in the case of the transit workers. The union had agreed to continue collective bargaining even after a strike appeared imminent. The company, however, insisted that the Employment Relations Board apply the compulsory arbitration features of the act. Since the federal act requires that both employer and employee continue to bargain collectively even though a strike may actually be in progress, the compulsory arbitration feature would be in direct conflict with this requirement.

Further, the Wisconsin board had held that the matter of assignment of workers to certain shifts infringed upon the rights of the employer to manage his own business in contravention of Section 111.58 of the Wisconsin act. Yet, said the Court, similar problems of assignment and scheduling have been held to be appropriate subjects for collective bargaining under the federal act.

The case of International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C. I. O. v. O’Brien adds another facet to the problem presented by such statutes. This was the case in which the Michigan labor mediation law was held unconstitutional.

The Michigan Act provided for a strike vote, compulsory arbitration, and denial of the right of employees to strike. Of this statutory arrangement, the Court said; "Even if some state legislation in this area could be sustained, the particular statute before us could not stand ... the

275. 29 U.S.C. §§ 158 (a) (5), 158 (b) (c) (3) (Supp. III).
279. Id. § 423.9 (a).
280. Id. § 423.13.
281. Id. §§ 423.9 (c), 423.22.
federal act then permits strikes at a different and usually earlier time than the Michigan law; and it does not require majority authorization for any strike. ... Without question, the Michigan provision conflicts with the exercise of federally protected labor rights."

As far as this discussion is concerned, the Michigan act has done almost exactly what the Wisconsin act did, i.e., deny public utility employees the right to strike and to set up a process of compulsory arbitration to replace the free collective bargaining guaranteed by the federal act. But the O'Brien case, in the part quoted, supra, does suggest that some state legislation in this area might be valid. To discover its validity or invalidity, the Supreme Court seems to first attempt to see if the state act conflicts with the federal act as to the particular question involved. If the case can be decided on this narrower, and much easier, ground, then the Court seems to be satisfied with this, without attempting to solve any of the broader issues involved.

It is in the light of the foregoing that we should compare these decisions and statutes with the Missouri act. First of all, do the compulsory mediation features of Missouri's act conflict with the federal act as did the compulsory arbitration features of the Wisconsin and Michigan acts? No categorical answer can be given to this question. It might be suggested, however, that the compulsory mediation features need not interfere with any collective bargaining which the parties might wish to engage in on their own. There is nothing binding on the parties as a result of the mediation attempt. The least that can be said is that compulsory mediation is not quite so repugnant to the policy behind the federal act as is compulsory arbitration. Furthermore, both labor and management would probably appreciate the existence of a competently administered, disinterested mediation board.

The next problem concerns the prohibition of strikes which we saw in both the Wisconsin and Michigan acts and which is also to be found in the Missouri act after state seizure. There again is a direct conflict with Sections 7 and 13 of the federal act which expressly guarantee that employees shall have the right to strike. Neither Michigan nor Wisconsin had a seizure provision, so they could not raise the state employer argument that Missouri could.

Enough has been said, I believe, to show that the validity or the invalidity of the King-Thompson act cannot be predicated on any Supreme Court decision which has gone heretofore. To declare the Missouri act un-
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constitutional, the Court will have to go much further than it has so far. It will have to declare that the individual states are estopped from any or all self-protective measures during periods of intra-state economic unrest. It is submitted that this would be a difficult decision for the Court to render.

Within the Missouri court system itself, the King-Thompson act has been the subject of case dispute. The first case was that of State ex rel Moore v. Julian.283 This was a mandamus action to compel the state mediation board to take jurisdiction of an alleged labor dispute between employees of the municipally owned and operated bus transportation service of Springfield and the Board of Public Utilities of that city. The union had what would ordinarily have been recognized as collective bargaining agreements with the Public Utility Board for the years 1946 and 1947, affecting wages, hours and working conditions. Apparently because the transportation employees were, in effect, city employees, the state mediation board denied these agreements validity as collective bargaining agreements and would not accept jurisdiction over the dispute on the union's request.

The Supreme Court ordered the mediation board to take jurisdiction of the dispute, pointing out: "In City of Springfield, v. Clouse et al.,284 it was held that the organization of municipal employees into labor unions is not improper, but that the constitutional provision there involved, 'That employees shall have the right to organize and to bargain collectively through representatives of their own choosing,'285 does not apply to public employees, and that certain statutes providing the organization and powers of cities of the second class prevent such cities from making collective bargaining agreements with their employees."286

But, the court went on to say: "The 1945 Board of Public Utilities Act having separated proprietary from governmental functions, and employees engaged therein, in cities of the second class, thus removing the impediment to the handling of employee-employer relations in municipally operated utilities on the same basis as in private industry, we cannot escape the conclusion that the King-Thompson Act must be construed as applying to labor disputes in municipally owned public utilities, at least in cities of the second class, and we so hold."287

The court also held that the mediation board had no discretion to with-
hold its mediation facilities in any labor dispute between parties subject to the act.

The second case involving the King-Thompson Act arose as a result of the United States Supreme Court decision holding the Wisconsin labor relations act unconstitutional. Attorney General Taylor delivered an opinion in which he held that on the basis of that decision, the King-Thompson act was unconstitutional and ordered the comptroller of the currency to withhold all funds from the mediation board. The theory was that if the act was unconstitutional the mediation board had no lawful capacity to incur expenses.

In *State ex rel State Board of Mediation v. Pigg,*288 the mediation board mandamused the comptroller to approve and certify for payment relator’s requisition for the salaries and expenses of its members. The Supreme Court pointed out that the only issue involved in the case was whether the mediation board had legal existence and lawful capacity to incur expenses and permit salaries to accrue.

Respondent alleged that the compulsory mediation provision of the King-Thompson Act is in conflict with the federal act, in particular, Section 203 (b) of the Labor Management Relations Act.289 This section sets up the Federal Mediation and Conciliation Service, said Service providing mediation facilities for industries in or affecting interstate commerce. The court admitted that the public utilities covered by the Missouri act might also come within the jurisdiction of the federal act, but this does not necessarily mean that there is a conflict.

The court quoted directly from the federal act that “... The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties.” Further, quoting from Section 202 (c), 29 USCA Sec. 172 (c), in part: “The Director may establish suitable procedures for cooperation with State and local mediation agencies.” Thus, said the court, “It is apparent that the federal statute recognizes and sanctions cooperation with state and local mediation agencies, where the state law is consistent with the federal legislation. The purpose of Section 295.080 is to facilitate a settlement of labor disputes upon a voluntary agreement of the parties through collective bargaining. No provision of this section tends to force an agreement of the parties. It seeks merely to aid the parties in reaching a voluntary settlement agreement.”290

288. 244 S.W. 2d 75 (Mo. 1951) (en banc).
290. 244 S.W. 2d 75, 80.
The main attack seemed to be on the constitutionality of the seizure and anti-strike provisions of the act. The court refused to rule on the issue of constitutionality, however, and said: "We think the sections governing the existence and work of the public hearing panels are severable. . . . An inspection of Chapter 295 shows that it consists of two separate and distinct parts. The object of the first part of the chapter is to prevent strikes in public utilities by conciliation and mediation. For that purpose the statute establishes the state board of mediation and provides for the public hearing panels. The object of Section 295.180 and 295.200 is to prevent strikes in such utilities in emergencies where mediation and conciliation fails. In such cases, seizure and operation by the State is provided for, pending settlement of the dispute. The law is both a mediation law and a seizure and anti-strike law."291 The alternative writ of mandamus was made peremptory.

The latest case involving the King-Thompson Act is that of Rider v. Julian and the Kansas City Public Service Company.292 The problem presented by this case is a difficult one, involving the tort liability of the Kansas City Public Service Company during the period of state seizure of the Public Service Company. From 11:00 P.M. on April 30, 1950 to 9:30 A.M. on December 11, 1950, the Public Service Company was under the control of the State. Governor Smith had ordered seizure, in compliance with the provisions of the King-Thompson Act, to avoid a threatened strike by the bus and streetcar operators.

The plaintiff in this case was injured due to the alleged negligence of the Public Service Company during this period of state seizure. Her action was brought against Vance Julian, former chairman of the State Mediation Board, as manager of the Company, and against the Company.

Judge Blair, in whose court the case was tried, dismissed the petition as against Julian, since Julian had been appointed manager of the Company in his capacity as chairman of the State Mediation Board. Since he was acting throughout the period of the seizure as an official of the state, and not as an individual, it was held that there was no personal liability as to him. Judge Blair stated:

"This suit undertakes to hold Julian, as a subordinate arm and extension of the executive department of the state, liable as such for a tort while acting under executive and statutory direction and plainly is one against the state. No permission to maintain it has

291. Id. at 84.
292. In the Circuit Court of Cole County, Missouri, February Term, 1952,
been granted or exists, in statute law or elsewhere, and thus it cannot be maintained.293

Judge Blair pointed out how completely control of the Public Service Company was taken over by the State through Governor Smith's "Proclamation," Executive Order No. 1, and Executive Order No. 2, all executed on the 29th day of April, 1950. By these executive orders, the court held that exclusive power to control and operate the transit company were conferred upon the governor, the state, and Julian. Julian was given the power to hire and fire, to direct the operations of the transit company, to fix the terms and conditions of employment, and, in general, to perform all the functions that the president of the company would normally be thought to exercise.294

The court held that the seizure was not merely a technical one, and stated: "... That he (Julian) did not have occasion to exercise each and every power granted and made available to him by the governor does not diminish in any measure the broad and exclusive powers he assumed and claimed to possess, and of which he held the company was bereft, by force of the Proclamation and Executive Orders, during the entire period of the seizure. The company could not itself exercise any of those powers during that period without Julian's sufferance, and Julian could exercise any or all of them at will. To me this is the criterion which must determine who was in control of the company and who was operating it during the seizure, and the facts force the conclusion that it was the governor and Julian as his agent. I shall so hold.295

In thus ruling that the Public Service Company was not in the possession of nor operating its transportation system at the time of plaintiff's accident, and thus not liable for such injury, Judge Blair pointed out that this was a contingency for which the King-Thompson Act had not provided. He expressed the thought that if his ruling was upheld upon appeal the legislature could be expected to enact suitable legislation to allow plaintiff's claim as one against the state, and thus to compensate her for her injuries.

This case well illustrates the folly of a legislature in blindly copying parts of another state's legislation, i.e., New Jersey's,296 without thinking through clearly what it is enacting. Provision for this sort of problem could easily have been made and has been in similar legislation of other states

293. 27 Kan. City B. J. 7 (June, 1952); See Bush v. State Highway Comm. of Missouri, 46 S.W. 2d 854, 856-859 (Mo. 1952); 26 Mo. Dig., States, Key No. 112.
295. Ibid.
which was on the statute books at the time the King-Thompson Act was enacted. It is to be hoped that when the Missouri legislature sees fit to amend the King-Thompson Act, or to pass in its place a comprehensive labor code, suitable time will be devoted to thinking through just what it is that is intended to be accomplished and then to attempt to accomplish it in such a manner as to avoid the numerous legal problems raised by the present King-Thompson Act.

VIII. MISCELLANEOUS CASES

This last section is a catch-all, designed to include all the Missouri labor cases which did not seem to fit in under the titles previously discussed. Also included herein are cases which, although similar in subject matter to each other, were not thought numerous enough to warrant separate sections.

1. Wages, Hours and Working Conditions

Under the title “Miscellaneous,” sub-title “Mechanics,” in the Missouri Laws of 1867, the eight hour day was established as a legal day’s work. The act allowed the parties to an employment contract to agree on longer or shorter hours if they so desired. It did not apply to persons hired by the month nor to laborers or farmhands engaged in agriculture. To this day, the wording of the statute has remained unchanged.

Although the 1867 act did not specifically exclude mine employees from its scope, a special act establishing the eight hour day for miners was passed in 1901. In State v. Cantwell (1904) certain mine officials appealed from a judgment under which they were found guilty of violating this act and fined twenty-five dollars each. Defendants had had their men working in the shafts for ten hours a day.

Defendants maintained that the statute was unconstitutional; first, because it was not marked as a health bill; second, because it was a deprivation of liberty of contract; third, because it denied the right to the gains of industry, fourth, that it denied the equal protection of the laws; and fifth, that it was class legislation. Furthermore, alleged defendants, their employees had voluntarily entered into the contracts by which they were to work more than eight hours a day.

298. Two bills to amend the King-Thompson Act have been introduced in the present session of the Missouri Legislature. See H.B. No. 98 and H.B. No. 305, 67th Gen. Assembly (1953).
301. 179. Mo. 245, 78 S.W. 569 (1904).
An interesting aspect of the trial was the fact that defendants produced numerous doctors and other "experts" who testified that working ten hours a day in the mine shafts was no more detrimental to the health of the men concerned than if they had been working for the same length of time at any ordinary employment on the surface.

The supreme court upheld the validity of the statute, stating that although it was not specifically designated as a health measure, it obviously was such. One of the highest and most important duties of the state, said the court, is to legislate for the preservation of the health and safety of its people. "That the Legislature has the power to make all needful regulations in the conduct and management of a business which is attended by danger of health or safety to the employees is no longer an open question."

The statute was held to be a general law, as opposed to class legislation. It was held to relate to persons or things as a class and not to particular persons or things of a class.

The court, in quoting with approval from Holden v. Hardy (said case upholding a similar Utah law) said: "It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself."

As for the "expert" testimony relating to the beneficial health aspects of working in the mine shafts, the court held that this was rightly excluded. "The validity of laws enacted in the exercise of the police power of the state cannot be made dependent upon the views of experts as to the necessity of such enactment."

In Shull v. Missouri-Pacific Ry., plaintiff sued under a law providing that a railroad corporation must pay its employees at least once every thirty
days. For a violation of this act, the employee aggrieved was entitled to recover double the amount due him in wages.

In the trial court, plaintiff was satisfied with a judgment for the actual wages due, not seeking a double recovery. The supreme court refused to rule on the constitutionality of the statute on defendant appealing, since conceded the wages recovered were due the plaintiff. The constitutional issue was not considered by the court to have been raised.

In 1910, the case of State v. Miksicek raised the same issue that had been considered by the United States Supreme Court in Lochner v. New York. Missouri, as New York, had attempted to regulate hours and working conditions in bakeries. The act was alleged by the State to be a valid health measure passed in pursuance of the police power.

The court held the act unconstitutional. As to the regulation of hours, this was held to be an arbitrary interference with that freedom of contract guaranteed by both the state and federal constitutions. And, since the act specifically referred to biscuit, bread or cake bakeries, the court held that the act could only apply to those types specified. Since there were other types of bakeries, such as pie and pastry bakeries, to which the health argument should equally apply, the court held the act to be class legislation because it discriminated against persons belonging to the same class.

Today, the problem presented by this case is covered by Chapter 186 of the 1949 Revised Statutes. This chapter covers food and drug laws. The doctrine of State v. Miksicek would seem to have been repudiated in theory if not in fact. The principle underlying such legislation today seems to be to protect the public from products produced under unsanitary working conditions as well as to protect the workers producing such products.

The latest Missouri case involving state regulation of hours of employment is that of State v. Taylor. Defendants were charged with a violation of Section 10171 of the 1939 Revised Statutes, which statute prohibited the employment of women for more than nine hours per day or fifty-four hours per week. Operators of canneries and packing plants in rural communities and also cities of less than ten thousand inhabitants were excluded from the act during the canning season. But such exemption was not to exceed ninety days a year. The statute was entirely inapplicable to telephone companies and to cities having fewer than three thousand inhabitants.

308. 125 S.W. 507 (Mo. 1910).
309. 198 U.S. 45 (1905).
310. 351 Mo. 725, 173 S.W. 2d 902 (1943).
Defendants argued that the statute deprived them of liberty and property without due process of law, denied them the equal protection of the laws, and was discriminatory. The circuit court sustained defendant's motion to quash the indictment.

On appeal to the supreme court, the main argument was that since all women were not treated alike under the statute, then it followed that all employers of women were not treated alike. Thus, it was argued that the statute was discriminatory. The last provision of the statute would allow employers in towns and cities under three thousand population to require women to work for a longer period than would be permissible over this number. The supreme court upheld this argument, and sustained the quashing of the indictment.

The statute was amended in 1949\(^{311}\) to read approximately as it did in the 1939 statutes except that the provision excluding cities and towns under three thousand population was eliminated. Whether or not this elimination has cured the statute's constitutional ailment remains to be seen.

2. Forged Union Label Cases

There have been a number of prosecutions by the state for the unauthorized use of union labels. The statute originally making such use unlawful was passed in 1893\(^{312}\) and has continued on the books practically without change since that time. The present statute reads:

"Any person or persons, employer, association who shall knowingly and wilfully keep or display in his place of business any union card or label without a contract with such union for the use of its union card or label or who shall refuse to return said card or label at the expiration of such contract with such union, or who shall display such union card or label in his place of business wherein he does not employ members of such union, or who shall... forge... any... copy of the private card or label... or who shall knowingly display... any such forged... card or label or trade-mark adopted by any union of workingmen shall be guilty...."\(^{313}\)

The first prosecution testing this statute was State v. Berlinsheimer (1895).\(^{314}\) The information charged the defendant with having knowingly sold cigars in boxes to which the forged and counterfeited labels of the Cigar Makers International Union had been affixed.

\(^{311}\) Mo. REV. STAT. § 240.040 (1949).
\(^{312}\) Laws 1893, p. 260.
\(^{313}\) Mo. REV. STAT. § 417.060 (1949).
\(^{314}\) 62 Mo. App. 168 (1895).
In reversing defendant's conviction, the court of appeals drew a distinction between the members of the Cigar Makers Union, who were engaged in making cigars, and the union itself, which was not so engaged. Since the union, as such, manufactured no cigars, the court refused to attach any validity as a trade mark to the union label. A trade mark, reasoned the court, must be affixed by the owner of the mark to his goods. The court did suggest that it thought the union had such a property right in the label as to get its unlawful use enjoined by a court of equity.

The same year as the Berlinsheimer case, however, the supreme court upheld a conviction under the same statute. In State v. Bishop, the court admitted that a union label is not a trade mark in the usual sense of the word since the union does not manufacture anything. Yet, it was held to be entitled to protection under the statute regardless of this fact.

The court held that the purpose of the statute was to protect labels as trade marks when adopted by unions of working men, and said: "A member of the union has the right to use the label, but no other person has except those who or firms which employ members of the union in the capacity of cigar makers or packers, who are also permitted to use the label so long as they employ members of the union."^316

In State v. Niesmann, a similar prosecution and conviction thereunder was sustained. Again, as in the other two cases, the complainant was the Cigar Makers Union.

The defendant in State v. St. Clair was convicted for having in his possession and using the trade mark or label of the International Typographical Union. Defendant used the symbol on his advertising cards to give the impression the cards were union made, when, in fact, he employed no union help in his shop. The conviction was affirmed on the basis of State v. Bishop.

In the case of State v. Ludwig defendant was alleged to have unlawfully attached a union label to clothing he had sold. There was some dispute over whether the label was the genuine label of the United Garment Workers at the time it was sewed in. Defendant was discharged, since the prosecution, although describing the union label in the information and producing in court the coat to which the label was allegedly unlawfully attached,
tached, failed to show that the label on the coat was the genuine label of the union.

Certain calendars issued by defendant in *State v. Baur* (1925)\(^{320}\) bore the union label without proper authorization. Defendant testified that the calendars had not been printed in his shop, and that he had no knowledge that the label had been affixed. The court, in discharging defendant, held that the evidence was insufficient to show that he had knowingly, wrongfully, or fraudulently used the union label, or that he had printed or caused the labels to be printed on the calendars.

There would not seem to be any special problems connected with these union trade-mark cases. Once the court reached the conclusion that union labels could validly be protected as trade-marks, the only problem left was the factual one of whether or not given circumstances amounted to a violation of the statute.

3. *Embezzlement Cases*

Cases involving embezzlement of trade union funds have been comparatively rare in the Missouri appellate courts. The earliest case found was that of *State v. Knowles* (1904)\(^{321}\). Defendant was prosecuted for the embezzling of funds while an officer of Miners Lodge #60 of the Ancient Order of United Workmen.

The embezzlement statute under which the prosecution was brought made it an offense for a member or officer of a benevolent association to convert association funds to his own use.\(^{322}\) The court held that prior to the transmission of the funds by the local to the Grand Lodge there was such a property interest by the local in the fund as to justify alleging the ownership of the fund to be in it. Defendant's conviction was thus upheld.

In *State v. Skinner*,\(^{323}\) a prosecution under the same statute, the court held that the information did not have to allege that the money was converted to defendant's own use without the consent of the owners and with the intent to permanently deprive the owners thereof. The information charging defendant as treasurer of the trade union with embezzlement of funds belonging to the union and received by him as treasurer was held to be sufficient to show ownership in the union of the property embezzled.

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320. 272 S.W. 1062 (Mo. App. 1925).
321. 185 Mo. 141, 83 S.W. 1083 (1904).
323. 310 Mo. 373, 109 S.W. 38 (1908).
And in *State v. Martin*, defendant union officer's conviction for embezzlement was affirmed, although there was some evidence tending to show that his defalcations were largely due to the fact that he was uneducated and had little, if any, knowledge of how to handle other people's money.

Again, as in the union label cases, these embezzlement cases are mainly concerned with the factual problem of whether or not defendant is guilty of the acts alleged to have violated the statute.

4. Unclassified Cases

We come now to those cases which refuse to be pigeon-holed to the slightest extent. The first of these is *Durrant v. Lexington Coal Mining Co.* (1889). This was an action for personal injuries suffered by a miner while in the employ of defendant. The action was based on certain mine safety legislation. The specific section of the act sued on required that shaft elevator cars be enclosed with metal so that debris falling from the mine entrance would not strike and injure men in the cars. Defendant had not so enclosed his cars, and plaintiff, while loading an elevator car, was struck with a lump of coal which fell from the top of the mine shaft. The injury could not have occurred had defendant followed the statute and enclosed his cars.

The court recognized that the purpose of the act was to protect the health and safety of the mine employees, and that the act extended to the protection of employees while working loading the elevators from the mine shafts, as well as while ascending or descending the shafts.

Defendant argued that plaintiff, having knowledge of the lack of covering around the car, was guilty of contributory negligence in working around it, and thus should be barred from recovering. The court felt that to allow this argument to prevail would defeat the whole purpose of the statute. Since defendant wilfully violated the statute, he must suffer the penalty for having done so.

This case illustrates how early the Missouri legislature recognized the importance of mine safety regulations. Mining has continued to be a closely regulated industry as to working conditions. The reader's attention is called to Chapter 293 of the 1949 *Revised Statutes*, entitled "Mine and Cave Safety

324. 230 Mo. 680, 132 S.W. 595 (1910).
325. For the latest embezzlement case, one which is all procedural and hence not discussed here, see *State v. Hill*, 179 S.W. 2d 712 (Mo. 1944).
326. 10 S.W. 484 (Mo. 1889).
and Inspection." In this chapter will be found extensive statutory provisions regulating mines and mining.

The only case which could be found on "yellow dog" contracts was that of State v. Julow (1895). The act forbidding such contracts was passed in 1893, and was entitled "An Act to prevent the abridgement of the legal rights of workingmen by employers and other persons." In substance, the act made it unlawful for employers, as a condition of employment, to coerce or compel employees not to join labor unions or attend their meetings. Defendant told one of his union employees to either withdraw from the union or be fired. The employee refused, and, on being discharged, became the complainant in this proceeding.

The supreme court held that the statute was unconstitutional as depriving the employer of his liberty of contract without due process of law, thus violating both the Missouri and federal constitutions.

Further, the court held that the statute was bad as class legislation, since it did not purport to take in all laborers within its scope, but merely union laborers. This was considered a violation of what is now Article III, Section 40 (28) of the Missouri Constitution of 1945. By this section, the legislature is prohibited the power to grant "... to any ... association ... any special or exclusive right, privilege or immunity."

The court's reasoning here would seem to be faulty, however, for the act did not confer any such rights on labor unions. All the statute did was to prohibit employers from requiring of employees, whether such employees were or were not members of a labor union, as a condition of employment, a promise not to join a union.

The problem would seem to be taken care of today by Article I, Section 29 of the Missouri Constitution of 1945, which says: "That employees shall have the right to organize and to bargain collectively through representatives of their own choosing." Since the right to organize is thus recognized by the constitution, then, apparently, any attempt on the part of an employer to deny his employees this right would be violative of the constitution. And for this, proper relief should be granted by the court.

In Henning v. Staed, a statute making debts due for labor preferred claims against the property of the employer in the event of the employer's insolvency, was held constitutional. The situation is covered today by

328. 129 Mo. 163, 31 S.W. 781 (1895).
330. 40 S.W. 95 (Mo. 1897).
Section 513.055 of the 1949 Revised Statutes. This section provides that employees and laborers shall be preferred creditors for wages earned within six months prior to the taking over of their employer's business either by way of court process, receivership or trustee. They are preferred creditors, however, only to the amount of one hundred dollars. The employee or laborer must submit a claim and statement verified under oath showing how much has been earned and the nature of the work performed. If the claim is contested, it must be reduced to judgment in a court of competent jurisdiction before any part of it need be paid.\textsuperscript{331}

\textit{State ex rel St. Louis-San Francisco Ry.} (1949)\textsuperscript{332} presented a somewhat analogous problem to that determined in \textit{Steele v. Louisville and Nashville Ry.}\textsuperscript{333} Relator sought to prohibit respondent judge from proceeding in a case brought by two train porters asking declaratory and injunctive relief on behalf of themselves and others similarly situated.

Plaintiffs in the injunction suit were colored porters and, as such, had their own union. The suit was brought as the result of an agreement between the Brotherhood of Railway Trainmen and defendant railroad which would deprive the porters of their jobs and replace them with white employees. The petition alleged that plaintiffs were and had been for many years performing all the duties of head-end passenger brakemen, but because they were Negroes; they were called train porters, given certain additional duties to perform and received less pay than white brakemen; that they were not allowed to join the same labor organization as the white trainmen; and that the Brotherhood refused to represent them in collective bargaining. In 1928, the relator had entered into agreements with four Brotherhoods representing white trainmen which prevented job promotion or reclassification for Negroes. In 1946, white members of the Brotherhood took over the job of baggageman formerly held by Negroes. In 1948, whites were assigned to the job of head-end brakemen.

The circuit court issued a temporary injunction restraining defendant railroad from replacing Negroes with whites and arbitrarily taking away from them their job classification.

On appeal to the supreme court, that court stated that the situation presented was that of a jurisdictional strike, \textit{i.e.}, an overlapping of the functions performed by train porters and members of the Brotherhood. The real

\textsuperscript{331} See also Mo. Rev. Stat. § 430.360 (1949).
\textsuperscript{332} 338 Mo. 1136, 219 S.W. 2d 340 (1949), cert. denied, 338 U.S. 849 (1949).
\textsuperscript{333} 323 U.S. 192 (1944).
problem, said the court, is who is going to get to perform the two functions. The court did not feel that the race issue had to be involved in order to cause such a jurisdictional dispute to arise, and the case of *Howard v. Thompson* was cited to show that there had been a dispute of many years standing over the performance of the function of brakemen by train porters. In the *Thompson* case, the court had found that as the train porters had their own union, through which they had negotiated numerous contracts with the carriers, if they desired the Brotherhood to represent them, such a question must be presented to the federal mediation board for settlement. The case further held that jurisdictional disputes must be referred to the National Railroad Adjustment Board.

The Missouri supreme court stated that despite *Howard v. Thompson*, the lower court did have jurisdiction to enjoin plaintiffs' discharges and the changing of rules and working conditions to abolish their jobs and replace them with the other jobs created for that purpose. And this jurisdiction would be retained until the administrative bodies set up by the Railway Labor Act decided the jurisdictional and representation questions involved. Then, apparently, the court would lose its jurisdiction over the case.

The court distinguished this case from the *Steele* case, since here the porters, unlike the firemen in the *Steele* case, had their own union. Regardless of this distinction, however, racial prejudice was obviously the background to both cases. Such an attitude is particularly unbecoming for a labor union to adopt since race prejudice is not so much different from economic prejudice that a group can hardly be sincere which actively condones the one while actively opposing the other.

A recent and interesting case in Missouri is that of *State v. Day-Brite Lighting, Inc.* Defendant was being prosecuted for a violation of Section 11785 of the 1939 statutes. This section provides that "any person entitled to vote... shall, on the day of such election, be entitled to absent himself from... employment... for a period of four hours between the times of opening and closing the polls; and... shall not, because of so absenting himself, be liable to any penalty; Provided, employer may specify... hours during which... employee may absent himself. Any person or corpora-

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337. 45 U.S.C.A. § 151 et seq.
338. 240 S.W. 2d 886 (Mo. 1951) (en banc).
tion who shall refuse... the privilege hereby conferred, or shall discharge or threaten to discharge any employee for absenting himself... for the purpose of said election, or shall cause any employee to suffer any penalty or deduction of wages because of the exercise of such privilege... shall be guilty of a misdemeanor...."

The International Brotherhood of Electrical Workers had a collective bargaining agreement with defendant which, among other things, provided that pay was to be received only for actual hours worked. It further provided that no employee, unless sick or under emergency conditions, should absent himself from work without permission.

One Grotemeyer, a union employee, whose work day ended at 4:30 P.M. was, along with other workers on the same shift, allowed to leave to vote at 3:00 P.M. Since the polls did not close until 7:00 P.M., they had four hours in which to vote. But apparently relying on the collective bargaining provision as to wages paid for actual time worked, defendant docked from these workers wages for time between 3:30 P.M. and 4:30 P.M.

Defendant maintained that he did not violate the act, since he did not discharge or threaten to discharge Grotemeyer. And, since Grotemeyer was paid for the actual hours he worked, it was argued that he had not been penalized. To this the supreme court said: "It is the clear intendment of the act that the employee shall be paid during his authorized absence as though he had worked. It would be an impossibility for the two necessary elements of the offense, to-wit: absence from work and deduction of wages during such absence ever to come into existence under defendant's contention. Regardless of the validity of the act on constitutional grounds, its meaning is clear and the deduction of one and a half hours from Grotemeyer's wages was a violation of its terms."340

The court agreed with defendant that the act would have to be held unconstitutional unless it could be found to have been validly enacted within the powers of the state. It was pointed out that the police power of the state has been frequently invoked in legislation relating to the economic and physical welfare and safety of employees and the public in general. All this, although an expense to the employer, has uniformly been held to be constitutional in principle.

The court then read in political welfare with economic and physical welfare, saying: "That every citizen should be given the right and the
opportunity to vote is a matter of public interest, and any law having for its purpose the guaranty of such right and opportunity should be upheld if it is possible to do so. On finding the economic burden placed on the employer by this statute to be not an unreasonable one, the validity of the act was upheld.

Judge Hyde, in a dissent concurred in by Judge Conkling, maintained that defendant should not be considered guilty of a crime, since the statute did not specifically say that employees must be paid for time taken off. They reasoned that since the collective bargaining contract in force between Grote-meyer’s union and defendant provided that wages should be paid only for time worked, then it could not be considered a penalty for not paying him for the time taken off.

In the dissent by Special Judge Vandeventer, he stated: “An employer is deprived of his property without due process of law if he is compelled to pay wages during the absent period, where no services for the employer are performed and where the period of the absence is for the benefit and convenience of the employee. Such a violation of an employer’s rights cannot be hallowed by the police power.”

On appeal to the Supreme Court, in an opinion by Mr. Justice Douglas, Missouri’s power to validly enact legislation of this type was upheld. Justice Douglas said: “Our recent decisions make plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare. The legislative power has its limits. . . . But the state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field, so long as specific constitutional prohibitions are not violated and so long as conflicts with valid and controlling federal laws are avoided.”

The fact that the employer must pay the employee wages for time not worked is chalked up as part of the “costs of our civilization.”

The court further held: “The classification of voters so as to free employees from the domination of employers is an attempt to deal with an evil to which the one group has been exposed. The need for that classification

341. Id. at 892.
342. Id. at 903.
344. Id. at 423.
is a matter for legislative judgment . . . and does not amount to a denial of equal protection under the laws.\textsuperscript{346}

Mr. Justice Jackson dissented on the theory that a state has no right to force an employer to pay an employee for time not worked. Basically, he is opposed to what he terms a "state-imposed pay-for-voting system."\textsuperscript{347} Further, he warns, "... a constitutional philosophy which sanctions intervention by the State to fix terms of pay without work may be available tomorrow to give constitutional sanction to a state-imposed terms of employment less benevolent."\textsuperscript{348}

In summary of this decision, then, the majority in both the Missouri and the federal courts felt that both the provision for time off from work and pay for that time was valid. The minority also apparently felt that the time off for voting was valid. But the argument was over whether or not the employer should have to pay the workers for this time taken off. This is a question which is quite difficult to answer. As answered by the majority in both courts, a new concept of due process and of the police powers seems to be arising, to-wit— that political welfare as well as health and social welfare is a valid subject as to which the state police power may operate.

**IN CONCLUSION**

It is hoped that this survey of Missouri labor law will be of some practical value to Missouri jurists, lawyers and legislators. At the very least, it should bring out the fact that the labor movement in Missouri has presented complicated social and economic problems for the appellate courts to deal with as well as the legal questions involved. At the most, it may be that the reader has gained a fuller appreciation of the position of labor unions in Missouri's legal history.

\textsuperscript{346} Id. at 425.  
\textsuperscript{347} Id. at 428.  
\textsuperscript{348} Ibid.