Shield, Sword, Or Machicolation

William R. Clark
SHIELD, SWORD, OR MACHICOLATION\textsuperscript{1}

WILLIAM R. CLARK* 

"Employees shall have the right to organize and to bargain collectively through representatives of their own choosing."\textsuperscript{2} These sixteen seemingly simple words were approved by the members of the Missouri constitutional convention\textsuperscript{3} and subsequently adopted February 27, 1945.\textsuperscript{4} However, it may be noted that the provision as it was originally approved differs from the now adopted provision as it appears in the official form in that the word "That" was added as a prefix thereto.\textsuperscript{5} If "That" were the only "latent" problem of construction and interpretation which the now seventeen words present, there would be little need for the minds of men to give but a passing thought to such a seemingly simple sentence, but "That" is not, as we shall see, the problem by any means.

This article is written for the prime purpose of determining, if possible, by reviewing only the transcript of the last constitutional convention, whether this provision was meant to grant of and in itself any "new" judicially enforceable rights to the "employee"\textsuperscript{6} and the "representa-

\textsuperscript{1}Member of the Missouri Bar; B.S., University of Missouri, 1947, LL.B. 1956. In private practice, Columbia, Missouri; Corporation Counsel, office of the Secretary of State, State of Missouri.


2. VERBATIM TRANSCRIPTION OF PROCEEDING OF CONSTITUTIONAL CONVENTION 1971 (1944), (hereinafter cited as PROCEEDINGS).

3. Ibid.
5. Ibid.
6. Employee defined: (1) "One who works for wages or salary in the service of an employer;—disting. from official or officer." WEBSTER’S COLLEGIATE DICTIONARY 327 (5th ed. 1944). (2) "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to . . . [the Railway Labor Act], or by any other person who is not an employer as herein defined." National Labor Relations Act, § 2(3), 49 Stat. 450, as amended, 29 U.S.C. § 152(3) (1952).
tives” of their choice by the inclusion thereof in article I of the Missouri constitution, or whether its inclusion therein was only a written assertion of the then existing rights which added nothing new to the law except a constitutionally asserted guaranty of protection from future adverse legislative enactment. By mere reference to footnotes 6 and 7 herein, one without more could anticipate several acute problems by the sole fact that the speaker of the words might have command of one definition and the hearer of the words, the other, or perhaps each might use a completely different definition acquired from custom or personal usage with unknown variants; however, for the sake of complex simplicity, only the two definitions set forth for each word will be applied herein. They will be hereinafter referred to either as the standard (Webster’s) or Labor’s (NLRA) definition where used.

The writer realizes that these debates are only some evidence to be considered in construing this provision, but these debates were the birth of this prodigy, and therefore it appears wise to examine this point in time leaving its progressive environmental development for later consideration.

The debates opened on this provision when the clerk read section I as it was originally presented to the convention. The section was read as follows:

Section I. There shall be no abridgment of the right of employees to join, organize or remain members of any bona fide labor organization, and to exercise the right of collective bargaining through representatives of their own choosing; nor shall any employee be discriminated against for such union labor activity.8

The presentation of this section and subsequent first substitute therefor was made by Mr. Wood as follows:

Mr. WESLEY: Mr. President, first I want to move the adoption of this section. Then, in view of the fact that Mr. Reuben Wood is president of the American Federation of Labor in Missouri and an outstanding labor man in the United States, I defer to Mr. Reuben Wood in the presentation of this section.

8. PROCEEDINGS 1931.
PRESIDENT: Is there a second?

(Motion was seconded by Mr. Wood (of Greene)).

MR. WOOD (OF GREENE): Mr. President, I thank Mr. Wesley for his very great compliment. First, Mr. Chairman, I'd like to offer a substitute for Section I.

(Substitute brought forward and read as follows)

PRESIDENT: Mr. Wood, is this a substitute for the Section I?

MR. WOOD (OF GREENE): Section I, yes.

(Clerk read as follows)

SUBSTITUTE NO. I FOR SECTION I. Amend File No. 10, page 1, section I, Line one to six inclusive, by striking out section one and inserting in lieu thereof the following:

"Section I. There shall be no abridgment of the right of employees to organize and bargain collectively through representatives of their own choosing."

MR. WOOD (OF GREENE): I move the adoption of the substitute, Mr. President.

(The motion was seconded by Mr. Wesley.)

Mr. Wood then made a long statement involving for the most part the historical development of labor, and the following comment contained therein appears noteworthy to point up that from the very beginning his emphasis was on labor as a group and not upon the individual employees. He commented as follows:

MR. WOOD (OF GREENE): Mr. President, Section I—it read in the report that there shall be no abridgment of employees to join bona fide labor organizations and to exercise the right of collective bargaining through representatives of their own choosing, nor shall any employee be discriminated against for labor union activities. The Committee has discussed this first section, Mr. President, and eight members of the Committee have decided to this substitute which strips the section of all its verbiage and reduces it to this one simple sentence.

Mr. President, I realize that any legislation or any amendment of the Constitution that affects labor and that seeks to give labor more freedom or equal rights with every other organization,

9. Id. at 1932.
naturally will engender some opposition... (Emphasis added.) 10

... Organized labor, or the workers of this state are not asking for any special privileges. ... Now, there is some objection to this section as originally written and I assume the same objection will be raised against this substitute. I hold in my hand a copy of the resolution passed by the City Council of Kansas City opposing the adoption of Section I... and they give as among their many reasons that it will nullify provisions in our city charter and the judicial interpretations thereof. This one,

"Whereas a fair interpretation of Section I of said file, number 10, as applied to Kansas City would permit all employees of the city to join, organize or remain a member of any bona fide labor organization and direct his idea of collective bargaining and thus nullify the provision of our city charter and the judicial interpretations thereof."

Mr. President, there are several thousand city employees in Kansas City who have been dealing in collective bargaining with that city for years. 11

It is apparent here and throughout the remaining portion of Mr. Wood's statement that he is using collective bargaining in the broadest sense so as to include all employer-employee relationships, and he, without defining his terms, emphasized this fact to the delegates.

In the closing comments, Mr. Wood again emphasized that labor was not asking for any special privileges but rather urged the adoption thereof as a statement of public policy and stressed that several states had gone even further in their constitutions. However, a careful reading of the following comments will indicate Mr. Wood apparently believed that this provision would give to labor the right to bargain collectively, but he did not indicate if he expected therefrom a creation of an affirmative duty on the part of the employers of this state or the loss of the employer's right to discharge his employees for any cause at any time:

So it is Mr. President and members of this Convention, that members of organized labor are not asking any special privileges. We're not asking anything but what has been received by every other group. I feel that this state should adopt Section I as a matter of public policy.

---

10. Ibid.
I hold in my hand a communication sent to the country press for the Missouri Retailers Association. I have inquired as best I could, the cause of sending this out. The retail merchants and others I have consulted seemed to know very little about it but in their open situation they are afraid that if Section I is adopted immediately every retail merchant in this state will have to organize employees. Nothing was ever farther from the truth, but they do admit in their letter, "It is true that more effective administration and endorsement of either proposal could be obtained by setting up an administrative body in the nature of a Missouri Labor Relations Act which would correspond with the National Labor Relations Act."

... Now I do hope that we can get this simple sentence in our constitution which is a matter of an expression of public policy and that we can say that as far as we know, there is no other state in the union that has a clause of this kind except New York and that Missouri was the second state in the union of the forty-eight states that established a public policy recognizing the right, inherent right of workers to organize and bargain collectively.

Now, there are many other states that have other clauses in their Constitutions, not dealing with collective bargaining. ... Mr. President, this is the following language in the New York Constitution. "Labor not a commodity; hours and wages in public work; right to organize and bargain collectively. Labor of human beings is not a commodity nor an article of commerce and shall never be so construed or considered. No laborer, workman, or mechanic in the employ of a contractor or subcontractor engaged in the performance of any public work shall be permitted to work more than eight hours in any day nor more than five days in any week except in cases of extraordinary emergency.' That is a copy of the provision wage laws passed under the Hoover Administration in all public building constructed by the United States Government, 'Nor shall he be paid less than the rate of wages prevailing in the same trade or occupation of the locality within the state where such public work is to be situated, erected, or used. Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.' It was adopted on November 8, 1938.

I believe that every delegate here thoroughly understands the implications and the meaning of this section. Our Labor Committee felt that it would be, that we should reduce the language of Section I and just slight it and just submit the substitute in
one plain sentence which is just as understandable as if you would write a whole page.

It has not the implications that the section had in the first place of pointing out something that the workers have a right to do, the things that they could not be discriminated against for doing in the way of organization, and I move you, Mr. Chairman, that the substitute be adopted.\textsuperscript{12}

These were the inceptive thoughts which were injected into the minds of the delegates, but it cannot be absolutely stated as did Mr. Wood above that "every delegate here thoroughly understands the implications and meaning of this section" for to do this each would have to be a labor specialist. However, without more, Mr. Wood's motion was seconded and adopted as stated:

(The motion was seconded by Mr. Hogan.)

(Clerk read as follows:)

\textbf{SUBSTITUTE No. I FOR SECTION No. I.} Amend File No. 10, Page 1, Section 1, Line one to six inclusive, by striking out section one and inserting in lieu thereof the following:

Section I. There shall be no abridgment of the right of employees to organize and bargain collectively through representatives of their own choosing.\textsuperscript{13}

Mr. Hanks (JASPER) then addressed the convention in support of this substitute. The following comments of Mr. Hanks are considered helpful to show the way the other delegates were being lead by talk in terms not capable of common understanding:

... These men only ask this, and organized labor only asks this. They ask only that labor be permitted to organize, to bargain collectively. Why, in order that labor may participate with capital and management in the welfare of this state. That's the purpose in it. . . .

Labor seeks to participate in the entire social scheme of government. Of course by this simple line in our Constitution we do not establish the right of labor. Those rights are already established. By this simple line we do not ordain that organized labor shall live and continue to exist. Oh no. Those rights were or-

\textsuperscript{12} Id. at 1937, 1938.
\textsuperscript{13} Id. at 1938.
dained at the time of the creation of the Federal Constitution. They will continue to exist. . . .

What is it that we can do then, my friends, if we cannot ordain and cannot establish it here. We can with honor to ourselves say that we can do this. We can recognize that labor is here, that labor has been with us throughout the years, throughout the centuries. We in Missouri have recognized organized labor because in doing so we recognize ourselves as a part in parallel of the great industrial state of Missouri.14

Mr. Wood was then questioned by Mr. Shepley concerning the application of the state police power to this provision:

Mr. SHEPLEY: Mr. Wood, this right which you seek to have recognized and protected in this constitutional provision, do you feel that that is a right which should at all times be subject to the police powers of the state?

MR. WOOD (OF GREENE): Certainly.

MR. SHEPLEY: Would you have any objection to having that put in at the end of your section so there would be no objection to it?

MR. WOOD (OF GREENE): That is entirely superfluous. . . . I only wish we had all the protective legislation that the corporations have in this state and this nation. I am merely asking for this to be inscribed in our Constitution Mr. President, that the State of Missouri has enunciated by its basic document recognized by the men and women organized to bargain collectively and not only that but there is a great reason for it. Collective bargaining has prevented many many labor disturbances. . . .15

Again, Mr. Wood is using Labor's terms unknown in definition to most of the delegates. He continues:

. . . Insofar as the police power was concerned, Mr. Shepley, any infraction of the law that may be committed by the employer or the employee certainly is subject to the police power of the state. There is no necessity for hampering this section by injecting such a sentence in our state Constitution that we cannot enact, cannot place a provision in our Constitution protecting labor unless it must be dismerged by a sentence that this law is subject to the police power. That certainly would insult the labor.16

14. Id. at 1939.
15. Id. at 1940.
16. Id. at 1941.
At this point Mr. Damron questioned Mr. Wood, and as the following will point up, Mr. Wood gave what I believe is the first real common understandable purpose of this constitutional provision insofar as the non-labor delegate was concerned:

**MR. DAMRON:** Mr. Wood, does the labor now have the right to organize and bargain collectively in this state?

**MR. WOOD (OF GREENE):** Oh yes. Everyone knows that. That's true.

**MR. DAMRON:** What rights or powers if any, do you seek to obtain by this proposal that you do not now have?

**MR. WOOD (OF GREENE):** Well Mr. Damron, if it is in our state Constitution we will preclude the possibility and the probability as has happened in the past. In future sessions of the Legislature, many bills being introduced seeking to destroy collective bargaining.

* * *

**MR. WOOD (OF GREENE):** The two bills in here, the two proposals in here would practically destroy the labor movement if they are adopted by the Convention and Mr. President, there are measures in every session of the Missouri General Assembly for many years, nearly every session, that seek to take away and hamper the right of men and women to organize and bargain collectively. If it is in our Constitution, it is . . . a measure of protection, a measure of recognition that the matter of public policy that we, the members of organized labor have the same right to organize and bargain collectively in our own interest as every other organization and every other group.17

The next interesting development was an amendment offered by Mr. Shepley which subsequently forced the withdrawal by Mr. Wood of his original substitute and a re-submission of the second substitute which was to be later adopted:

**AMENDMENT NO. 1 TO SUBSTITUTE NO. 1 FOR SECTION I.** Amend File No. 10, amend Substitute 1 for Section I by substituting a semicolon for the period at the end of said substitute and by inserting after said semicolon the following words: 'Provided that such right shall be subject to the police powers of the State

---

17. Ibid.
and of its municipalities, counties and other political subdivisions.'

Mr. Shepley: Mr. President, my purpose in putting this—in suggesting this amendment does not arise out of any feeling on my part against what we have known today as collective bargaining, the right of employees to organize. It is prompted by this one purpose or one thought. Whenever, in your Constitution, you create a right in any individual or group or class, and you say that that right shall never be abridged, then I think unless you qualify along the lines of this amendment, you have tied the hands of your General Assembly to the point where they are powerless at any future date to legislate in any way on that subject. Now, I may be wrong, but that is frankly my purpose and my only purpose in suggesting this amendment. . . . 18

After a rather lengthy but somewhat collateral discussion, Mr. Shepley therein indicated that he would not be opposed to a provision similar to the New York provision. (This is the second mention of the New York provision by a delegate before the convention, but the first indication that this provision would be at all acceptable to the opponents of the Wood substitute.) Judge Moore (opposing the Shepley amendment) questioned Mr. Shepley about the police power of the state as follows:

Mr. Moore: What do you mean by police power?

Mr. Shepley: I mean the inherent power of the state or any government having any police power to protect the welfare and the health, the well being of its people, regulate society in such a way as to protect the people whom it exists for.

Mr. Moore: Do you not think that the state would have that right without your amendment to this section?

Mr. Shepley: I don't think so, Judge. At least, I am in doubt about it for this reason. The wording of this proposal, this substitute, says there shall be no abridgment of the right. Now, if that were worded the way that I believe it is worded in the New York provision, I wouldn't have suggested this at all. There it says that employees shall have the right to organize and bargain collectively. I would say that would certainly be subject to the inherent police power of the state, but where you say there should be no abridgment, I don't see how you can get away from

the fact that that puts it above your control at all, of the General Assembly.

... that is a right which they should have, which they have exercised, and it is one, as Mr. Wood pointed out, which should not be brought into question every time the General Assembly meets.19

* * *

The following comments of the several persons indicated are considered important to point up why the New York provision was subsequently presented to the convention:

Mr. Wesley: Mr. President, I believe that by tacking this amendment on to our substitute, it would simply be an invitation to the General Assembly to pass some laws against the right of collective bargaining, and I am absolutely opposed to Mr. Shepley's amendment. . . .

Mr. Shepley: Mr. Wesley, would you have any objection to your Committee's section reading, 'employees shall have the right to organize and bargain collectively'?

Mr. Wesley: Personally, I should not.

Mr. Shepley: Do you feel you would get anything less in that sentence than you would get in the one you submitted?

Mr. Wesley: No, I don't.

Mr. Shepley: Well, if you make it that way, I will withdraw my amendment very gladly.

Mr. Wesley: If you will ask Mr. Wood this question?

Mr. Shepley: Well, Mr. Wood, I beg your pardon, sir, I will address my question to you. Do you feel that you would get anything less, what you want, by the statement, 'employees shall have the right—the inherent right to organize and bargain collectively'?

Mr. Wood (of Greene): Well, Mr. Shepley, it would be one and the same thing.

19. Id. at 1945.
Mr. Shepley: Well, the reason I asked my question, Mr. Wood is this; that I want you to understand that if you word it the other way, I will withdraw my amendment. I have no desire to put it in if it is worded as the New York Constitution is worded.

* * *

Mr. Wood (of Greene): Well, Mr. President, I hope this amendment will not pass. If we adopted this amendment, then any municipality in this state or the state could pass a law or ordinance depriving workers of the right to organize and bargain collectively.

President: Question is on Mr. Shepley’s amendment to the substitute.

(Chorus of ‘Question’)

President: As many as are in favor of the amendment, let is be known by saying “aye”... Contrary “no”. The noes have it. The amendment is lost. The question is on the substitute.20

After the amendment failed there subsequently took place an exchange of words between Mr. Wood and Mr. Brown which is some evidence of why this provision was important to labor and again is the seemingly real purpose for the inclusion of such a provision in the Constitution:

Mr. Brown (of Carroll): I was inquiring as one organization man to another.

Mr. Wood (of Greene): Oh.

Mr. Brown (of Carroll): You know that I would not deny the right of labor to organize.

Mr. Wood (of Greene): I am sure of that.

Mr. Brown (of Carroll): And I know that you would not deny the right of farmers to organize.

Mr. Wood (of Greene): No, I wouldn’t, Mr. Brown.

Mr. Brown (of Carroll): Now, it would not occur to me to write into the Constitution the provision that there shall be no abridgment of the right of farmers to organize, because I don’t think there is anything in the Constitution, either in the Con-

---

20. Id. at 1945-47.
stitution or the statutes, anywhere abridging the right of either labor or farmers to organize.

Mr. Wood (of Greene): The trouble is, I fear that you don't differentiate between employees that have no stock or interest in a corporation working, and the farmers that work at farming. Most members of Farm Bureau Federations and the Missouri Farmers' Association are farm owners. They are, in a word, businessmen, and the farmers' organizations are really business organizations. There is no employer or employee consideration in the farmers' unions. Most of you are employers, and your functions are to have proper markets so that you may be able to utilize that market through cooperative action, and the relation of employer-employee is entirely different from any other organization. Labor workers have more opposition to organization for the purpose to protect themselves than any other organizations. You are really a business organization, and you own your own business, nine-tenths of it. All these workers work all over the country, and they work for one employer after another, and they own no interest in the business only their skill and ability to produce.

Mr. Brown (of Carroll): Of course, in matters of organization, farmers are subject to the same legislative consideration as Labor or any other group?

Mr. Wood (of Greene): Yes, but, Mr. Brown, I don't think there has ever been a measure introduced in this General Assembly that questioned in anywise the right of farm organizations to organize and carry on their natural functions of the business. There never has been any legislation introduced in this Legislature trying to deprive you of your right to carry on your normal business activities, but on the other hand, in almost every session, there is some type of legislation that seeks to harm, hamper and prevent organizations of workers from carrying out the regular functions and duties of an organization, and I don't know of any other organization, farm organizations or professional men, or any other avocation of life that is in the same category as employer-employee relations that now exist between Labor and their employers.

Mr. Brown (of Carroll): I think you are right so far as organizations are concerned. I do not think that the Legislature has ever denied the right of farmers to organize. At the same time I do not think that they deny the right of Labor to organize.

Mr. Wood (of Greene): Well, Mr. Brown, we have in the last session of the Legislature—five or six states passed legislation,
that if it was administered and carried out to its final conclusion, it would destroy organized labor... and I can see no reason why the state or municipality should be accorded the privilege of denying a man the right that’s been recognized for years, to organize for his own protection. I can’t conceive of it.

Mr. Brown (of Carroll): ... I have no particular objection to this provision as in your substitute, but it just occurs—a question occurs as to whether we need to write it into the Constitution. I seriously question that.

* * *

Mr. Wood (of Greene): In the Farm Bureau Federation, the Missouri Farmers’ Association cooperative, as well as other corporations, you have laws protecting you as a cooperative organization... You have laws that protect your organization, cooperative laws...

Now, there isn’t any law that protects organized labor in their organized structure, and we do not ask for it. I don’t think it’s possible. All that Labor asks is that their right, which certainly is inherent, to organize and bargain collectively should not be abridged by anyone. I can’t conceive that the Congress of the United States would pass such a law as that, so that’s the difference. Members of organized labor haven’t any interest in the institutions wherein they work. They have no financial interest unless they desire to buy some stock. They haven’t any interest in the managerial end of the institution.

You are both managers and cooperators and benefactors of that organization, of your cooperative. That’s entirely different from men who work for wages... you have laws that protect you, but we don’t.21

From the foregoing it is noted that apparently Mr. Wood never intended this provision should or would give any judicial insurance to the employee that his employer would not or could not discharge him without thereby being subject to the rise of a cause of action therefor. Also it would seem that again there is evidence that the provision was being supported as a “prohibitive” measure against adverse legislative enactment and therefore was apparently never intended to be a “self-executing” provision. The convention was adjourned at this point and was again called to order the next day, May 4, 1944.

21. Id. at 1948-50.
The very first action taken on this provision when the convention reconvened was the Shepley—bargain withdrawal by Mr. Wood of his controversial substitute and in lieu thereof substitute No. 2 was submitted as follows:

MR. WOOD (OF GREENE): Mr. President with the consent of the second, I'd like to withdraw the substitute and submit another in lieu thereof of which I think would clear up a good deal of the question.

PRESIDENT: Is there objection to the request to withdraw the substitute? The chair hears none. The substitute will be withdrawn.

(Mr. Wood of Greene sent up another substitute which was read as follows:)

SUBSTITUTE No. 2 FOR SECTION I. Amend File No. 10, Page 1, Section I, Line one to six, inclusive; by striking out Section 1 and inserting in lieu thereof; 'Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.'

MR. WOOD (OF GREENE): Mr. President, I think it is not necessary for any further discussion on this amendment or this substitute because I believe every delegate here understands the wording. This wording was changed on account of the suggestion being made yesterday of the language of the first substitute in which it said 'there shall be no abridgment of the right.' This changes the wording that their employees shall have the right to organize and bargain collectively.

(The motion was seconded by Mr. Hanks.)

* * *

Before comment could be had concerning the new Wood substitute, two proposed amendments were presented, one of which was ruled out as a substitute for a substitute and the other was defeated. Both were in the nature of "right-to-work" proposals.

Mr. Shepley, who opposed the earlier Wood substitute, opposed the Hemphill amendment (in substance a "right-to-work" proposal) and at the same time provided the convention with what he thought the Wood substitute sought to accomplish. This is also further evidence that the provision was regarded as "prohibitory":

22. Id. at 1952, 1953.
Mr. Shepley: Mr. President, ... the only purpose for Mr. Wood's substitute, as I see it, is this. The assertion of a principle which should be, I think, freely acknowledged by every person who believes in the right of individuals to be free plus the fact that that right seems to have been questioned, seriously questioned, by a good many people. To say to the individual working person who in many instances occupies a pretty humble position economically, that he or she cannot cooperate with his or her fellow workers in an effort to secure a little better condition of work to me is inhuman and I can't subscribe to that very simple matter of justice. [Note: Mr. Shepley is not saying that because thereof the employer must lose his right to discharge and acquire an affirmative duty to recognize such unacquired rights.]

Now, that's all that Mr. Wood's substitute seeks to accomplish is to have us in this Constitution pronounce that principle as being the principle to be adopted by the people of Missouri, namely that employees may be free to cooperate with each other in the securing of better conditions. Now, I don't think we should go any further than that ... I believe that if we put anything in this Constitution, and I think we should, we should limit it to the very simple statement which is now contained in Mr. Wood's substitute which has been changed from the wording that was contained, to concede to our conception. I think that is a simple statement to a very fundamental right and when we seek to go further than that I believe we, are undertaking an impossible task which should properly be left to the General Assembly of the State of Missouri. For that reason I rise to oppose the amendment.23

Again before any further comment was made on the new Wood substitute, Mr. Righter supporting Kansas City offered the following amendment (later to be withdrawn and another submitted therefor) to the Wood substitute as follows:

President: Amendment by Mr. Righter.

(The Clerk read as follows:)

Amendment No. 2 to Substitute No. 2 for Section I. Amend File No. 10, by amending Mr. Woods' Substitute for Section I, by changing the period at the end of the sentence to a comma, and by adding thereto the following: 'provided however that this

23. Id. at 1959.
Section shall not apply to the state, or any sub-division or municipality thereof.

President: Is there a second?

(The motion was seconded by Mr. Steven.)

Mr. Righter and Kansas City were concerned with the possibility of the Wood substitute requiring the cities to bargain collectively with their employees. To this belief, Mr. Wood commented:

... Now, ... this amendment to the Constitution, Mr. President; ... does not interfere, does not change the employer-employee relations as between city employees and municipalities. This amendment does not require City Governments or municipalities to deal in collective bargaining with their employees in the same manner as is required by private employers. The very fact that a committee representing groups of employee organizations in a municipality sitting down to a table and thrashing out matters ... with reference to wages, hours, and working conditions without signing a contract, is not in the same category at all with private employment.

Is Mr. Wood inferring now that the amendment will 'require' collective bargaining in private industry? However, whatever the case may be, Mr. Wood considered the Righter amendment as positively preventing a city employee from belonging to a labor union, as follows:

Mr. Righter: If I understand you correctly, Mr. Wood, you say that your Substitute does not apply to the state and subdivisions of the state in any case, is that correct?

Mr. Wood (of Greene): To change their present methods, no, but it will prevent a city or the state from telling a citizen of the state that 'you cannot join a labor union', and neither can the Federal Government. I hope that we will never adopt a basic, in adopting our basic law, I hope that we will never place in that basic document a provision that will authorize the officials elected or appointed of any municipality to say to any citizen that 'You shall not join a labor union', and that's what your amendment will do.

Mr. Righter: Well, is it your thought that after this amendment is adopted, if it is adopted, that employees will still not have the right to bargain collectively with the Government?
Mr. Wood (of Greene): Substitute, they will still go on as they have in the past, and there can be no other way. The city cannot sit down and sign a wage agreement with a group of men to the exclusion of someone else.

*   *   *

Mr. Wood (of Greene): If the amendment to the Substitute is adopted, Mr. Righter, your City Council and municipality will have the power and authority to say to any citizen that if he shall make application for employment that, 'You shall not belong to a labor union,' and they will have no power to do it.

Mr. Righter: Then your thought is that this Substitute that you have offered does deprive the city of that power, is that correct?

Mr. Wood (of Greene): It deprives the city, yes, of that power to tell any citizen that he cannot belong to a labor union.

*   *   *

Mr. Righter: I don't know that the city is so much concerned with the question whether they join an organization but the city is very much concerned that they shall not have, by constitutional fiat, the absolute right to bargain collectively with the city or with the state for that matter.26

*   *   *

Mr. Moore: Your objection then, is not to the right to organize, but to the right to bargain?

Mr. Righter: I have no objection in the world to the employees organizing, but I do object to putting in the Constitution a limitation upon the state's sovereignty, that it must concede them the right to organize whether it wants to or not, that is to say organize for the purpose of collective bargaining.

Mr. Moore: Then, Mr. Righter, did you mean what you said a moment ago, that the city should have the right to say to its employees that, "You shall not join a certain organization and work for the city?"

Mr. Righter: Well, I think the city—I think the state should have the right to say if it wants to. I should not be prevented in

26. Id. at 1963, 1964.
this Constitution from saying that its employees shall not organize into a collective bargaining unit, and if that is true with respect to the state, that is true with respect to every governmental sub-division of the state.\textsuperscript{27}

Do not these comments imply that some of the members believed that an affirmative duty on the part of the employers of this state would be created if the new Wood substitute was adopted? However, I believe the following statement by Mr. Wood negates the intent to create any new rights not presently in existence and therefore if there was not at this time (1944) an affirmative duty on the employer, the Wood substitute would not create one. Note Mr. Wood’s statement:

\textbf{Mr. Wood (of Greene):} Gentlemen, I hope this amendment will not be adopted. Now, there is nothing in our Constitution now that prohibits either private or public employees from organizing and bargaining collectively. The state does not, the Bill of Rights in our Constitution does not permit representatives of the state or municipality to sign a contract with a group of employees to the exclusion of any other citizen. Our Federal Constitution does not permit the Federal Government to sign an agreement in collective bargaining with a group of federal employees to the exclusion of any other citizen. Under the Hoover Administration, we passed a provision rate of wage law for all public constructions. There was nothing in that law that required anyone working on a public construction to be a member of organized labor or not a member. That is as far as the Federal Government can go under our Constitution. We now have the right to organize, and as we are trying to draft this basic document in the interest of all the people, it certainly is not fair to say the least, that you would single out the largest group of the state and force upon them an inhibition that our present Constitution does not provide. In other words, if you adopt this amendment, you will say to the employees of this state, both private and public that, ‘You have had the right to organize all these years, but now this clause in the new Constitution gives you the right to organize in private industry but not in public industry, not as public employees.’ That, ‘Our present Constitution all these years has not permitted a state or municipal official to discharge an employee because he does, or does not belong to a labor union, but now this new clause provides that you may work, may be employed by the state or a municipality but we are now giving the state and

\textsuperscript{27} \textit{Id.} at 1965, 1966.
municipality the right to say, you shall not belong to a labor union in consideration of your employment.'

Mr. President, I hope the amendment will be defeated, because it's taking away freedom that we have had formerly. . . . Certainly, I do not believe the people of this state would ratify the document that seeks to take away the right that we enjoy now and have struggled for all through the centuries. I don't believe Missouri would take the backward step, I certainly don't, and I hope this amendment will be defeated.28

Mr. Righter was subsequently granted permission to withdraw his amendment and thereafter offered a new one in lieu thereof so that the amendment might conform to Mr. Wood's previous objections of preventing city employees the right of organization:

MR. RIGHTER: Now, Mr. President, I offer an amendment to Mr. Wood's Substitute and that amendment reads as follows. 'Provided however, that the right of collective bargaining shall not apply to the state, or any sub-division or municipality thereof.' It does not by its terms exclude the right of employees of the state or any sub-division to organize.

(Amendment brought forward.)

PRESIDENT: Question is on the amendment. Any discussion? Is there a second to the motion to amend?

(The motion was seconded by Mr. Ford.)29

Mr. Wood's comment immediately thereafter shows the very broad meaning which he affixed to the words "collective bargaining":

MR. WOOD (OF GREENE): Mr. President, I can see no reason of cluttering up the Constitution with this ambiguous language. Again you tell city employees and state employees and municipal employees that, 'You shall not engage in collective bargaining.' Now, collective bargaining means a good many things. When you sit down at a table, representative of the employees of the city sits down at a table and discusses the matter concerning employee relations between an employee and the city, that is collective bargaining. If this amendment is adopted, no representative of any employees of the city could sit down and bargain with the city officials. Now, a city water company belongs to the peo-

28. Id. at 1968.
29. Id. at 1969.
30. Ibid.
There follows collateral discussion of a very broad nature which is
unnecessary to set out herein because nowhere in these discussions can
one find even a reasonable inference that the supporters of the Wood sub-
stitute intended to create, if adopted, any affirmative duty toward collec-
tive bargaining on the part of employers, either in a private or public
capacity. The Righter amendment subsequently failed on vote of the
convention. Then the new Wood substitute was immediately thereafter
voted upon without further comment. Therefore, we can say that the
"New York provision" was never offered in and of itself on its own
merit, nor was it squarely discussed by the members of this convention
so as to provide the reader of these minutes with any direct meaning
attached to the specific provision. However, there are perhaps reasonable
indirect conclusions that may be drawn from the discussion on the first
day set out heretofore. These observations will be noted later.

For the record, the final approval of the convention of the Wood
amendment is set forth as stated:

**PRESIDENT:** Clerk will read the Substitute by Mr. Wood.

(The Clerk read as follows:)

**SUBSTITUTE No. 2 FOR SECTION I.** Amend File No. 10, Page 1,
Line one to six, inclusive; by striking out Section I and inserting
in lieu thereof; 'Employees shall have the right to organize and
to bargain collectively through representatives of their own
choosing.'

(Roll call was taken.)

**PRESIDENT:** The result is forty seven aye, twelve no. The Sub-
stitute is approved.31

After the adoption thereof, a motion to strike the provision was
presented and defeated, but the following comment appears in the dis-
cussion of this motion which indicates that again nothing more was in-
tended to be added by the adoption thereof:

**MRS. BROWN (of CARROLL):** I just want to briefly say a word in
support of the motion to strike. I will say in the first place that
I am just as good a friend of labor as Mr. Wood or any other
member of this Convention. I do not think that this section, if
adopted as voted, gives labor any right it does not now have
under the Constitution.32

31. **PROCEEDINGS 1971.**
32. **Id. at 1973.**
Thus ended two days of debates on the provision that is now article I, section 29 of the Missouri constitution. While Mr. Wood and his supporters, from the inception of the original to the final provision as adopted, no doubt were thinking in terms of organized labor and did give labor definitions to the words therein, rather than the standard definition, a conclusion cannot necessarily be drawn, even with this being admitted, that organized labor was granted, or even wanted to create, any new rights therefrom. Mr. Wood stated that the provision should be adopted by the state merely as a matter of public policy. 33 Further, Mr. Wood admitted that 'by' this simple line in our constitution we do not establish the right of labor. Those rights are already established. When answering Mr. Damron's question, 34 Mr. Wood certainly stated the real understandable reason, in my opinion, as it was possibly understood by the majority of the delegates. He said in answer to the question, (what rights or powers, if any, do you seek to obtain by this proposal that you do not now have?) "We will preclude the possibility and the probability as has happened in the past, in future sessions of the legislature, many bills being introduced seeking to destroy collective bargaining."

Apparently, if Mr. Shepley had not "bargained" with Mr. Wood by indicating that he would withdraw his police power amendment providing the Wood provision read as the New York provision, the New York provision would never have entered the picture. This to me is the real reason we have these particular words in section 29 today rather than any particularly significant intent or meaning which Mr. Wood and his supporters attached to the particular words. All Mr. Wood, seemingly in the common sense understanding, wanted was to prohibit the legislature from passing future adverse legislative enactments thereby prohibiting the "taking away" of the rights which labor had at that time, and it was never intended that the provision create any new right. Admittedly, however, his group could have had a "latent" intent as was pointed out in earlier comments.

Further, this prohibitive meaning was manifested in the conversation between Mr. Brown and Mr. Wood, 35 wherein Mr. Wood also indicated that he had no intent to take away the employer's right to discharge his employee by this provision, therefore negating any implication of a newly

33. Id. at 1937.
34. Id. at 1941.
35. Id. at 50.
created right of discharge that could possibly be construed from the provision standing alone; and further asserted again the sole need for protection from the legislature. Mr. Shepley, who originally opposed the Wood provision, supported it later because apparently he was convinced that the legislature had questioned their rights and that these rights should be protected therefrom. In addition, he stated he thought this provision was only a statement of a fundamental right and no more; to go further than a mere statement of the fundamental right was an impossible task for the constitutional convention, for that was a task properly left to the legislature.36

While there were inferences in connection with the discussion of the Righter amendment37 that there was danger of the creation of some absolute right by constitutional fiat, these inferences cannot be given a great deal of weight in the overall picture in view of the fact that only a few of the delegates were learned in the problems of labor and those learned gentlemen had expressly stated to the other delegate that the provision was only a "protective" measure for the prevention of the loss of any then existing rights. Mr. Wood expressly referred to "the right that we enjoy now." So also with respect to the broad language used by Mr. Wood in spelling out the meaning of collective bargaining—he admitted that it meant a good many things, though possibly because he was a "labor expert", he could have meant the term in the sense of only the collective bargaining process as it is understood when referring specifically to labor law; but were the other delegates aware of such implications? I believe the answer is obviously in the negative. Therefore, it would appear unreasonable to assume that the majority of the delegates at the convention, when they voted and adopted this provision that is now section 29, intended it to mean anything but a constitutionally asserted fundamental right adopted as a manifestation of the state's public policy to prevent the future legislatures from enacting laws that would take away the then existing rights of organized labor. Therefore, we surely cannot conclude from these debates that any new rights were thereby intended to be created insofar as the majority of the members of the constitutional convention were concerned. What the people of Missouri thought and intended when they voted on this provision is a matter that would be speculative comment.

36. Ibid.
37. PROCEEDINGS 1962.
Even if we admit insofar as the constitutional convention is concerned that section 29 was never intended to have any self-executing effect, we have gained but little as to the real meaning. For in the final analysis, it is the courts that affix the true meaning to which all must give obedient note, and a review of those cases considered by the courts must be left for another time.

In concluding any answer to the bare premise it would seem that in view of the foregoing we can only safely and apparently correctly state that we should give force only to the common standard understanding of those words in article I, section 29 and hold in effect that the provision was only a written assertion of the then existing rights thereby adding nothing new so as to create any different rights in law except a constitutionally asserted guaranty of protection from future adverse legislative enactments, a fortiori leaving the employee to such actions as he may have had at common law. To hold otherwise would be to throw down the shield, periodically face the sword, and forever constantly have the menace of machicolation.