

2018

**Teamsters Local 222 and John and Jane Doe Nos. 1-23,  
Appellees, v. Utah Transit Authority, Appellant.**

Utah Supreme Court

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IN THE  
SUPREME COURT OF THE STATE OF UTAH

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*Appellees,*  
v.  
UTAH TRANSIT AUTHORITY,  
*Appellant.*

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BRIEF OF APPELLANT

---

On appeal from the Third Judicial District Court, Salt Lake County,  
Honorable Ryan M. Harris, District Court No. 140902884

---

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## Table of Contents

Jurisdictional Statement.....	1
Introduction.....	1
Determinative Provisions.....	4
Statement of the Case.....	5
1.    Nature of the Case and Course of Proceedings .....	5
2.    Statement of Facts.....	6
Summary of the Argument .....	9
Argument.....	11
1.    The Utah Public Transit District Act Does Not Provide Supervisors the Right to Bargain Collectively Because It Provides Only Those Rights Required Under Federal Law in 1964, and Federal Law Did Not Provide Supervisors the Right to Bargain Collectively in 1964 .....	11
1.1    The Court's Objective in Interpreting a Statute Is to Give Effect to the Legislature's Intent .....	14
1.2    The Utah Public Transit District Act Protected Only Those Rights Recognized by the NLRA in 1964 .....	15
1.3    Supervisors Did Not Have the Right to Bargain Collectively Under the NLRA in 1964.....	17
2.    The Result Is the Same if the Utah Public Transit District Act Adopted the Definition of the ULRA .....	20
2.1    Utah Never Considered Supervisors to Be Employees Under Labor Laws.....	21
2.1.1    The Early Years of Utah Labor Law .....	22
2.1.2    The NLRA, federal Wagner Act, of 1935 .....	23
2.1.3    The ULRA, Utah Little Wagner Act, of 1937.....	25



2.1.4	The NLRB Interprets the NLRA Inconsistently Between 1942 and 1947 .....	25
2.1.5	The U.S. Supreme Court Issues <i>Packard Motor Car Company v. NLRB</i> in March 1947 .....	26
2.1.6	The Taft-Hartley Amendments Are Enacted in June 1947 .....	29
2.1.6.1	Representative Hartley's House Report .....	30
2.1.6.2	Senator Taft's Senate Report .....	33
2.1.6.3	Veto and Override .....	34
2.2	Because the Taft-Hartley Amendment Clarified the NLRA, Its Definition of "Employees" Is the Same Definition in the ULRA .....	35
2.2.1	Subsequent Legislation Declaring the Intent of an Earlier Statute is Entitled to Great Weight in Statutory Construction .....	36
2.2.2	Whether the Taft-Hartley Amendments Are Clarifying and Apply Retroactively Is Governed by Federal Law .....	39
2.2.2.1	Under Federal Law, Clarifying Amendments Make What Was Intended All Along Unmistakably Clear .....	40
2.2.2.2	The Text of A Clarifying Amendment Need Not Declare That It Is Clarifying .....	42
2.3	Both the Utah Legislature and this Court Distinguished Between Employers and Employees in Both the Workers Compensation Setting and the Collective Bargaining Setting .....	45
2.3.1	This Court Consistently Distinguished Between Employees and Supervisors When Interpreting Labor Laws .....	45

2.3.2	Other Sections of the Utah Code Are in Accord.....	48
2.4	The Contrary Conclusion Yields an Absurd Consequence .....	51
2.4.1	Independent Contractors Are Expressly Excluded Under Federal Law, but not Under Utah Law.....	52
3.	This Court Should Instruct the District Court, If It Becomes Necessary, to Order a Secret Ballot Election Rather than a Card Check .....	54
	Conclusion .....	56

### Addenda

A	February 9, 2017 Ruling and Order [R.1008-17]
B	October 27, 2016 Final Judgment [R.697-700]
C	October 13, 2015 Memorandum Decision and Order [R.277-95]
D	Urban Mass Transportation Act of 1964: 49 U.S.C. § 1609 (1964)
E	Urban Mass Transportation Act: 49 U.S.C. § 5333 (2017)
F	Utah Public Transit District Act of 1969: 1969 Utah Laws ch. 12 §§ 30, 31
G	Utah Public Transit District Act: Utah Code § 17B-2a-813 (2017)
H	National Labor Relations Act: 29 U.S.C. §§ 151-168 (1964)
I	National Labor Relations Act: 29 U.S.C. §§ 151-169 (2017)
J	Utah Labor Relations Act: Utah Code §§ 34-20-1 to -14 (2017)
K	Title 58, Labor, Comp. Laws Utah 1917
L	Wagner Act, Pub. L. No. 74-198, 49 Stat. 449 (originally codified at 29 U.S.C. §§ 151, 152 (Supp. 1. (1935)))

- M    *In re United States Stamping Co.*, 1 N.L.R.B. 123, 127 (1936)
- N    Utah Labor Relations Act of 1937
- O    *Packard Motor Car Co. v. NLRB*, 330 U.S. 485 (1947)
- P    Taft-Hartley Act, Pub. L. No. 80-101, 61 Stat. 136 (codified at 29 U.S.C. §§ 151 - 166 (1947))
- Q    House Report No. 80-245, 292 - 309 (1947)
- R    Senate Report No. 80-105, 407 - 411 (1947)

## Table of Authorities

### Federal Cases

<i>Amalgamated Transit Union Int'l v. Donovan</i> , 767 F.2d 939 (D.C. Cir. 1985) .....	16, 17
<i>Bethlehem Steel Co. v. N.Y. State Labor Relations Bd.</i> , 330 U.S. 767 (1947) .....	26
<i>Bruesewitz v. Wyeth LLC</i> , 562 U.S. 223 (2011) .....	37
<i>Burke v. Utah Transit Auth.</i> , 462 F.3d 1253 (10th Cir. 2006).....	18
<i>Consumer Products Safety Commission v. GTE Sylvania, Inc.</i> , 447 U.S. 102 (1980) .....	37
<i>Dobbs v. Anthem Blue Cross &amp; Blue Shield</i> , 600 F.3d 1275 (10th Cir. 2010).....	40
<i>Erlenbaugh v. United States</i> , 409 U.S. 239 (1973) .....	49
<i>Federal Housing Administration v. Darlington, Inc.</i> , 358 U.S. 84 (1958) .....	38
<i>Glidden Co. v. Zdanok</i> , 370 U.S. 530 (1962) .....	38
<i>Holt v. State Farm Fire &amp; Cas. Co.</i> , 627 F.3d 188 (5th Cir. 2010).....	40
<i>In re Goodyear Tire &amp; Rubber Co. of Cal.</i> , 3 N.L.R.B. 431 (1937), 1937 WL 7333 .....	25
<i>In re Md. Drydock Co.</i> , 49 N.L.R.B. 733 (1943), 1943 WL 10134 .....	25
<i>In re R.C.A. Manufacturing Co., Inc.</i> , 2 N.L.R.B. 159 (1936), 1936 WL 7784 .....	25

<i>In re Saxon Mills</i> , 1 N.L.R.B. 153 (1936), 1936 WL 6762 .....	25
<i>In re United States Stamping Co.</i> , 1 N.L.R.B. 123 (1936) .....	24, 35
<i>Int'l Bros. of Elec. Workers v. NLRB</i> , 487 F.2d 1143 .....	34
<i>Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union</i> , 457 U.S. 15 (1982) .....	11, 12, 16, 40
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244 (1994) .....	40
<i>Liquilux Gas Corp. v. Martin Gas Sales</i> , 979 F.2d 887 (1st Cir. 1992) .....	44
<i>Middleton v. City of Chicago</i> , 578 F.3d 655 (7th Cir. 2009) .....	44
<i>NLRB v. Bell Aerospace Co. Div. of Textron Inc.</i> , 416 U.S. 267 (1974) .....	passim
<i>NLRB v. Carteret Towing Co.</i> , 307 F.2d 835 (4th Cir. 1962) .....	17
<i>NLRB v. Hearst Publ'ns Inc.</i> , 322 U.S. 111 (1944) .....	53, 54
<i>NLRB v. Ky. River Cmty. Care, Inc.</i> , 532 U.S. 706 (2001) .....	20
<i>Packard Motor Car Co. v. NLRB</i> , 330 U.S. 485 (1947) .....	passim
<i>Piamba Cortes v. Am. Airlines, Inc.</i> , 177 F.3d 1272 (11th Cir. 1999) .....	40, 44
<i>Red Lion Broad. Co. v. FCC</i> , 395 U.S. 367 (1969) .....	36, 38, 39



<i>Southern Pac. Co. v. Schoer</i> , 114 F. 466 (8th Cir. 1902) .....	23
<i>United States v. Hutcheson</i> , 312 U.S. 219 (1941) .....	39, 40
<i>United States v. Montgomery Cty.</i> , 761 F.2d 998 (4th Cir. 1985).....	40, 41, 42
<i>United States v. United Mine Workers of America</i> , 330 U.S. 258 (1947) .....	37
<i>United States v. Wrightwood Dairy Co.</i> , 315 U.S. 110 (1942) .....	37

#### State Cases

<i>Am. Foundry &amp; Mach. Co. v. Utah Labor Relations Bd.</i> , 141 P.2d 390 (Utah 1943) .....	46
<i>Bagley v. Bagley</i> , 2016 UT 48, 387 P.3d 1000 .....	52
<i>Bldg. Serv. Emp. Local No. 59 v. Newhouse Realty Co.</i> , 95 P.2d 507 (Utah 1939) .....	45, 46
<i>Carranza v. United States</i> , 2011 UT 80, 267 P.3d 912.....	14
<i>Chapman v. Handley</i> , 24 P. 673 (Utah 1890) .....	21
<i>Gressman v. State</i> , 2013 UT 63, 323 P.3d 998.....	40
<i>Hansen v. Eyre</i> , 2003 UT App 274, 74 P.3d 1182.....	49
<i>Hotel Utah Co. v. Indus. Comm'n</i> , 209 P.2d 235 (Utah 1949) .....	47
<i>Hotel Utah Co. v. Indus. Comm'n</i> , 211 P.2d 200 (Utah 1949) .....	46, 47, 55

<i>Kell v. State</i> , 2012 UT 25, 285 P.3d 1133.....	14
<i>Maxfield v. Herbert</i> , 2012 UT 44, 284 P.3d 647.....	14-15
<i>Miller v. Weaver</i> , 2003 UT 12, 66 P.3d 529.....	48
<i>Olsen v. Eagle Mountain City</i> , 2011 UT 10, 248 P.3d 465.....	14, 48
<i>Rasmussen v. U.S. Steel Co.</i> , 265 P.2d 1002 (Utah 1954).....	47
<i>Rockefeller v. Indus. Comm’n of Utah</i> , 197 P. 1038 (Utah 1921) .....	23, 45
<i>Se. Furniture Co. v. Indus. Comm’n</i> , 111 P.2d 153 (Utah 1941).....	25
<i>State ex rel. Z.C.</i> , 2007 UT 54, 165 P.3d 1206.....	51, 52
<i>State v. Bagnes</i> , 2014 UT 4, 322 P.3d 719.....	21
<i>State v. Robertson</i> , 2017 UT 27, — P.3d — .....	4, 9
<i>Summit Water Distrib. Co. v. Summit Cnty.</i> , 2005 UT 73, 123 P.3d 437.....	14, 48
<i>Utah Labor Relations Bd. v. Broadway Shoe Repairing Co.</i> , 236 P.2d 1072 (Utah 1951).....	47
<i>Utah Labor Relations Bd. v. Utah Valley Hosp.</i> , 235 P.2d 520 (Utah 1951).....	51
<i>W. Coating, Inc. v. Gibbons &amp; Reed Co.</i> , 788 P.2d 503 (Utah 1990).....	14

<i>Waddoups v. Noorda</i> , 2013 UT 64, 321 P.3d 1108.....	40
---	----

## Constitutional Provisions

Utah Const. art. XVI, § 3 .....	22
---------------------------------	----

## Federal Statutes

### National Labor Relations Act:

National Labor Relations Act, 29 U.S.C. §§ 152, 157, 159 (2012 and Supp. 2016) .....	passim
---	--------

National Labor Relations Act, 29 U.S.C. §§ 152, 157 (1964) .....	9, 17, 18, 19
---	---------------

Taft-Hartley Act, Pub. L. No. 80-101, 61 Stat. 136, amendments, originally codified at 29 U.S.C. §§ 151 – 67 (Supp. 1 (1947)) .....	passim
---	--------

Wagner Act, Pub. L. No. 74-198, 49 Stat. 449, codified at 29 U.S.C. §§ 151 – 66 (Supp. 1 (1935)) .....	passim
---	--------

### Urban Mass Transportation Act:

Urban Mass Transportation Act, 49 U.S.C. §§ 5301 to -5340 (2017) .....	passim
---	--------

Urban Mass Transportation Act of 1964, Pub. L. 88-365, 78 Stat. 302, 49 U.S.C. § 1601 - 11 (1964) .....	passim
--	--------

## State Statutes

Utah Labor Relations Act, Utah Code §§ 34-20-1 to -14 (2017) .....	passim
---	--------

Utah Labor Relations Act, 1937 Utah Laws ch. 55 §§ 1-18 .....	2, 3, 25, 56
--	--------------

Utah Public Transit District Act, Utah Code §§ 17B-2a-801 to -826 (2017) .....	passim
---	--------

Utah Public Transit District Act, 1969 Utah Laws ch. 12 §§ 1-59 .....	passim
Utah Code §§ 34-25-1, -2 (2017) .....	45
<u>Other</u>	
73 Am. Jur. 2d Statutes § 241 (2017) .....	44
82 C.J.S. Statutes § 460.....	39, 43
House Report No. 80-245 (1947) .....	30, 43, 51, 53
Senate Report No. 80-105 (1947) .....	33, 51
<i>1947 Taft-Hartley Passage and NLRB Structural Changes,</i> NATIONAL LABOR RELATIONS BOARD, <a href="https://www.nlr.gov/who-we-are/our-history/1947-taft-hartley-passage-and-nlr-structural-changes">https://www.nlr.gov/who-we-are/our-history/1947-taft-hartley-passage-and-nlr-structural-changes</a> .....	29

## **Jurisdictional Statement**

This court has jurisdiction under section 78A-3-102(3)(j) of the Utah Code.

## **Introduction**

In 1964, Congress passed the Urban Mass Transportation Act, which allowed the federal government to provide federal funds to local public transit districts to enable those public transit districts to take over then-failing private transit systems. Pub. L. 88-365, 78 Stat. 302 (1964) (now codified at 49 U.S.C. §§ 5301 to -5340). Because federal labor laws concerning collective bargaining applied only to private employees — e.g., the employees of private transit systems — Congress required states, as a condition of receiving federal funds, to enact legislation to preserve “existing collective bargaining agreements,” and continue “collective bargaining rights” to protect “individual employees against a worsening of their positions related to employment.” 49 U.S.C. § 5333(b)(2).

In 1969, Utah enacted the Utah Public Transit District Act to satisfy the Urban Mass Transportation Act’s precondition for receiving federal funding to create a public transit district, such as UTA. 1969 Utah Laws ch. 12 § 30 (now codified at Utah Code § 17B-2a-813(1)). To satisfy the precondition, the Utah Public Transit District Act allows the “employees” of a public transit system to join labor organizations and bargain collectively. Utah Code § 17B-2a-813(2)(a).

The issue here is whether the term “employee” in the Utah Public Transit District Act includes supervisors, even though the term “employee” under



federal labor laws in 1964 did not. Put differently, the issue is whether the Utah Public Transit District Act provided more collective bargaining rights — i.e., to supervisors — than the Urban Mass Transportation Act required, even though the Utah Public Transit District Act expressly states that it was establishing only those “rights, benefits, and other employee protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, . . . as determined by the Secretary of Labor.” *Id.* § 17B-2a-813(1).

Because the Utah Public Transit District Act used the term “employee” as it was used in the Urban Mass Transportation Act, UTA supervisors do not have collective bargaining rights. The district court erred in ruling otherwise, even while recognizing the result as anomalous because UTA supervisors “may very well be the only supervisors in the United States with the right to organize and collectively bargain.” [R.287 at n.2.] This court should reverse on the ground that the Utah Public Transit District Act does not provide collective bargaining rights to supervisors because federal law did not require Utah to create such rights.

The result is no different if, as the district court ruled, the term “employee” in the Utah Public Transit District Act has the same meaning as it does in the Utah Labor Relations Act (“ULRA”). Utah enacted the ULRA in 1937. 1937 Utah Laws ch. 55 §§ 1-18 (current version at Utah Code §§ 34-20-1 to -14). The relevant language is copied almost verbatim from the National Labor Relations Act (“NLRA”). Utah Code § 34-20-2(4).

The NLRA was enacted in 1935 through legislation known as the “Wagner Act.” Pub. L. No. 74-198, 49 Stat. 449 (codified at 29 U.S.C. §§ 151-166 (Supp. 1 (1935))). It guaranteed private sector employees, but not public employees, the right to organize into unions and engage in collective bargaining. 29 U.S.C. § 152(2) (Supp. 1 (1935)).

In 1947, after a series of inconsistent decisions by the National Labor Relations Board (“NLRB”) and the courts, Congress enacted the Taft-Hartley Amendments to clarify and amend the NLRA. Pub. L. No. 80-101, 61 Stat. 136 (amendments originally codified at 29 U.S.C. §§ 151 – 167 (Supp. 1 (1947))). Relevant here, Congress clarified that supervisors were never employees for purposes of collective bargaining. 29 U.S.C. § 152(2), (3) (Supp. 1 (1947)).

Utah did not amend its ULRA definition of “employee” or “employer,” but instead kept the original language that Congress clarified had never included supervisors. In fact, the ULRA today is nearly identical to its 1937 version. *Compare* Utah Code § 34-20-2, *with* 1937 Utah Laws ch. 55 § 2.

The district court here nonetheless interpreted the term “employees” to include supervisors under the ULRA, and, therefore, under the Utah Public Transit District Act. But if the Taft-Hartley Amendments *clarified* that supervisors were never included in the definition of “employees” under the NLRA, then Utah did not need to amend the ULRA to clarify that issue because its definition was copied from the same federal law clarified to exclude supervisors.

For these reasons, whether the term “employee” in the Utah Public Transit District Act has the same definition as was required by the Urban Mass Transportation Act or has the same definition as that term has in the ULRA, the result is the same: UTA supervisors cannot bargain collectively.

**Issue:** Whether the term “employee” used in section 17B-2a-813 of the Utah Code, Utah Public Transit District Act, includes supervisors and thereby allows supervisors to bargain collectively with UTA.

**Standard of Review:** This court reviews a district court’s interpretation of a statute for correctness. *State v. Robertson*, 2017 UT 27, ¶ 14, — P.3d —.

**Preservation:** This issue is preserved. [R.277,284,287,290,1008.]

### **Determinative Provisions**

The following determinative provisions are attached at Addenda D-J:

Urban Mass Transportation Act of 1964: 49 U.S.C. § 1609 (1964)

Urban Mass Transportation Act: 49 U.S.C. § 5333 (2017)

Utah Public Transit District Act of 1969: 1969 Utah Laws ch. 12 §§ 30, 31

Utah Public Transit District Act: Utah Code § 17B-2a-813 (2017)

National Labor Relations Act: 29 U.S.C. §§ 152, 157 (1964)

National Labor Relations Act: 29 U.S.C. §§ 152, 157 (2017)

Utah Labor Relations Act: Utah Code §§ 34-20-2, -7, -8 (2017)

## Statement of the Case

### 1. Nature of the Case and Course of Proceedings

This case stems from a labor dispute between Teamsters Local 222 and UTA. The Teamsters sought to organize and represent UTA's rail operations supervisors for purposes of collective bargaining. UTA declined to recognize the union, asserting that rail operations supervisors are not "employees" for collective bargaining under the Utah Public Transit District Act.

The district court granted summary judgment in favor of the Teamsters. Because the Utah Public Transit District Act does not define the term "employees," the district court looked to Utah's labor statutes. The court ruled that UTA's rail operations supervisors are "employees" as that term is used in Utah's labor statutes, and, accordingly, could organize and collectively bargain. The district court ordered a secret ballot election of the rail operations supervisors to determine whether they wanted to unionize. The rail operations supervisors voted not to unionize. Following the election, the district court entered Final Judgment.

UTA moved for a new trial, asking the court to amend its decision regarding the interpretation of the terms "employer" and "employee" to make clear that rail operations supervisors are not employees under the Utah Public Transit District Act. The court denied UTA's motion. UTA appealed.

## 2. Statement of Facts

Teamsters is a labor organization representing employees in industries that affect commerce. [R.1.] UTA is a public transit district organized under section 17B-2a-801 of the Utah Code. [R.2.] The plaintiffs work for UTA as rail operations supervisors in the TRAX division. [R.2.]

In 2013, UTA employed approximately 38 to 41 rail operations supervisors. [R.4.] In 2014, UTA reclassified its rail operations supervisors from salaried workers to hourly workers. [R.4.] One or more of the rail operations supervisors contacted Teamsters, requesting assistance in organizing and bargaining collectively. [R.4.] Teamsters obtained authorization cards from 23 rail operations supervisors — a majority. [R.4.]

Teamsters sent a letter to UTA informing it of organizing efforts among the rail operations supervisors. [R.4.] UTA responded that it “recognize[d] that its employees have the right to self-organize and form, join, or assist labor organizations pursuant to” section 17B-2a-813(1) of the Utah Public Transit District Act. [R.9.] Teamsters requested recognition for union representation for rail operations supervisors at TRAX and offered to hire a neutral third party to conduct a card check to verify that the 23 authorization cards were from rail operations supervisors on UTA’s payroll. [R.11.]

UTA rejected Teamsters’ request for recognition. [R.13.] UTA indicated, first, that it did “not agree that the Rail Operations Supervisors at TRAX are an appropriate bargaining unit for representation,” and second, that it rejected the



card check as a sufficient procedure showing the desire for representation by a majority of the unit. [R.13.] UTA indicated that it would require that Teamsters file a petition for an election. [R.13.]

The rail operations supervisors brought this action seeking declaratory judgment that they are an appropriate bargaining unit under section 17B-2a-813(2) of the Utah Code. [R.2.] Simultaneously, Teamsters sought declaratory judgment that it was the exclusive bargaining representative for the bargaining unit of rail operations supervisors at TRAX. [R.2.] Teamsters and the rail operations supervisors asked the district court to “compel[] UTA to bargain with Teamsters Local 222 regarding the wages, salaries, hours, working conditions, and welfare, pension, and retirement of the bargaining unit.” [R.3.]

Teamsters moved for summary judgment. [R.156-70;277-94.] The district court granted the motion, ruling that UTA’s rail operations supervisors are “employees” with the right to organize and collectively bargain. [R.278, attached at Add. C.] Teamsters asked the court to authorize a card check, rather than a secret ballot election. [R.168-70.] The district court granted that request, stating that a secret ballot election was preferable but essentially was too difficult now that the Utah Labor Relations Board no longer exists. [R.290-94.]

The card check failed to produce the requisite number of cards, meaning that the rail operations supervisors had voted *not* to unionize. [R.301-02.] Teamsters filed a rule 60(b) motion, claiming several errors in the card check.

[R.304-12.] At that point, the district court “reconsider[ed] its early ruling to use a ‘card check’ method” because it had “major concerns with . . . the overall efficacy of the ‘card check’ method.” [R.436.] The district court determined that “[a] secret-ballot election is better designed to ascertain the true beliefs of the affected employees.” [R.436;440-42.]

The court granted Teamsters’ rule 60(b) motion in part, but ordered a secret ballot election to rectify any deficiencies in the card check. [R.434-42.] The court ordered the parties to “meet and confer” regarding rules for the election. [R.442.] The court issued an Order Directing Election, setting forth rules for the election. [R.651-55.]

Teamsters held the secret ballot election. [R.671-84.] The rail operations supervisors again voted not to unionize. [R.697-99.] As a result, Teamsters did not have a majority representation of the rail operations supervisors, and the rail operations supervisors were not certified as a collective bargaining unit. [R.699.] Having received the results of the election, the district court entered its final judgment. [R.697-99, attached at Add. B.]

UTA moved for a new trial on the question of whether rail operations supervisors were “employees,” the issue decided on summary judgment. [R.707-72.] The district court denied UTA’s motion for new trial. [R.1008-16, attached at Add. A.] UTA appealed. [R.1018-19.] Even though the election failed, the court’s ruling, if it stands, allows UTA supervisors to attempt to unionize in the future.

### Summary of the Argument

The district court erred when it granted summary judgment in favor of the Teamsters on the ground that UTA's rail operations supervisors are "employees" for purposes of collective bargaining under the Utah Public Transit District Act.

Since it was enacted in 1969, the Utah Public Transit District Act has required that "[t]he rights, benefits, and other employee protective conditions and remedies" of federal law apply to UTA. 1969 Utah Laws ch. 12 § 30 (now codified at Utah Code § 17B-2a-813(1)). UTA's employees have the right to self-organize; "form, join, or assist labor organizations"; and "bargain collectively through representatives of their own choosing." Utah Code § 17B-2a-813(2)(a). In exchange, UTA must "recognize and bargain exclusively with any labor organization representing a majority" of their employees. *Id.* § 17B-2a-813(2)(c)(i).

The Utah Public Transit District Act does not define the term "employees," but it refers to the federal Urban Mass Transportation Act of 1964. *Id.* § 17B-2a-813(1). That Act does not define "employees" but preserves then-existing rights under the National Labor Relations Act ("NLRA"). 49 U.S.C. § 1609(c) (1964) (current version at 49 U.S.C. § 5333(b)). The NLRA, in turn, defines "employees" for collective bargaining purposes and expressly excludes "supervisors" from the definition of "employees." 29 U.S.C. § 152(3) (2012); *id.* (1964). By extension, the Utah Public Transit District Act does not extend collective bargaining rights to "supervisors." This court can reverse on this ground alone.

The result is the same under the definition of “employees” in the Utah Labor Relations Act (“ULRA”), which the district court misinterpreted. The context of the ULRA reveals that “supervisors” were not entitled to collective bargaining protections. It was enacted in 1937, copied from the NLRA, which was enacted in 1935. However, in 1947, following a controversial decision of the U.S. Supreme Court, Congress passed the Taft-Hartley Amendments, which amended the NLRA to clarify that “supervisors” were not “employees.” Pub. L. No. 80-101, 61 Stat. 136 (1947) (amendments originally codified at 29 U.S.C. § 152(2), (3) (Supp. 1 (1947))). The House and Senate Reports make clear that Congress always intended the term “employee” to exclude supervisors.

The Utah Legislature did not amend the ULRA. It did not need to. Had the Taft-Hartley Amendments changed the meaning of the term “employee” from the one Congress gave it originally, then the failure of Utah to amend the ULRA would support the district court’s interpretation. The fact that the Taft-Hartley Amendments were clarifying reveals that Utah’s definition excluded supervisors in 1937 and thereafter. Utah case law and statutes from the period confirm that Utah never treated “supervisors” as “employees,” but as “employers.”

Under both interpretations, supervisors are not “employees” with collective bargaining rights under the Utah Public Transit Act. This court should reverse and remand for a factual determination of whether UTA’s rail operations supervisors are “supervisors” for purposes of collective bargaining.

## Argument

Under the Utah Public Transit District Act, supervisors are not afforded collective bargaining rights. This is because the Utah Public Transit District Act afforded only those collective-bargaining rights required by the Urban Mass Transportation Act. And the Urban Mass Transportation Act required states to afford only those rights then-protected by the National Labor Relations Act ("NLRA"), which did not extend collective bargaining rights to supervisors.

The result is no different if the scope of the rights afforded by the Utah Public Transit District Act mirrors the scope of the rights in the Utah Labor Relations Act ("ULRA"). The ULRA was patterned on the NLRA in the 1930s, and in 1947 Congress clarified that the NLRA never afforded collective bargaining rights to supervisors. The ULRA also never afforded such rights.

**1. The Utah Public Transit District Act Does Not Provide Supervisors the Right to Bargain Collectively Because It Provides Only Those Rights Required Under Federal Law in 1964, and Federal Law Did Not Provide Supervisors the Right to Bargain Collectively in 1964**

In 1964, Congress passed the Urban Mass Transportation Act to help communities improve their mass transit operations. Pub. L. 88-365, 78 Stat. 302 (1964) (originally codified at 49 U.S.C. §§ 1601 – 1611 (1964); current version at 49 U.S.C. §§ 5301 – 5340); see *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union*, 457 U.S. 15, 17 (1982).

At the time, many mass transit operations were private, which meant that transit employees' bargaining rights were protected under the NLRA, which



protected private, but not public, workers. *Jackson Transit*, 457 U.S. at 17.

Congress understood that after the enactment of the Urban Mass Transportation Act many transit workers would become public employees, which meant they would no longer be afforded the protections of the NLRA. *Id.*

While Congress wanted to improve transportation infrastructure, it also wanted to ensure that transit employees would be protected as they had been under the NLRA. *Id.* For that reason, Congress conditioned the receipt of federal funds to improve public transit systems upon whether states enacted legislation to preserve “existing collective bargaining agreements,” to continue “collective bargaining rights,” and to protect “individual employees against a worsening of their positions related to employment.” 49 U.S.C. § 1609(c) (1964) (current version at 49 U.S.C. § 5333(b)(2)(A)-(C)) (attached at Add. D, E).<sup>1</sup>

In 1969, to satisfy the condition for receiving federal funds, the Utah Legislature enacted the Utah Public Transit District Act. 1969 Utah Laws ch. 12 §§ 1-59 (current version at Utah Code §§ 17B-2a-801 to -826). The Utah Public Transit District Act confirms that the legislature protected only those rights that the Urban Mass Transportation Act required Utah to protect: “The rights, benefits, and other employee protective conditions and remedies of Section 13(c)

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<sup>1</sup> The relevant section of the Urban Mass Transportation Act is substantially the same as it was in 1964. *Compare* 49 U.S.C. § 1609(c) (1964), *with* 49 U.S.C. § 5333(b) (2012 & Supp. 2016). For convenience, this brief cites the current version unless noted.

of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of Labor, shall apply to the establishment and operation by the district of a public transit service or system.” 1969 Utah Laws ch. 12 §§ 30, 31 (current version at § 17B-2a-813(1)) (attached at Add. F, G).<sup>2</sup>

The Utah Public Transit District Act explains the rights and responsibilities of UTA and its employees. UTA is required to “recognize and bargain exclusively with any labor organization representing a majority of the district’s employees in an appropriate unit.” Utah Code § 17B-2a-813(2)(c)(i). In turn, “[e]mployees of a public transit system established and operated by a public transit district have the right to: (i) self-organization; (ii) form, join, or assist labor organizations; and (iii) bargain collectively through representatives of their own choosing.” *Id.* § 17B-2a-813(2)(a).

When UTA’s rail operations supervisors attempted to organize, UTA refused to recognize them as “employees,” asserting that “supervisors” are not “employees” allowed to bargain collectively under the NLRA and therefore are not “employees” allowed to bargain collectively under the Utah Public Transit District Act. The district court disagreed. As described below, the district court erred.

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<sup>2</sup> The relevant sections of the Utah Public Transit District Act are substantially the same today as they were in 1969. *Compare* 1969 Utah Laws ch. 12 §§ 30, 31, *with* Utah Code § 17B-2a-813 (2017). For convenience, this brief cites the current version unless noted.

### 1.1 The Court's Objective in Interpreting a Statute Is to Give Effect to the Legislature's Intent

This court's objective in interpreting a statute "is to give effect to the legislature's intent." *Carranza v. United States*, 2011 UT 80, ¶ 8, 267 P.3d 912 (internal quotation marks omitted). To discern legislative intent, the court looks first to the plain meaning of the language the legislature used. *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 9, 248 P.3d 465. And in determining the plain meaning, the court looks to how the language is used in context, not in isolation. *Id.* ¶¶ 9, 12. The relevant context includes both "the structure and language of the statutory scheme." *Id.* ¶ 12.

When interpreting Utah statutes modeled on federal statutes, "[t]his Court has previously adopted federal interpretations for sections of the Utah Code which are identical to or copied after federal acts." *W. Coating, Inc. v. Gibbons & Reed Co.*, 788 P.2d 503, 505-06 (Utah 1990); *see also Kell v. State*, 2012 UT 25, ¶¶ 27-28, 285 P.3d 1133 (looking to federal Antiterrorism and Effective Death Penalty Act to interpret Utah Post-Conviction Remedies Act); *Summit Water Distrib. Co. v. Summit Cnty.*, 2005 UT 73, ¶¶ 21-24, 123 P.3d 437 (looking to federal Antitrust Act to interpret Utah Antitrust Act).

This is because "[w]hen the legislature 'borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.'" *Maxfield v.*

*Herbert*, 2012 UT 44, ¶ 31, 284 P.3d 647 (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952)). “In other words, when a word or phrase is ‘transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.’” *Id.* (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)).

Based on these principles and for the reasons described below, this court should hold that when the Utah Legislature used the phrase “rights, benefits, and other employee protective conditions and remedies” in the Utah Public Transit District Act, it referred to those same rights, benefits, and employee protective conditions and remedies required by the Urban Mass Transportation Act, which, in turn, are those rights, benefits, and employee protective conditions and remedies afforded under the NLRA in 1964. Because the NLRA in 1964 expressly excluded “supervisors” as “employees” for purposes of collective bargaining, the Utah Public Transit District Act did not extend collective bargaining rights to supervisors. UTA’s rail operations supervisors therefore do not have rights to collectively bargain under the Utah Public Transit District Act.

## **1.2 The Utah Public Transit District Act Protected Only Those Rights Recognized by the NLRA in 1964**

The Utah Public Transit District Act states that, “[t]he rights, benefits, and other *employee* protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, 49 U.S.C. Sec. 5333(b), as determined by the Secretary of Labor, apply to a public transit district’s establishment and

operation of a public transit service or system.” Utah Code § 17B-2a-813(1) (emphasis added). The Urban Mass Transportation Act states that it is “a condition of financial assistance” that “the interests of *employees* affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable,” including “the preservation of rights, privileges, and benefits . . . under existing collective bargaining agreements or otherwise,” “the continuation of collective bargaining rights,” and “the protection of individual employees against a worsening of their positions related to employment.” 49 U.S.C. § 5333(b)(1), (2)(A)-(C) (emphasis added).

Case law makes clear that the purpose of the Urban Mass Transportation Act was to require only the continuation of those employees’ *then-existing* collective bargaining rights. The purpose was to entice “a state or local government [to] make arrangements to preserve transit workers’ *existing* collective-bargaining rights.” *Jackson Transit*, 457 U.S. at 16 (emphasis added).

As one court explained, “Congress meant to require the *continuation* of collective bargaining rights.” *Amalgamated Transit Union Int’l v. Donovan*, 767 F.2d 939, 947 (D.C. Cir. 1985) (emphasis added). The Urban Mass Transportation Act “was designed to preserve the status quo such that, where workers enjoyed collective bargaining rights prior to a state’s acquisition of a transit system with federal money, those workers were to be assured of a continuance of collective bargaining. Maintaining the status quo usually meant substantially preserving

collective bargaining rights that had been established by federal labor policy.” *Id.* at 948 (internal quotation marks and citation omitted).

Because the Urban Mass Transportation Act required states to preserve “existing collective bargaining rights,” and because the Utah Public Transit District Act intended to afford the “rights, benefits, and other employee protective conditions and remedies” of the Urban Mass Transportation Act, the dispositive issue here is whether supervisors had “existing” rights to bargain collectively in 1964 when Congress enacted the Urban Mass Transportation Act. Supervisors did not have that right.

### **1.3 Supervisors Did Not Have the Right to Bargain Collectively Under the NLRA in 1964**

Under federal law, collective bargaining rights are — and were, in 1964 — governed by the NLRA. 29 U.S.C. §§ 151 – 169 (2012).<sup>3</sup> The NLRA regulates the collective bargaining rights and responsibilities of employers and employees who “affect[] commerce.” *Id.* § 160(a); see *NLRB v. Carteret Towing Co.*, 307 F.2d 835, 387 (4th Cir. 1962) (“Congress intended to have the National Labor Relations Act extend to all employers who engage in commerce.”).

Given the breadth of the term “commerce,” the NLRA reaches nearly all American workers except public employees. And the rights afforded by the

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<sup>3</sup> The relevant sections of the NLRA are substantially the same, and retain the same numbering, today as in 1964. Compare 29 U.S.C. §§ 151 – 169 (2012), with 29 U.S.C. §§ 151 – 168 (1964). For convenience, this brief cites the current version unless noted.

NLRA, as applied to public transit employees via the Urban Mass Transportation Act, govern here. *E.g. Burke v. Utah Transit Auth.*, 462 F.3d 1253, 1259-60 (10th Cir. 2006) (turning to decisions of the NLRB to determine whether bus and light rail employees could be consolidated in one “appropriate bargaining unit” under the Urban Mass Transportation Act and Utah Public Transit District Act). The ULRA protects those few Utah private workers who do not engage in commerce and therefore are not protected by the NLRA, and the Utah Public Transit District Act protects certain public employees.

Under the NLRA, “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.” 29 U.S.C. § 157.

Critically, both in 1964 and today, “[t]he term ‘employee’ . . . shall not include . . . any individual employed as a supervisor.” *Id.* § 152(3). The full provision states:

*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, as amended from time to time, or by any other person who is not an employer as herein defined.

29 U.S.C. § 152(3) (emphases added) (1964 version attached at Add. H; current version attached at Add. I).<sup>4</sup>

That same section defines “supervisors” as including “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” *Id.* § 152(11).

When the Urban Mass Transportation Act required states to protect “the interest of employees,” it did not require states to create new collective bargaining rights for supervisors. Thus, the Utah Public Transit District Act does not extend to supervisors the right to bargain collectively. This court should reverse and remand for a factual determination of whether UTA’s rail operations supervisors are supervisors under the definition provided by under the NLRA, and, therefore, under the Utah Public Transit District Act.

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<sup>4</sup> The history of this provision will be discussed extensively below.



## 2. The Result Is the Same if the Utah Public Transit District Act Adopted the Definition of the ULRA

The district court did not rely on the Urban Mass Transportation Act or the NLRA. Instead, the district court turned to the ULRA for guidance as to the meaning of the word “employees.” [R.288-90.]<sup>5</sup> But under the ULRA, the result is the same. Utah Code §§ 34-20-1 to -14 (2017) (attached at Add. J.)

The rights and roles of “employees” and “employers” in collective bargaining are delineated in sections 34-20-7 and 34-20-8. Section 34-20-2 defines both “employee” and “employer” for purposes of that chapter. Section 34-20-2(4)(a) states that “[e]mployee’ includes any employee unless this chapter explicitly states otherwise.” The term expressly excludes “an individual employed as an agricultural laborer, or in the domestic service of a family or person at his home, or an individual employed by his parent or spouse.” *Id.* § 34-20-2(4)(b). An “[e]mployer’ includes a person acting in the interest of an employer, directly or indirectly.” *Id.* § 34-20-2(5).

The district court asked whether supervisors are “employees” or “employers” for purposes of Utah’s collective bargaining laws. Although UTA’s “rail operations supervisors” are the only supervisors at issue here, the district court’s ruling would extend to *all* supervisors, including upper management.

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<sup>5</sup> The district court turned first to dictionary definitions. [R.289.] UTA does not argue that a dictionary definition of “employee” would necessarily exclude “supervisors.” The U.S. Supreme Court has said as much. *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 711 (2001).

*NLRB v. Bell Aerospace Co. Div. of Textron Inc.*, 416 U.S. 267, 281 (1974) (discussing NLRA's potential application to vice presidents).

In what follows, UTA explains the history of state and federal labor law, both of which lead to the conclusion that Utah never intended to ascribe collective bargaining rights to supervisors. Although the district court correctly recited the historical events, it failed to recognize their meaning. UTA then turns to the principles of statutory construction that the district court misapplied.

## **2.1 Utah Never Considered Supervisors to Be Employees Under Labor Laws**

This court's "role in interpreting [a] statute is to give its words the meaning they would have had in the minds of the general public at the time of enactment." *State v. Bagnes*, 2014 UT 4, ¶ 16, 322 P.3d 719. Courts should consider "the surrounding circumstances existing at the time of [the statute's] passage" to determine a term's meaning. *Chapman v. Handley*, 24 P. 673, 674 (Utah 1890).

As described below, when Utah adopted its collective bargaining laws in 1937, it did not intend "supervisors" to be included in the term "employees." This is confirmed by the fact that in 1947 Congress clarified that supervisors were never employees. It is also confirmed by contemporaneous Utah law and the context of the terms "employee" and "employer" in the ULRA.

To understand these points, it is important to understand the evolution of Utah and federal labor law, from ratification of the Utah Constitution through 1947, when Congress passed the Taft-Hartley Amendments.

### 2.1.1 The Early Years of Utah Labor Law

The Utah Constitution states that “[t]he Legislature shall prohibit . . . [t]he political and commercial control of employees.” Utah Const. art. XVI, § 3. Shortly after statehood, Utah enacted labor laws. One such law stated that labor unions were not unlawful for working men or women: “It shall not be unlawful for working men and women to organize themselves into, or carry on, labor unions for the purpose of lessening the hours of labor, increasing the wages, bettering the conditions of the members of such organization; or carrying out their legitimate purposes as freely as they could do if acting singly.” Utah Comp. Laws § 3651 (1917) (attached at Add. K).

At the time, Utah law distinguished two types of workers: “vice-principals” and “fellow servants.” *Id.* §§ 3682, 3683. “Vice-principals” included “[a]ll persons engaged in the service of any person, firm, or corporation, . . . who are intrusted by such person, firm, or corporation as employer with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employe[e] in the performance of any duties of such employe[e].” *Id.* § 3682. In contrast, “fellow servants” included “[a]ll persons who are engaged in the service of such employer, and . . . [not] intrusted by such employer with any superintendence or control over his fellow employe[e]s.” *Id.* § 3683.

Early Utah case law discussing workers compensation held that “one cannot at the same time be employer and employ[ee] or master and servant.”

*Rockefeller v. Indus. Comm'n of Utah*, 197 P. 1038, 1042 (Utah 1921). This was true even when a person who would be considered an employer (or vice-principal) was performing a task that might be considered the task of an employee (or fellow servant). *Southern Pac. Co. v. Schoer*, 114 F. 466, 469 (8th Cir. 1902) (discussing Utah law). Utah law provided that “employee[s] who are intrusted by their employers with the authority to superintend other employee[s] of the same master, or with the authority to direct any other employee[e] in the discharge of any of his duties, are vice principals of such employer.” *Id.*

### 2.1.2 The NLRA, federal Wagner Act, of 1935

In 1935, Congress enacted the NLRA, also known as the Wagner Act. Pub. L. No. 74-198, 49 Stat. 449 (originally codified at 29 U.S.C. §§ 151-166 (Supp. 1 (1935)) (attached at Add. L)).<sup>6</sup> The NLRA created the National Labor Relations Board (“NLRB”) and set forth its policy — i.e., to address unequal bargaining power between employees and employers:

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce . . . . Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury,

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<sup>6</sup> For clarity, the NLRA refers to one Act over time. Because this brief will discuss two pieces of major legislation related to it, the brief at times refers to the Wagner Act when discussing the 1935 legislation (Add. L) and the Taft-Hartley Amendments when referring to the 1947 legislation (Add. P). Both pieces of legislation, however, are part of the NLRA.

impairment, or interruption, and promotes the flow of commerce by . . . restoring equality of bargaining power between employers and employees.

§ 1, 49 Stat. at 449. The NLRA defined "employee" and "employer" as follows:

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act 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.

§ 2, 49 Stat. at 450.

At that time, the NLRB generally excluded supervisors and foremen from bargaining units. The NLRB presumed, without expressly stating, that supervisors did not fall within the definition of "employees." For example, in *In re United States Stamping Co.*, the NLRB found that "[t]he foremen and assistant foremen are paid respectively on a salary and an hourly basis and ought also to be excluded as having supervisory authority and duties that relate them more directly to the management than to the workers." 1 N.L.R.B. 123, 127 (1936), 1936

WL 6759 (attached at Add. M). A series of other decisions routinely excluded supervisors as part of the "employee" bargaining unit. *E.g.*, *In re Saxon Mills*, 1 N.L.R.B. 153, 156 (1936), 1936 WL 6762 (certifying bargaining unit exclusive of supervisors); *In re R.C.A. Manufacturing Co., Inc.*, 2 N.L.R.B. 159, 165 (1936), 1936 WL 7784 (same); *In re Goodyear Tire & Rubber Co. of Cal.*, 3 N.L.R.B. 431, 439 (1937), 1937 WL 7333 (same).

### **2.1.3 The ULRA, Utah Little Wagner Act, of 1937**

In this context of state and federal law, Utah enacted the ULRA in 1937, often called the "Little Wagner Act." 1937 Utah Laws ch. 55 §§ 1-18 (current version at Utah Code §§ 34-20-1 to -14)) (attached at Add. N). Utah adopted verbatim the NLRA's declaration of policy, except making appropriate changes such replacing "interstate" with "intrastate." *Id.* § 2. Utah also adopted verbatim the NLRA's somewhat vague definitions of "employer" and "employee." *Id.* § 3; *see Se. Furniture Co. v. Indus. Comm'n*, 111 P.2d 153, 153-54 (Utah 1941).

### **2.1.4 The NLRB Interprets the NLRA Inconsistently Between 1942 and 1947**

In 1942, the NLRB addressed squarely whether "a unit composed entirely of supervisory employees was a unit appropriate for the purposes of collective bargaining." *See In re Md. Drydock Co.*, 49 N.L.R.B. 733, 737 (1943), 1943 WL 10134 (explaining 1942 decision). Over the next few years, the NLRB issued a series of inconsistent decisions on this point.

At first, the NLRB recognized the right of foremen to organize bargaining units, later refused to approve foremen organization units, and still later recognized their right to bargain collectively. See *Bethlehem Steel Co. v. N.Y. State Labor Relations Bd.*, 330 U.S. 767, 770 (1947) (describing inconsistent decisions); *N.L.R.B. v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 277 (1974) (stating related decisions from this period “manifested a progressive uncertainty”).

#### **2.1.5 The U.S. Supreme Court Issues *Packard Motor Car Company v. NLRB* in March 1947**

In March 1947, the U.S. Supreme Court issued *Packard Motor Car Co. v. NLRB*, the case that spurred Congress to clarify its definition of “employees” in the NLRA. 330 U.S. 485 (1947) (attached at Add. O). Over 1,000 foremen of the Packard attempted to organize. *Id.* at 487. Packard objected on the ground that the foremen were not “employees,” but were “employers” because they “act[] in the interest of an employer.” *Id.* at 488 (citing 49 Stat. 450). The NLRB disagreed, holding that Packard’s “foremen” were “employees” under the NLRA. *Id.*

The court affirmed, 5-4, holding that the NLRB had the authority to make this decision. *Id.* at 488-89. The court did not condone the policy of allowing foremen to bargain collectively, but held only that the NLRA did not expressly preclude it. *Id.* at 489. The court recognized its “only function is to determine whether the order of the Board is authorized by the statute.” *Id.* at 488. The court explained that “it is for Congress to create exceptions or qualifications at odds with its plain terms.” *Id.* at 490. The court would not look into legislative history

to determine whether “exclusion of foremen was intended,” because it concluded that the NLRA was not ambiguous. *Id.* at 492.

The court acknowledged Packard’s argument that “unionization of foremen is from many points bad industrial policy,” but declined to rule on the merits of that issue, concluding that “[h]owever we might appraise the force of these arguments as a policy matter, we are not authorized to base decision of a question of law upon them. They concern the wisdom of the legislation; they cannot alter the meaning of otherwise plain provisions.” *Id.* at 493.

The court recognized the inherent inconsistency in allowing management to unionize, but did not specify where it drew the line between workers who were “employees” within the meaning of the NLRA and workers who were “employers” within the meaning of the NLRA. In a footnote, it commented: “If a union of vice presidents, presidents or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporate officers elected by the board of directors.” *Id.* at 490 n.2.

Four justices dissented. Justice Douglas authored a strongly worded dissenting opinion: “For if foremen are ‘employees’ within the meaning of the [NLRA], so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents — indeed, all who are on the payroll of the company, including the president. . . . But once vice-presidents, managers, superintendents,



foremen all are unionized, management and labor will become more of a solid phalanx than separate factions in warring camps." *Id.* at 494 (Douglas, J., dissenting).

Justice Douglas also noted that, although the statute said that "employee" included "any employee," the term was "used in opposition to the term 'employer,'" which was "defined to include 'any person acting in the interest of an employer.'" The term 'employer' thus includes some employees." *Id.* at 495 (internal citation omitted). He could "find no evidence that one personnel group may be both employers and employees within the meaning of the Act." *Id.*

Speaking to legislative history, Justice Douglas wrote that there was "no trace of Congressional concern with the problems of supervisory personnel. The reports and debates are barren of any reference to them." *Id.* at 498. He noted that three other federal Acts expressly *included* "subordinate officials" in the definition of "employee," which suggested, along with the legislative history of the NLRA, that Congress did not intend to *include* supervisors as employees. *Id.* at 499; *see Bell Aerospace*, 416 U.S. at 279 (discussing same).

The Congressional response to *Packard*, described below, demonstrates that Congress agreed with Justice Douglas — not that Congress had mistakenly extended collective bargaining rights to supervisors and needed to fix that problem, but that Congress never extended collective bargaining rights to supervisors under the NLRA.

### 2.1.6 The Taft-Hartley Amendments Are Enacted in June 1947

*Packard* issued March 10, 1947, and Congress immediately moved to clarify the NLRA. In April, Representative Hartley introduced a bill in the House of Representatives, followed by Senator Taft's bill in the Senate in May. *1947 Taft-Hartley Passage and NLRB Structural Changes*, NATIONAL LABOR RELATIONS BOARD, <https://www.nlr.gov/who-we-are/our-history/1947-taft-hartley-passage-and-nlr-structural-changes> (last visited August 30, 2017) [hereinafter *1947 Taft-Hartley Passage and NLRB Structural Changes*].

Collectively, the amendments were known as the Taft-Hartley Act. Pub. L. No. 80-101, 61 Stat. 136 (amendments originally codified at 29 U.S.C. §§ 151 – 67 (Supp. 1 (1947))) (attached at Add. P). The Taft-Hartley Act made the following clarifications to the definitions of “employer” and “employee”:

(2) The term “employer” includes any person *acting as an agent of an employer, directly or indirectly*, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term “employee” shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act 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, as amended from time to time, or by any other person who is not an employer as herein defined.

§ 2, 61 Stat. at 137-38 (emphases added).

Representative Hartley's House Report and Senator Taft's Senate Report are instructive. The U.S. Supreme Court subsequently relied on them in generating its post-Taft-Hartley jurisprudence: "Significantly, both the House Report and the Senate Report voiced concern over the Board's broad reading of the term 'employee' to include those clearly within the managerial hierarchy." *Bell Aerospace*, 416 U.S. at 283-284.

As described below, each Report explains that Congress was not changing, but was clarifying, the definition of "employees" in the NLRA.

#### **2.1.6.1 Representative Hartley's House Report**

Representative Hartley's House Report outlines why it was necessary to clarify the NLRA. H. R. Rep. No. 80-245 (1947) (pp. 292-309 attached at Add. Q) [full document at R.821-83].

First, and most generally, Representative Hartley expressed frustration that the NLRB had misinterpreted the Act to be overly friendly to employers and not adequately friendly to employees. He wrote that the NLRB "appears to have assumed that when Congress said it wished to protect the rights of 'workers' it

mean to protect labor organizations . . . , even when the labor organizations exploited the workers or engaged in other activities that were inconsistent with the interests of workers." *Id.* at 302. He further explained that "[t]o the Board, the interests of the unions, not those of the workers, seem to have been of paramount importance. The Board has had little regard for the rights of employees, and its misconception of its duties doubtless has increased industrial strife." *Id.*

Second, the bill clarified that the term "employee" does not include supervisors. *Id.* at 304. Representative Hartley explained the Board's errors in interpreting the Act: "[T]he bill forbids the Board to regard as employees foremen and other representatives of management who act for employers in their dealings with employees and their unions." *Id.* at 299. This was necessary, he wrote, because "so-called independent unions of foremen are not in fact independent, but . . . the unions of men the foremen supervise actually control them. The evidence further shows that management must have in the plants agents who are entirely loyal, just as representatives of the workers must be undivided in their loyalty to the workers." *Id.*

Finally, the bill amended the definition of "employer," changing the phrase "any person acting in the interest of an employer" to "any person acting as an agent of an employer." *Id.* at 302 (emphasis in original). Representative Hartley explained that, under the old language, "the Board frequently 'imputed' to employers anything that anyone connected with an employer, no matter how

remotely, said or did, notwithstanding that the employer had not authorized what was said or done, and in many cases even had prohibited it. By such rulings, the Board often was able to punish employers for things they did not do, did not authorize, and had tried to prevent." *Id.* As a result of the new definition, only when a person was acting as "agent" of the employer would his actions be ascribed to the employer. Representative Hartley explained that the amendment would "make[] the ordinary rules of the law of agency equally applicable to employers and to unions." *Id.*

Crucially, Representative Hartley explained that the Board had misinterpreted the original Act: "When Congress passed the Labor Act, we were concerned, as we said in its preamble, with the welfare of 'workers' and 'wage earners,' not of the boss. It was to protect workers and their unions against foremen, not to unionize foremen, that Congress passed the act." *Id.* at 304. In short, "unionizing supervisors under the Labor Act is inconsistent with the purpose of the act." *Id.* at 305. He explained the reason that foremen should not have the same protections as other employees, citing the same reasons given by Justice Douglas. *Id.* at 307-08.

In the end, Representative Hartley confirmed that: "by this bill, Congress *makes clear once more what it tried to make clear* when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer.'" *Id.* at 308 (emphasis added).

### 2.1.6.2 Senator Taft's Senate Report

In the Senate Report, Senator Taft described the need for clarifying legislation as "urgent." S. Rep. No. 80-105, at 408 (1947) (pp. 407-11 attached at Add. R) [full document at R.885-982]. He explained the urgency as follows: "A recent development which probably more than any other single factor has upset any real balance of power in the collective-bargaining process has been the successful efforts of labor organizations to invoke the NLRA for covering supervisory personnel, traditionally regarded as part of management, into organizations composed of or subservient to the unions of the very men they were hired to supervise." *Id.* at 409.

He explained that "[i]t was not until 1945, after several changes in position, that the National Labor Relations Board itself by divided vote finally decided that supervisory employees were covered by the [NLRA]. This construction was recently upheld by the Supreme Court in the *Packard Motor Car* case (decided March 10, 1947.)" *Id.* at 409-10. Noting that the court had not upheld the policy, only the Board's ability to interpret the word "employee," he stated: "This means, as Mr. Justice Douglas pointed out in his dissenting opinion – and as Board counsel conceded in argument – that unless Congress amends the act in this respect its process can be used to unionize even vice presidents since they are not specifically exempted from the category of 'employees.'" *Id.* at 410.

Senator Taft wrote: "In recommending the adoption of this amendment, the committee is trying to make clear what Congress attempted to demonstrate last year

when it adopted the Case bill.<sup>7</sup> By drawing a more definite line between management and labor we believe the proposed language has fully met some of the technical criticisms to the corresponding section referred to in the President's veto of that bill. *It should be noted that all that the bill does is to leave foremen in the same position in which they were until the Labor Board reversed the position it had originally taken in 1943.*" *Id.* at 411. He summarized the change by saying "[i]t eliminates the genuine supervisor from the coverage of the act as an employee and *makes it clear* that he should be deemed a part of management." *Id.* In other words, the clarification was necessary to avoid the absurd conclusion that vice presidents could have the protections of law when they collectively bargain.

#### 2.1.6.3 Veto and Override

The House passed Representative Hartley's bill 308-107, and the Senate passed the Taft bill, 68-24. *1947 Taft-Hartley Passage and NLRB Structural Changes.*

President Truman vetoed it. 93 Cong. Rec. 7500-03 (1947). Within days, the House overrode the veto 331-83, and the Senate overrode the veto 68-25, which was six votes more than needed. *Presidential Vetoes, 1789-1988*, S. Pub. 102-12, at 378-79 (1992). The bill became law June 23, 1947, just three-and-a-half months after *Packard*. *Id.*; Pub. L. No. 80-101, 136 (1947).

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<sup>7</sup> The Case bill was introduced in Congress in 1946 to amend the NLRA, including to exclude supervisors as statutory employees. *See Int'l Bros. of Elec. Workers v. NLRB*, 487 F.2d 1143, 1166 n.25 (describing history of Case bill). It passed both houses of Congress, but was vetoed by President Truman. *Id.*

Because Congress clarified that the NLRA never defined “employees” to include supervisors, Utah did not amend the ULRA. Congress had clarified that *Packard* was inconsistent with what Congress intended in 1935, the language Utah copied in 1937. Utah did not need to amend its language because no Utah court had erroneously interpreted the ULRA and, as explained above, at the time the ULRA was enacted, the NLRB decisions had generally excluded supervisors as part of bargaining units. *E.g. In re U.S. Stamping Co.*, 1 NLRB at 127.

The district court here disagreed. The court rejected the history and concluded that because *Packard* had said the language of the NLRA was unambiguous, the ULRA is also unambiguous and therefore the legislative history was irrelevant. [R.1013-14.] In what follows, UTA explains how the district court erred in assuming a 1947 U.S. Supreme Court decision reflects what the Utah Legislature intended in 1937.

## **2.2 Because the Taft-Hartley Amendment Clarified the NLRA, Its Definition of “Employees” Is the Same Definition in the ULRA**

The district court erred in treating the Taft-Hartley Amendments as legislative history, rather than subsequent legislation. [R.1012.] This is an important distinction, one made clear by the U.S. Supreme Court, which has consistently held that subsequent legislation is entitled to great weight in statutory construction, even where legislative history is not.

The district court also erred when it concluded that, because current Utah law does not recognize clarifying amendments, *federal* clarifying amendments in



1947 also cannot be recognized. [R.1009-10.] But federal law does recognize clarifying amendments as retroactive, particularly when the U.S. Supreme Court says a word is unambiguous, as *Packard* did here, but Congress concludes the court erred and amends the legislation to make its intention more clear. Because under federal law clarifying amendments apply retroactively, the 1947 Taft-Hartley Amendments retroactively apply to the NLRA – and, in turn, confirm that the ULRA does not provide to supervisors the right to bargain collectively.

Finally, the district court failed to recognize that contemporary Utah law shows that, in 1937, Utah – like the NLRB at that time – defined “supervisors” to be “employers” rather than “employees.” UTA addresses each error in turn.

#### **2.2.1 Subsequent Legislation Declaring the Intent of an Earlier Statute is Entitled to Great Weight in Statutory Construction**

First, the district court rejected the importance of the Taft-Hartley Amendments, stating that it had “serious concerns about whether one Congress can usefully or accurately describe an earlier Congress’s intent in passing a previous statute, concerns that are shared by the United States Supreme Court.” [R.1012.] Here, the district court confused postenactment legislative history with subsequent legislation. Although postenactment legislative history is of dubious value, it is well settled under federal law that “[s]ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction.” *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 380-81 (1969).

The U.S. Supreme Court expressly addressed the distinction: “subsequent legislation” refers to legislation that was passed by Congress to clarify previous legislation. *Consumer Products Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 117-18 & n.13 (1980). It does not refer to “legislative history” before the original act was passed or to legislative commentary after-the-fact. *Id.* This is because, “[w]ith respect to subsequent *legislation*, . . . Congress has proceeded formally through the legislative process. A mere statement in a conference report of such legislation as to what the Committee believes an earlier statute meant is obviously less weighty.” *Id.* (emphasis in original).

The district court cited two cases that illustrate the point: *GTE* and *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2011). *Bruesewitz* confirms that “[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation.” 562 U.S. at 242. Justice Scalia called it a “contradiction in terms” referring to statements made in subsequent debates, not to *subsequent legislation*. *Id.* The cases cited by *Bruesewitz* show the distinction. In *United States v. Wrightwood Dairy Co.*, the court refused to rely on “[t]he opinions of some members of the Senate, conflicting with the explicit statements of the meaning of the statutory language made by the Committee reports and members of the Committees.” 315 U.S. 110, 125 (1942). And in *United States v. United Mine Workers of America*, the court refused to rely on “remarks” made during Senate debates about a bill that did not pass. 330 U.S. 258, 281-82 (1947).

In contrast, *Red Lion* refers to *subsequent legislation*. In *Red Lion*, the court considered a statute amended by Congress to make clear that it agreed with an agency interpretation of a statute enacted thirty years earlier. 395 U.S. at 380. The court afforded the 1959 amendment “great weight in statutory construction,” *id.* at 381, holding that it made clear what Congress had meant in the 1927 statute. *Id.* The cases cited in *Red Lion* illustrate the operative distinction.

The first case is *Federal Housing Administration v. Darlington, Inc.*, 358 U.S. 84 (1958). In *Darlington*, the court considered a 1954 amendment to a 1947 law. 358 U.S. at 85-86. The court said, “[s]ubsequent legislation which declares the intent of an earlier law is not, of course, conclusive in determining what the previous Congress meant. But the later law is entitled to weight when it comes to the problem of construction.” *Id.* at 90.

The second case is *Glidden Co. v. Zdanok*, 370 U.S. 530 (1962). In *Glidden*, the court built on that principle, saying the *Darlington* maxim is “[e]specially . . . so when the Congress has been stimulated by decisions of this Court to investigate the historical materials involved and has drawn from them a contrary conclusion.” 370 U.S. at 541. The court also identified its source of “subsequent legislation which declares the intent of an earlier law”: “[an] examination of the House and Senate Reports.” *Id.* (internal quotation marks omitted).

Another case also illustrates the point. In *United States v. Hutcheson*, the court relied on the House and Senate Reports and concluded that Congress

passed the Norris-LaGuardia Act “to restore the broad purpose which Congress thought it had formulated in the Clayton Act but which was frustrated, so Congress believed, by unduly restrictive judicial construction.” 312 U.S. 219, 235-36 (1941). Thus, the subsequent legislation demonstrated that “[t]he Norris-LaGuardia Act reasserted the original purpose of the Clayton Act.” *Id.* at 236.<sup>8</sup>

The district court erred in comparing this case to *GTE* and *Bruesewitz*, rather than *Red Lion*. The Taft-Hartley Amendments were clear in their goal to negate a judicial interpretation and clarify what Congress meant all along. The House and Senate Reports make that plain. *Bell Aerospace*, 416 U.S. at 278-81.

#### **2.2.2 Whether the Taft-Hartley Amendments Are Clarifying and Apply Retroactively Is Governed by Federal Law**

The district court also erred when it applied current Utah law to reject any import for clarifying amendments under federal law in 1947. Subsequent legislation, by definition, includes clarifying amendments, which serve to “declar[e] the intent of an earlier statute.” *Red Lion*, 395 U.S. at 380-81. “An amendment of a statute may be evidence of the legislative intent underlying the earlier form of the statute. Such an amendment therefore may be used to divine the legislative intent with regard to the original law.” 82 C.J.S. *Statutes* § 460 (footnotes omitted); see also *id.* §§ 509-12.

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<sup>8</sup> None of these cases consider whether the makeup of Congress had changed. The district court erred in doing so. [R.1013-14.] Indeed, in *Red Lion*, a 1959 Congress clarified a 1927 statute. But even if the makeup of Congress were important, Congress overrode a presidential veto with Taft-Hartley.

**2.2.2.1 Under Federal Law, Clarifying Amendments  
Make What Was Intended All Along  
Unmistakably Clear**

The district court incorrectly concluded that because this court does not recognize *state* clarifying amendments, *federal* clarifying amendments are not indicative of a statute's meaning. [R.1009.] UTA acknowledges state labor law, rather than federal labor law, controls. *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union*, 457 U.S. 15, 27-29 (1982). But that state law is copied from federal law, which makes the interpretation of federal law dispositive.

UTA also acknowledges that *in Utah*, clarifying amendments are not controlling. *Waddoups v. Noorda*, 2013 UT 64, ¶ 9, 321 P.3d 1108. But this is irrelevant. The principle is based in state law, which by statute articulates a general presumption against retroactivity. *Gressman v. State*, 2013 UT 63, ¶ 12, 323 P.3d 998 (citing Utah Code § 68-3-3).

Under federal law, a clarifying amendment *is* meaningful and applies retroactively. *United States v. Montgomery Cty.*, 761 F.2d 998, 1003 (4th Cir. 1985).<sup>9</sup> The Fourth Circuit explained the role of clarifying amendments in *United States v. Montgomery County*. The Fourth Circuit was asked whether the National Institute of Health ("NIH") had to pay a county-imposed "transient tax" when its outpatients spent two to three days in various hotels or motels. 761 F.2d at 999.

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<sup>9</sup> See also *Holt v. State Farm Fire & Cas. Co.*, 627 F.3d 188, 194-95 (5th Cir. 2010); *Dobbs v. Anthem Blue Cross & Blue Shield*, 600 F.3d 1275, 1282 (10th Cir. 2010); *Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1283 (11th Cir. 1999); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 272-80 (1994).

The county code defined a “transient” as “a person ‘who . . . obtains sleeping accommodations’ for seven days or less.” *Id.* at 999 & 1001 n.8 (omission in original). The NIH asserted that it did not have to pay the tax because it was not a “person.” *Id.* at 999-1000. The district court agreed with the NIH. *Id.* at 1000.

Immediately thereafter, the county amended the statute to replace “person” with “human being,” making the tax due from the outpatients themselves, not the NIH. *Id.* at 1002. On appeal, the NIH argued that the amendment proved that the prior language did not reach the transactions in question. *Id.* at 1003.

The Fourth Circuit rejected the NIH’s argument, writing: “changes in statutory language need not *ipso facto* constitute a change in meaning or effect. Statutes may be passed purely to make what was intended all along even more unmistakably clear. That is the situation here.” *Id.* The court elaborated, as the district court in the instant case cited, “It is true, of course, that a statute which has all along unambiguously proclaimed WHITE cannot retrospectively be made to assert BLACK just because the legislature, at a later date, says so.” *Id.*

But the Fourth Circuit was unconcerned with this, saying, “[h]owever, the . . . language with which we here are confronted . . . is arguably only ambiguous – and not persuasively so at that.” *Id.* The Fourth Circuit relied on the fact that the county enacted “within months of the district court’s adverse decision, emergency legislation to guard against what it no doubt regarded as a

judicial misperception by the district judge of its intent in the past, and to insure that, from and after the passage of the [amendment], that erroneous possibility could not even arguably arise." *Id.*

The same is true here. Like the legislation described in *Montgomery County*, the Taft-Hartley Amendments were emergency legislation passed within months of an adverse judicial decision to guard against what Congress regarded as a judicial misperception of its intent and to insure that the erroneous possibility could not even arguably arise again. In other words, Congress made clear what it had always believed to be true – supervisors were not “employees” with collective bargaining rights under the NLRA.

#### **2.2.2.2 The Text of A Clarifying Amendment Need Not Declare That It Is Clarifying**

The district court erred when it ruled that even if clarifying amendments applied retroactively, the Taft-Hartley Amendments were not “clarifying” because “the 1947 statutory amendment does not itself declare that it is a clarifying amendment” and “does not ever make an express declaration that the bill is intended to be categorized as a ‘clarifying amendment.’” [R.1011-12.]

The district court misunderstood the test for whether an amendment is clarifying. A clarifying amendment itself need not *say* that it is clarifying; it is sufficient if the legislative history does so, and it is also sufficient if either the legislative history or the amendment clearly indicate it.

An amendment of a statute may be evidence of the legislative intent underlying the earlier form of the statute. Such an amendment therefore may be used to divine the legislative intent with regard to the original law.

A statutory amendment which construes and clarifies a prior statute, rather than changing the law, normally must be accepted as a legislative declaration of the meaning of the original act. A court may find a legislative amendment to be a clarification of a previously existing statute *where the legislative history or the language of the statute, as amended, clearly indicates an intent to clarify*. When there has been doubt or ambiguity surrounding a statute, an amendment by the legislature may be interpreted as some indication of a legislative intent to clarify, rather than to change, existing law. Likewise, when a legislative amendment is enacted soon after a controversy arises regarding the meaning of an act, it is logical to regard the amendment as a legislative interpretation of the original act.

82 C.J.S. *Statutes* § 460 (emphasis added) (footnotes omitted); *see id.* §§ 509-12.

The legislative history of the Taft-Hartley Act expressly states that the intention was to clarify the NLRA: "So, by this bill, Congress *makes clear once more what it tried to make clear* when, in passing the act, it defined as an 'employer,' not an 'employee,' any person 'acting in the interest of an employer . . .'" H. R. Rep. No. 80-245, at 308 (1947) (emphasis added).

Additionally, case law sets forth "[a] number of factors [that] may indicate whether an amendment is clarifying rather than substantive: [1] whether the enacting body declared that it was clarifying a prior enactment; [2] whether a conflict or ambiguity existed prior to the amendment; and [3] whether the amendment is consistent with a reasonable interpretation of the prior enactment



and its legislative history.” *Middleton v. City of Chicago*, 578 F.3d 655, 663-64 (7th Cir. 2009); *see also Piamba Cortes v. Am. Airlines, Inc.*, 177 F.3d 1272, 1283-84 (11th Cir. 1999); *Liquilux Gas Corp. v. Martin Gas Sales*, 979 F.2d 887, 890 (1st Cir. 1992); 73 Am. Jur. 2d *Statutes* § 241 (2017).

Using that test, the Taft-Hartley Amendments “clarified” the NLRA, at least as far as “supervisors” were concerned. As described above, (1) the House and Senate made clear that they were clarifying a prior enactment; (2) *Packard v. Motor Car Company*, 330 U.S. 485, 486 (1947), made clear that a conflict existed prior to the amendment; and (3) Justice Douglas’s *Packard* dissent made clear that there was “no trace of Congressional concern with the problems of supervisory personnel. The reports and debates are barren of any reference to them.” *Packard*, 330 U.S. at 498 (Douglas, J., dissenting); *see also Bell Aerospace*, 416 U.S. at 279 (describing same).

In this context, Utah had no need to amend the ULRA to clarify that “employee” did not include “supervisors.” No Utah court had interpreted the ULRA as *Packard* had let stand an interpretation of the NLRA. Thus, the original meaning of the word “employees,” clarified in the Taft-Hartley Amendments, remained the meaning in the ULRA.

### **2.3 Both the Utah Legislature and this Court Distinguished Between Employers and Employees in Both the Workers Compensation Setting and the Collective Bargaining Setting**

Utah never considered supervisors to be employees with collective bargaining rights. This is confirmed by contemporaneous Utah statutes and case law that show that Utah consistently distinguished between employees and supervisors, considering "supervisors" to be a subset of "employers," not "employees."

#### **2.3.1 This Court Consistently Distinguished Between Employees and Supervisors When Interpreting Labor Laws**

Like NLRB cases between the passage of the NLRA in 1935 and the passage of the ULRA in 1937, Utah cases from the time period reveal that the terms "employer" and "employee" were mutually exclusive in the collective bargaining context.<sup>10</sup>

In 1939, this court reviewed a decision of the Utah Labor Relations Board addressing whether certain supervisors had "interfere[d] with, restrain[ed] or coerc[ed] employees" regarding their rights to bargain in violation of the Labor Code. *Bldg. Serv. Emp. Local No. 59 v. Newhouse Realty Co.*, 95 P.2d 507, 573 (Utah 1939). The question arose because certain "supervisory employees" who had the right to "hire and fire" had discussed with the non-supervisory employees their

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<sup>10</sup> As noted above, this court made clear in a workers compensation case that "one cannot at the same time be employer and employ[ee] or master and servant." *Rockefeller v. Indus. Comm'n of Utah*, 197 P. 1038, 1042 (Utah 1921). Those classifications are still in effect. Utah Code §§ 34-25-1, -2.

right to collectively bargain. *Id.* at 577. These supervisory employees included a “head housekeeper in charge of all employees from the mezzanine floor to the twelfth floor of the hotel, who has the power to hire and fire in her department.” *Id.* at 515. The court determined that the head housekeeper’s actions had not constituted “interference,” but clearly considered her on the “employer” side of the divide. *Id.* at 515-17. Throughout that case, individuals were described in terms of whether they could “hire or fire” — that being the standard used to separate supervisors from non-supervisors in both workers compensation cases and collective bargaining cases.

Although the NLRB cases in the early 1940s were inconsistent, Utah cases were not. In 1943, before the Taft-Hartley Amendments, this court considered whether the American Foundry and Machine Company had engaged in certain unfair labor practices when its foremen and management had threatened to fire anyone they found to be unionizing. *Am. Foundry & Mach. Co. v. Utah Labor Relations Bd.*, 141 P.2d 390, 390-91 (Utah 1943).

In 1949, following the passage of the Taft-Hartley Amendments, this court continued to treat supervisors as different from employees. For example, it affirmed the Board’s certification of a collective bargaining unit that “include[d] all production laundry workers and exclude[d] clerical workers and supervisors with power to hire and fire.” *Hotel Utah Co. v. Indus. Comm’n*, 211 P.2d 200, 201 (Utah 1949). This court wrote, “[i]n our opinion to include all workers, except

clerical help and supervisors is an appropriate inclusion-exclusion line." *Id.* at 205. This court allowed another bargaining unit that included "[b]ellboys, porters, elevator operators, baggage checkroom attendants, doormen, page boys and valets," but excluded "front office employees, clerks, housekeeping department employees, culinary and banquet department employees, garage employees and all supervisory employees with authority to hire and fire." *Hotel Utah Co. v. Indus. Comm'n*, 209 P.2d 235, 236 (Utah 1949).

In 1951, this court affirmed a collective bargaining class that included "all shoe repairmen and excluding . . . supervisory employees with the power to hire or fire." *Utah Labor Relations Bd. v. Broadway Shoe Repairing Co.*, 236 P.2d 1072, 1073 (Utah 1951). And in 1954, this court distinguished "union men" from "non-union employees" and "supervisory employees." *Rasmussen v. U.S. Steel Co.*, 265 P.2d 1002, 1002-03 (Utah 1954).

These cases reveal that, both before and after the Taft-Hartley Amendments, this court consistently distinguished supervisors, foremen, management, and the like from lower-level "employees" for purposes of certifying bargaining units. This is because, just as "employees" are different from "employers" in the workers compensation arena, Utah, like Congress, considered "employees" to exclude "supervisors" for purposes of collective bargaining because supervisors were the "employer."

### 2.3.2 Other Sections of the Utah Code Are in Accord

The Utah Legislature's use of the term "employee" in other sections of Utah's collective bargaining laws confirm this result. Nearby sections reveal that the words "employer" and "employee" must be read to be exclusive groups of people. If a supervisor is an "employer," in that he acts in the interest of the employer, he cannot simultaneously be an "employee."

This is important because this court does not "interpret the 'plain meaning' of a statutory term in isolation. [The court's] task, instead, is to determine the meaning of the text given the relevant context of the statute (including, particularly, the structure and language of the statutory scheme)." *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 12, 248 P.3d 465. In contrast, this court must "read the plain language of the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters. We follow the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object." *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 529 (internal quotation marks and citations omitted). "When evaluating the plain language of a particular statutory provision, [this court] interpret[s] it in harmony with other statutes in the same chapter and related chapters." *Summit Water Distrib. Co. v. Summit Cnty.*, 2005 UT 73, ¶ 17, 123 P.3d 437 (internal quotation marks omitted).

The doctrine of *in pari materia* is also instructive, as "a reflection of practical experience in the interpretation of statutes: a legislative body generally uses a

particular word with a consistent meaning in a given context.” *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1973) (cited by *Utah Dep’t of Transp. v. Carlson*, 2014 UT 24, ¶ 17, 332 P.3d 900). “If it is natural or reasonable to think that the understanding of the legislature or of persons affected by the statute would be influenced by another statute, then those statutes should be construed to be in pari materia, construed with reference to one another and harmonized if possible.” *Hansen v. Eyre*, 2003 UT App 274, ¶ 7, 74 P.3d 1182 (internal quotation marks omitted).

The following examples from the Utah Code demonstrate that the word “employer” and “employee” must refer to different individuals. This is important because it shows the legislature’s intention in using the word “employee,” and also because it shows that the dictionary definition of “employee” — that is, all people who work for an entity, including the CEO — cannot be correct in this context.

The “Declaration of policy” concerning Employment Relations and Collective Bargains clearly delineates differing groups of people:

- The public policy of the state . . . recognizes that there are three major interests involved, namely: that of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.
- It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair

conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

Utah Code § 34-20-1(1), (4). Two other definitions from the same section similarly reveal that the terms “employee” and “employer” are exclusive:

- “Labor dispute means any controversy between an employer and the majority of the employer’s employees in a collective bargaining unit . . .
- “Labor organization means an organization of any kind or any agency or employee representation committee or plan in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

*Id.* § 34-20-2(10), (11).

The same conclusion is reached by the very definition of “unfair labor practices,” which are described in terms of the employer’s relationship with the employees:

- It shall be an unfair labor practice for an employer, individually or in concert with others . . . (a) [t]o interfere with, restrain or coerce employees . . . (b) [t]o dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . .

*Id.* § 34-20-8(1). In fact, the entirety of section 34-20-8 relies on a distinction between “employers” and “employees.” Under these statutes, one person—such as a “supervisor”—cannot be both an employee and employer. Utah law has always treated “employers” and “employees” as exclusive groups.

Thus, like case law from the time period, other statutory uses of the word “employer” and “employee” demonstrate that the two were always intended to be exclusive. In the context of the entire chapter, it is difficult to see how the legislature might have intended the word “employee” to include all supervisors, up to and including vice presidents.<sup>11</sup>

## 2.4 The Contrary Conclusion Yields an Absurd Consequence

It is worth outlining the absurd consequences that result if supervisors are employees for purposes of collective bargaining. “Normally, where the language of a statute is clear and unambiguous, our analysis ends; our duty is to give effect to that plain meaning. However, [a]n equally well-settled caveat to the plain meaning rules states that a court should not follow the literal language of a statute if its plain meaning works an absurd result.” *State ex rel. Z.C.*, 2007 UT 54, ¶ 11, 165 P.3d 1206 (alteration in original) (internal quotation marks omitted).

“The absurd results canon of statutory construction recognizes that although ‘the plain language interpretation of a statute enjoys a robust

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<sup>11</sup> By contrast, section 34-20-2(5) expressly excludes charitable hospitals from the definition of “employer.” The Taft-Hartley Amendments excluded charitable hospitals as part of the federal definition of “employer,” stating in the House Report that the regulation of charitable hospitals was to be left to the states because charitable hospitals are not engaged in commerce. H. R. Rep. No. 80-245 at 303. Neither the House Report nor the Senate Report has any further discussion. *See generally* H.R. Rep. No. 80-245, S. Rep. No. 80-105.

In 1951, this court held that because the statute did not exclude “hospitals” from the definition of “employers,” it must include them. *Utah Labor Relations Bd. v. Utah Valley Hosp.*, 235 P.2d 520, 525 (Utah 1951). In 1969, the Utah Legislature amended the Utah Code to exclude hospitals. Utah Code § 34-20-2 (1969).



presumption in its favor, it is also true that [a legislative body] cannot, in every instance, be counted on to have said what it meant or to have meant what it said.” *Id.* ¶ 11 (quoting *FBI v. Abramson*, 456 U.S. 615, 638 (1982) (O’Connor, J., dissenting)) (alteration in original). Said differently, “the absurd consequences canon . . . resolves an ambiguity by choosing the reading that avoids absurd results.” *Bagley v. Bagley*, 2016 UT 48, ¶ 27, 387 P.3d 1000.

The conclusion that supervisors are “employees” yields an absurd consequence. Justice Douglas, Senator Taft, and Representative Hartley made that clear: “For if foremen are ‘employees’ within the meaning of the [NLRA], so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents – indeed, all who are on the payroll of the company, including the president . . . . But once vice-presidents, managers, superintendents, foremen all are unionized, management and labor will become more of a solid phalanx than separate factions in warring camps.” *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 494 (1947) (Douglas, J., dissenting).

#### **2.4.1 Independent Contractors Are Expressly Excluded Under Federal Law, but not Under Utah Law**

The point is illustrated by how Utah treats independent contractors. The Wagner Act did not mention independent contractors. Pub. L. No. 74-198, § 9(c), 49 Stat. 450 (1935). In 1944, the NLRB concluded, and the Supreme Court affirmed, that Hearst Publications’ newsboys were “employees” who could join together for collective bargaining, over Hearst’s argument that they were

"independent contractors," who could not. *NLRB v. Hearst Publ'ns Inc.*, 322 U.S. 111, 131-32 (1944) (overruled in part by *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318 (1992)).

Representative Hartley stated that the court's conclusion was absurd. He stated that "[a]n 'employee,' according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire." H.R. Rep. No. 80-245, at 309 (1947). He stated that Congress meant "employee" as that word has always been interpreted, "not new meanings that, 9 years later, the Labor Board might think up." *Id.* He declared that Congress should expressly clarify that independent contractors do not fall within the definition of "employee." *Id.* That amendment passed as well, and, as a result, independent contractors are not "employees" under federal law for purposes of collective bargaining. 29 U.S.C. § 152(3).

This is important because, just as the Utah Legislature did not amend its statute to clarify that supervisors are not "employees," it did not clarify that independent contractors are not employees under section 34-20-2(4). In other words, the Utah Code does not exclude "independent contractors" from the term "employees," Utah Code § 34-20-2(4), but the United States Code does, 29 U.S.C. § 152(3). And under *NLRB v. Hearst Publications, Inc.*, the plain language of the

statute that was the NLRA, and continues to be the ULRA, includes “independent contractors” as employees. 332 U.S. at 131-32.

If the district court’s same logic regarding “supervisors” is applied to “independent contractors,” then in Utah, “independent contractors” are “employees” for purposes of collective bargaining. This would contradict several other sections of the Utah Code that do not treat independent contractors as employees. *E.g.*, Utah Code § 35A-4-204(3) (defining “employee” to exclude independent contractors in Employment Security Act); § 61-2f-303 (distinguishing “employees” from “independent contractors” for real estate licensing); § 63G-7-102(3)(c) (defining “employee” to exclude independent contractors in Governmental Immunity Act of Utah). Including supervisors under the umbrella of “employees” results in equally absurd consequences.

This court should vacate summary judgment and remand for the court to resolve the fact question of whether UTA’s rail operations supervisors are supervisors for purposes of collective bargaining.

**3. This Court Should Instruct the District Court, If It Becomes Necessary, to Order a Secret Ballot Election Rather than a Card Check**

Finally, UTA requests that this court provide guidance on the issue of card checks versus special elections. This issue is relevant only if this court reverses the entry of summary judgment and the district court later finds, as a factual matter, that UTA’s rail operations supervisors are not supervisors for purposes of collective bargaining.

The district court initially ordered a card check. [R.290-94.] But when the card check proved to be fraught with uncertainty, the district court ordered a secret ballot election. [R.436,440-42.] The parties agreed on certain elements of the secret ballot election, and the district court resolved the rest. [R.651-55.] After the election, neither party raised procedural challenges, so there should be no dispute that a secret ballot remains the appropriate method.

As the district court recognized, the card check method is less reliable and subjects employees to threats and group pressure. [R.440-42.] A secret ballot mitigates those concerns. In 1949, this court explained the virtues of a secret ballot election in the union context:

The election method is a suggested means, and in our opinion, is the most effective way of obtaining an untrammelled expression of the desires of the employees. It is not difficult to imagine that in being canvassed by Union agents to sign an authorization card an employee is subjected to Union coercion or at least mental pressure by the agents or by other members more interested in the authorization. . . . There is little chance for undue influence when employees are entitled to a secret vote, and we commend this method to the Commission, particularly, where as here, the employer made a timely request for its use.

*Hotel Utah Co. v. Indus. Comm'n*, 211 P.2d 200, 202-03 (Utah 1949). Federal law also requires the secret ballot method, and has done so since the Taft-Hartley Amendments. 29 U.S.C. § 159(c).<sup>12</sup>

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<sup>12</sup> The Wagner Act authorized the NLRB to “take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.” Pub. L. No. 74-198, § 9(c), 49 Stat. 453 (1935). The ULRA authorized the Utah Labor

Because special elections are preferable and required by federal law, this court should instruct the district court that, if the process becomes necessary, it must order a special election rather than a card check.

### Conclusion

The district court erred in its interpretation of the term “employees” in section 34-20-2 of the Utah Public Transit District Act. This court should vacate summary judgment and remand for the court to resolve the fact question of whether UTA’s rail operations supervisors are supervisors for purposes of collective bargaining. This court should also instruct the district court that, if necessary, to order a secret ballot election rather than a card check.

DATED this 31<sup>st</sup> day of August, 2017.

ZIMMERMAN JONES BOOHER

/s/ Troy L. Booher  
Troy L. Booher  
Julie J. Nelson  
Erin B. Hull  
*Attorneys for Appellant*

---

Board to “take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.” 1937 Utah Laws ch. 55 § 10(c). But the Taft-Hartley Act stated that the NLRB “shall direct an election by secret ballot.” Pub. L. No. 80-101, § 9(c) 61 Stat. 136, 144 (1947). The ULRA was not similarly amended. Utah Code § 34-20-9(3).

## Certificate of Compliance With Rule 24(f)(1)

I hereby certify that:

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 13,993 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).
2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 13 point Book Antiqua.

DATED this 31<sup>st</sup> day of August, 2017.

/s/ Troy L. Booher

### Certificate of Service

This is to certify that on the 31<sup>st</sup> day of August, 2017, I caused two true and correct copies of the Brief of Appellant to be served on the following via first-class mail, postage prepaid:

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*Attorneys for Appellees*

/s/ Troy L. Booher



Tab A



FEB 09 2017

By: Salt Lake County

Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAHTEAMSTERS LOCAL 222 and JOHN  
AND JANE DOE NOS. 1-23,

Plaintiffs,

vs.

UTAH TRANSIT AUTHORITY,

Defendant.

## RULING AND ORDER

Case No. 140902884

February 9, 2017

Judge Ryan M. Harris

Before the Court is a Motion for New Trial Pursuant to Rules 52 and 59 ("the Motion"), filed by Defendant Utah Transit Authority ("UTA"). By the Motion, UTA asks the Court to reconsider its ruling, delivered in a lengthy Memorandum Decision and Order on October 13, 2015, that UTA's rail operations supervisors are "employees" as that term is used in the Public Transit District Act ("the Act"), Utah Code Ann. § 17B-2a-813(2)(a), and that therefore those rail operations supervisors have the statutory right to organize and collectively bargain. Plaintiff Teamsters Local 222 ("the Union") opposes the Motion. The Motion is fully briefed and ready for decision. UTA has requested a hearing, but the Court does not believe that oral argument will substantially assist the Court in adjudicating the Motion, and therefore denies UTA's request for oral argument.

The question that the Court decided in October 2015 was one of statutory interpretation: what does the term "employee" mean as used in the Act? The Court answered that question by reference to dictionaries, which the Court thought unanimously provided a straightforward definition of the term that does not exclude supervisors, as well as by reference to other sections of the Utah Code. See Oct. 13, 2015 Mem. Decision and Order, at 12-13. Specifically, the Court looked to Utah's "Little Wagner Act," passed in 1937 and today codified at Utah Code Ann. § 34-20-2(4), which contains a definition of "employee" that does not exclude supervisors. Id. at 10, 13. In the course of that discussion, the Court also noted that the analogous federal

statute (the “Wagner Act”) was originally passed in 1935, and at that point contained the same expansive definition of “employee,” without any exclusion for supervisors. *Id.* at 9-10, 13. It was not until 1947 that the U.S. Congress amended the Wagner Act’s definition of “employee” to include a specific exclusion for “supervisors.” *Id.* at 10 (citing Pub. L. 80-101, 61 Stat. 136, enacted June 23, 1947 (now codified at 29 U.S.C. § 152(3))). In its Memorandum Decision, the Court noted the significance of the U.S. Congress taking pains to amend its statute to exclude “supervisors” from the definition of “employee” in their labor relations code, while the Utah Legislature declined to make any similar change. Partly on this basis (and partly on the plain meaning of the term and its dictionary definition), the Court held that the term “employee” as used in the Act included all employees, including supervisory employees.

UTA now asserts that this determination was legal error, and that the Court’s interpretation of the statute was faulty. UTA posits that the 1947 amendment to the federal labor relations statute was merely a “clarifying” amendment intended to clarify that Congress—even back in 1935—had all along meant for the term “employee” to exclude “supervisors.” UTA argues that, because the 1947 amendment to the Wagner Act was merely a “clarifying” amendment, Utah’s failure to likewise amend its Little Wagner Act (to exclude “supervisors”) should not be assigned the rather high level of significance that the Court attributed to it. There are several problems with this argument.

First of all, the governing question here is governed by state law, not by federal law. The parties agreed on that point before. *See id.* at 8 (noting that “both sides recognize that the question of whether the UTA rail operations supervisors can organize and collectively bargain is ultimately a question of state law, and not of federal law”). Under state law, there is no longer any such thing as a “clarifying” amendment. *See Waddoups v. Noorda*, 2013 UT 64, ¶ 9, 321 P.3d 1108 (stating that the Utah Supreme Court has “repudiated” the “exception” to retroactivity rules that allowed “clarifying amendments” to operate retroactively); *see also Gressman v. State*, 2013 UT 63, ¶ 16, 323 P.3d 998 (stating that “we have never applied” clarifying

amendments as "an exception" to retroactivity rules). The Utah Supreme Court has clearly been uncomfortable with the concept of "clarifying" amendments for many years now, see, e.g., Visitor Information Center Authority of Grand County v. Customer Serv. Div., 930 P.2d 1196, 1198 (Utah 1997) (stating that "[l]ater versions of a statute do not necessarily reveal the intent behind an earlier version," and that many legislative changes simply "support the proposition that the statute previously meant something different from what it now says"), and in the face of all of this case law this Court is itself uncomfortable altering what appeared to the Court, in October 2015, to be a fairly straightforward exercise in statutory interpretation, based on a principle that has recently been "repudiated" by the Utah Supreme Court.

Second, there is a presumption that "a new legislative enactment is an amendment rather than a clarification of existing law," and this presumption "may be rebutted only if it is clear the legislature intended to interpret rather than change the law." See State v. Elmore, 228 P.3d 760, 770 (Wash. Ct. App. 2010); see also 82 C.J.S. STATUTES § 460 (stating that "[a] court may find a legislative amendment to be a clarification of a previously existing statute where the legislative history or the language of the statute, as amended, clearly indicates an intent to clarify"). UTA has not rebutted this presumption here. Certainly, the federal cases cited by UTA do not provide a basis for rebutting this presumption; indeed, these cases agree that the category of "clarifying" amendments is a narrow one, to be applied only when the intent to "clarify" is clear. Some of UTA's cited cases, including United States v. Montgomery County, 761 F.2d 998 (4<sup>th</sup> Cir. 1985), merely advert to the *possibility* of a clarifying amendment. Id. at 1003 (stating that "changes in statutory language need not *ipso facto* constitute a change in meaning or effect," and that "[s]tatutes *may* be passed purely to make what was intended all along even more unmistakably clear" (emphasis added)); see also Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272, 1283 (11<sup>th</sup> Cir. 1999) (stating that "an amendment containing new language *may* be intended to clarify existing law" (emphasis added)). However, the Fourth Circuit in Montgomery County went on to note that the "clarifying amendment" exception was

limited, and that “a statute which has all along unambiguously proclaimed WHITE cannot retrospectively be made to assert BLACK just because the legislature, at a later date, says so.” Id. Another cited case involved a statutory amendment that expressly stated, in the statutory amendment itself, that it was a clarifying amendment. See Dobbs v. Anthem Blue Cross and Blue Shield, 600 F.3d 1275, 1282 (10<sup>th</sup> Cir. 2010) (stating that “§906(b) states that it is merely a ‘clarification’ rather than a substantive change in the law”). And the other cited cases are not relevant to the question at hand. See Holt v. State Farm Fire & Cas. Co., 627 F.2d 188, 194-95 (5<sup>th</sup> Cir. 2010) (saying nothing about clarifying amendments); Landgraf v. USI Film Prods., 511 U.S. 244, 272-80 (1994) (same). In essence, the Court is of the view that the cited federal case law does not quite support the weight that UTA attempts to lay upon it.

Moreover, even if the Court were to apply UTA's cited cases to this situation, the Court would still not reach the result UTA desires. The Court, for several reasons, cannot conclude that the amendment to the Wagner Act was actually a “clarifying” amendment.

Initially, and most fundamentally, the 1947 statutory amendment does not itself declare that it is a clarifying amendment. Congress has made such a declaration on occasion, see, e.g., Dobbs, 600 F.3d at 1282, and its failure to do so here must be given some weight, see, e.g., Fonseca v. City of Gilroy, 56 Cal.Rptr.3d 374, 391-92 (Cal. Ct. App. 2007) (stating that “particularly when there is no definitive ‘clarifying’ expression by the Legislature in the amendments themselves, we will presume that a substantial or material statutory change . . . bespeaks legislative intention to change, and not just clarify, the law”); see also Salt Lake County v. Holliday Water Co., 2010 UT 45, ¶¶ 43-44, 234 P.3d 1105 (noting that the text of the amendment contained “nothing . . . that appear[ed] to be an attempt to clarify preexisting language,” and therefore holding that the amendment was “not a mere clarification of the law” but, rather, “an affirmative addition of a new exemption to the statute”).

Likewise, the legislative history to which UTA so hopefully points also does not ever make an express declaration that the bill is intended to be categorized as a “clarifying

amendment,” with all of the legal implications such a classification carries. Instead, the author of the House Report (Rep. Hartley, the bill’s sponsor) simply indicates his belief that, by this amendment, “Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an ‘employer’, not an ‘employee,’ any person ‘acting in the interest of an employer.’” See H.R. Rep. No. 245, at 308 (1947). UTA infers that statements like this, appearing in the House Report (and in another similar Senate Report), are sufficient to categorize this amendment as a “clarifying” amendment. But UTA fails to grapple with the fact that neither the bill itself, nor its sponsors, ever actually made the specific categorization that UTA wishes they had made.

Next, even if the cited legislative history could be interpreted as broadly as UTA urges, the Court has serious concerns about whether one Congress can usefully or accurately describe an earlier Congress’s intent in passing a previous statute, concerns that are shared by the United States Supreme Court. See, e.g., Bruesewitz v. Wyeth, LLC, 562 U.S. 223, 242 (2011) (stating that “[p]ost-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation”); Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 117-18 (1980) (stating that “the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one”). These concerns become especially pointed when one considers the circumstances surrounding the passage of the Wagner Act and the Taft-Hartley Act. The Wagner Act was passed in 1935 by the 74<sup>th</sup> Congress, which was an overwhelmingly Democratic Congress made up of 70 Democratic Senators and 322 Democratic representatives.<sup>1</sup> The Taft-Hartley Act was passed a full twelve years later, by the 80<sup>th</sup> Congress, which happened to be the first Congress in quite some time that was controlled by Republicans (51 Senators and 248 Representatives). Different Congresses are controlled by different parties over time, and take different positions on different issues. It would be one thing

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<sup>1</sup> Although these numbers are not in the record, the Court believes it can take judicial notice of the partisan makeup of various Congresses.

if a purported "clarifying" amendment was passed by the same Congress that passed the original law, but it is another thing entirely to think that a different Congress more than a decade later, controlled by a different party and made up of presumably many different people, would be able to accurately convey, in a House Report or otherwise, what a previous Congress intended. Some jurists (including, most famously, the late Justice Scalia) have problems with *any* resort to legislative history. See, e.g., Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 73 (2004) (Scalia, J., dissenting) (stating that "I have often criticized the Court's use of legislative history because it lends itself to a kind of ventriloquism" in which "committee reports are used to make words appear to come from Congress's mouth which were spoken or written by others (individual Members of Congress, congressional aides, or even enterprising lobbyists)"). In this Court's view, that is too hard a line to take, because sometimes legislative history can add value to a statutory interpretation analysis. But in this particular case, very little value is added by the proffered legislative history. It is hard enough to extrapolate the intent of an entire legislative body from the views of one (or even a number of) legislator(s), even when that legislator is speaking about passage of an act that occurred in the very same Congress. But where the legislative history proffered purports to speak of legislative intent regarding events that occurred twelve years in the past, in a different Congress, the weight one should give to that legislative history would appear to be at a very low ebb. See GTE Sylvania, 447 U.S. at 118 (stating that a piece of legislative history from a subsequent Congress is not "entitled to much weight").

Finally, and most convincingly here, resort to legislative history is categorically inappropriate, even for jurists not named Scalia, where the legislative passage to be interpreted is unambiguous. See U.S. v. Gonzales, 520 U.S. 1, 6 (1997) (stating that "there is no reason to resort to legislative history" where there is a "straightforward statutory command"); see also LeBeau v. State, 2014 UT 39, ¶ 26, 337 P.3d 254 (stating that a court "may resort to other indications of legislative intent, including legislative history," only where the statutory language is ambiguous); Taylor ex rel. C.T. v. Johnson, 1999 UT 35, ¶ 13, 977 P.2d 479 (stating that "it is



elementary that we do not seek guidance from legislative history . . . when the statute is clear and unambiguous"). Where the passage is unambiguous, the statute is to be interpreted according to the plain meaning of the terms, without resort to any extrinsic evidence, including legislative history. In addition, as UTA's own cases teach, if the passage is unambiguous, then any amendment to change it is not a "clarifying" amendment but, rather, an amendment that substantively changes the meaning of the term. See Montgomery County, 761 F.2d at 1003 (stating that "a statute which has all along unambiguously proclaimed WHITE cannot retrospectively be made to assert BLACK just because the legislature, at a later date, says so").

In this case, no less an authority than the United States Supreme Court has already declared that the passage in question was unambiguous to begin with. See Packard Motor Car Co. v. N.L.R.B., 330 U.S. 491, 492 (1947) (stating that "[t]here is . . . no ambiguity in this Act to be clarified by resort to legislative history"). Indeed, "UTA does not dispute that Packard said that the language [in the Wagner Act] was unambiguous." See UTA Reply Br., at 3. Rather, UTA impliedly asserts that Congress apparently overruled the Supreme Court on the question of ambiguity. This argument is without merit. If the United States Supreme Court holds that a particular passage is unambiguous, then that is the end of the matter. A judicial determination that a passage is unambiguous means, by definition, that there are not two reasonable interpretations of that passage. If Congress takes another view, then its original interpretation was, *ipso facto*, not reasonable. Congress may certainly disagree with the Court's interpretation of the statute, and may even amend the statute, but none of that legislative action changes the fact that the passage was originally unambiguous, and it is unambiguous because the Supreme Court says it is. Courts, including (and especially) the Supreme Court, get to decide whether a passage is or is not ambiguous. UTA provides no authority for the rather novel proposition that Congress can overrule a court's determination as to whether a passage is unambiguous.

Indeed, when a "court of last resort," such as the U.S. Supreme Court, interprets or construes a statute, that court "is explaining its understanding of what the statute has meant

continuously since the date when it became law." See State v. Aubuchon, 90 A.3d 914, 921 (Vt. 2014) (citing McClung v. Employment Dev. Dep't, 99 P.3d 1015, 1018 (Cal. 2004)). In such an instance, after the court of last resort "definitively and finally interprets a statute, the Legislature may amend the statute to say something different, [b]ut if it does so, it *changes* the law; it does not merely state what the law always was." *Id.*; see also Elmore, 228 P.3d at 769 (stating that "it is ultimately for the courts to construe the law," and that "once the highest court construes a statute, that construction operates as if it were originally written into the statute," and that thereafter a legislative body may no longer constitutionally "clarify" that statute to contradict the judiciary's interpretation, although it can certainly amend the statute); State v. Rios, 237 P.3d 1052, 1061 (Ariz. Ct. App. 2010) (stating that "[e]ven if a statute is ambiguous when enacted, once a judicial interpretation clarifies it, the statute is no longer ambiguous and the Legislature may not clarify its intent"). Thus, anything that a legislative body might have to say about the meaning of a statute following definitive judicial interpretation is, by constitutional definition, not a "clarifying" amendment. In this case, the U.S. Supreme Court interpreted the Wagner Act in Packard. That interpretation is definitive, because the U.S. Supreme Court is without question a "court of last resort," and because "[i]t is emphatically the province and duty of the judicial department to say what the law is," see Marbury v. Madison, 5 U.S. 137, 177 (1803). By definition, then, the 1947 change to the statute cannot be considered a "clarifying" amendment.

In sum, this Court simply does not believe that Congress's 1947 change to the Wagner Act was a "clarifying" amendment. That amendment fundamentally changed the definition of a term—a definition that had been interpreted and solidified by no less an authority than the U.S. Supreme Court—to add exceptions that were not previously included. This Court is simply not persuaded that this is one of those presumably rare instances where a legislative amendment can be deemed merely "clarifying." Therefore, the fact that the Utah Legislature, for 70 years now, has declined to make a similar amendment to the Little Wagner Act is a fact that the Court appropriately found, and continues to find, significant.

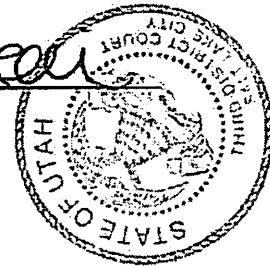


This Court undertook a lengthy analysis in 2015, and determined that the term "employee" as used in the Act did not exclude supervisors. The Court is unpersuaded, after reviewing UTA's latest motion and the relevant case law, that its decision was at all infirm the first time around. The Court's previous decision stands. UTA's Motion is DENIED.

This Ruling and Order is the order of the Court with regard to the Motion, and no further writing is necessary to effectuate this decision.

DATED this 9<sup>th</sup> day of February, 2017.

  
RYAN M. HARRIS  
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140902884 by the method and on the date specified.

MANUAL EMAIL: TROY L BOOHER tbooher@zjbappeals.com  
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02/09/2017

/s/ ELSA YOUNG

Date: \_\_\_\_\_

\_\_\_\_\_

Deputy Court Clerk

Tab B

The Order of the Court is stated below:

Dated: October 27, 2016

02:22:34 PM

/s/

RYAN HARRIS

District Court Judge



SCOTT A. HAGEN (4840)  
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*Attorneys for Defendant Utah Transit Authority*

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IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

---

TEAMSTERS LOCAL 222 and JOHN and  
JANE DOE nos. 1-23,

Plaintiffs,

v.

UTAH TRANSIT AUTHORITY,

Defendant.

**[PROPOSED] FINAL JUDGMENT**

Civil No. 140902884

Judge Ryan M. Harris

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1. By Memorandum Decision and Order dated October 13, 2015, the Court granted the motion for summary judgment filed by Plaintiff Teamsters Local 222 ("Teamsters") and ruled that Defendant Utah Transit Authority's ("UTA") TRAX Rail Operations Supervisors constituted an appropriate bargaining unit under Utah Code Ann. § 17B-2a-813(2). The Court subsequently issued an Order Directing Election dated August 17, 2016, in which the Court ordered that a secret ballot election take place on Monday and Tuesday, September 12-13, 2016,

at UTA's Jordan River Service Center, to determine whether the Teamsters held majority support within the bargaining unit.

2. On September 14, 2016, UTA filed an Election Report prepared by Carrie Taylor, the Election Monitor chosen by the parties.

3. According to the Election Report, the secret ballot election was held as directed by the Court, and the Election Monitor counted and tallied the ballots on September 13, 2016.

4. The Election Monitor reported that 44 total ballots were cast, without any challenged ballots.

5. There were 19 "yes" votes in favor of union representation by the Teamsters, and 25 "no" votes against union representation by the Teamsters. Accordingly, the "no" votes prevailed.

6. Based on the results of the secret ballot election, Plaintiff Teamsters Local 222 does not have majority representation within the bargaining unit consisting of TRAX Rail Operations Supervisors at UTA.

7. Furthermore, as stated in the Order Directing Election, Teamsters Local 222 shall be barred from seeking another determination of majority status until one year from the date of the final determination of the election results.

#### ORDER OF FINAL JUDGMENT

The Court now orders that Teamsters Local 222 is not the exclusive bargaining representative for the bargaining unit of TRAX Rail Operations Supervisors at UTA, and that Teamsters Local 222 shall be barred from seeking another determination of majority status

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within that unit until September 13, 2017. Furthermore, UTA shall not be compelled to bargain with Teamsters Local 222.

This is the Final Judgment of the Court in this case.

In accordance with the Utah State District Courts E-filing Standard No. 4, and URCP Rule 10(e), this Order does not bear the handwritten signature of the Judge, but instead displays an electronic signature at the upper right-hand corner of the first page of this Order.

Approved as to Form:

/s/ Russell T. Monahan

(permission given via email)

Russell T. Monahan

Attorney for Plaintiff

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of October, 2016, a true and correct copy of the foregoing **[PROPOSED] FINAL JUDGMENT** was electronically filed with the Clerk of the Court using the Utah Trial Court/ECF system which sent notification of such to the following:

Russell T. Monahan  
COOK & MONAHAN  
323 South 600 East  
Suite 200  
Salt Lake City, Utah 84102

/s/ Doris Van den Akker

00700



Tab C



OCT 13 2015

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

By

Deputy Clerk

TEAMSTERS LOCAL 222 and JOHN  
AND JANE DOE NOS. 1-23,

Plaintiffs,

vs.

UTAH TRANSIT AUTHORITY,

Defendant.

MEMORANDUM DECISION  
AND ORDER

Case No. 140902884

October 13, 2015

Judge Ryan M. Harris

This matter came before the Court on September 29, 2015 for oral argument on a Motion for Summary Judgment ("the Motion"), filed by Plaintiff Teamsters Local 222 ("the Union"). Prior to the hearing, the Motion was fully briefed. At the hearing, the Union was represented by Russell T. Monahan, and Defendant Utah Transit Authority ("UTA") was represented by Scott A. Hagen and Kimberly A. Child. After consideration of the memoranda filed by the parties, the arguments made at the September 29 hearing, and applicable statutes and case law, the Court enters the following Memorandum Decision and Order.

INTRODUCTION

In this case, the Court is called upon to determine whether "rail operations supervisors" in UTA's TRAX division are entitled to organize and bargain collectively with their employer. If this question were decided under federal law, as nearly all labor law issues are these days, the answer may well be "No," due to the fact that, since 1947, federal labor law has not allowed "supervisors" the privilege of organizing and collectively bargaining.<sup>1</sup> But due to unique circumstances explained more fully below, the parties agree that the question in this case is

<sup>1</sup> The parties to this case take different positions as to whether, as a factual matter, these "rail operations supervisors" are actually "supervisors" as that term is used in labor law. That factual question is not before the Court on this particular Motion for Summary Judgment, and in fact is rendered moot by the Court's decision herein.

governed not by federal law, but by state law, informed to some degree by federal labor policy. The parties take different positions with regard to whether, under Utah law, supervisors have the right to organize and collectively bargain.

While at some level it might seem counter-intuitive that Utah, of all states, would have local labor laws that are, in any respect, more favorable to workers than federal law, upon careful review of the applicable statutes, that indeed appears to be the case. Utah's labor laws, some of which have been on the books since the 1930s without significant amendment at any time since, indicate that all "employees" of any "public transit system" have the right to organize and bargain collectively. While Congress, in 1947, amended federal labor law to create an exception for "supervisors," Utah's similar statute has never been so amended. The Utah legislature is, of course, free to amend its laws to match the federal exclusion for "supervisors." But at no point over the past 80 years has the legislature made that change. Until it does, this Court is obligated to enforce the statutes as written, according to their plain language and ordinary meaning.

Accordingly, for the reasons set forth below, under Utah law UTA's rail operations supervisors, as "employees" of a "public transit system," have the right to organize and collectively bargain. And for the reasons set forth herein, the Court will conduct a "card check" to determine whether or not a majority of those employees have selected the Union to represent them. Therefore, the Union's Motion is GRANTED, for the reasons discussed below.

#### **UNDISPUTED FACTS**

1. Prior to 1969, all transit service in the State of Utah was provided by private transit companies. In 1969, the Utah legislature passed the Public Transit District Act, now codified at Utah Code Ann. § 17B-2a-801 *et seq.* ("the Act"). In 1970, very soon thereafter, UTA was created under authority of the Act as a public transit district. UTA is, and has been since its inception, a local district political subdivision of the State of Utah.

2. A few years before passage of the Act, the federal government had made available federal funds for the purpose of supporting local public transit districts. In 1964, Congress passed the Urban Mass Transportation Act ("UMTA"). If state and local governments met the requirements of UMTA, they could access federal funds for the purpose of supporting local public mass transit.

3. One of the crucial requirements of the federal government upon which it conditioned use of federal funds was that local transit districts would have to make it possible for employees of the local transit districts to organize and collectively bargain. Section 13(c) of UMTA states expressly that "[a]s a condition of financial assistance . . . , the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable," which arrangements must, at a minimum, provide for:

- "the preservation of rights, privileges, and benefits . . . under existing collective bargaining agreements";
- "the continuation of collective bargaining rights"; and
- "the protection of individual employees against a worsening of their positions related to employment."

See 49 U.S.C. § 5333(b).

4. In keeping with these requirements, the Utah Act contains provisions intended to allow employees of any public transit district created pursuant to the Act to organize and collectively bargain. The Act states plainly that "[e]mployees of a public transit system established and operated by a public transit district have the right to: (i) self-organization; (ii) form, join, or assist labor organizations; and (iii) bargain collectively through representatives of their own choosing." See Utah Code Ann. § 17B-2a-813(2)(a). Moreover, "[e]ach public transit district shall [] recognize and bargain exclusively with any labor organization representing a majority of the district's employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare, pension, and retirement provisions." Id. at § 813(2)(c).

5. For decades now, the rank-and-file employees of UTA (e.g., bus drivers) have taken advantage of these provisions, and they have organized and appointed Local 382 of the Amalgamated Transit Union ("Local 382") as their representative to bargain collectively on their behalf. See, e.g., Burke v. Utah Transit Authority and Local 382, 462 F.3d 1253, 1256 (10<sup>th</sup> Cir. 2006) (stating that "[s]ince its inception, Local 382 of the Amalgamated Transit Union has continuously represented the employees of Utah's public transit system").

6. However, Local 382 has never represented UTA's approximately 40 "rail operations supervisors."

7. In approximately January 2014, UTA ceased paying its rail operations supervisors on a salary basis and, instead, made them hourly employees. At least some of the rail operations supervisors were not pleased with this new development, and contacted the Union to inquire about whether action could be taken to organize.

8. In February 2014, Spencer Hogue, the Secretary-Treasurer of the Union, met with a number of the rail operations supervisors, and at the meeting obtained a number of authorization cards from them. Hogue eventually obtained a number of additional authorization cards, and thereupon sent a letter to UTA informing them that 23 rail operations supervisors—a clear majority—had signed cards authorizing the Union to bargain collectively on their behalf. The Union asked UTA to formally recognize it as the authorized representative of UTA's rail operations supervisors.

9. UTA refused, and explained its belief that UTA's rail operations supervisors were not protected by the Act and that UTA did not have to bargain with the rail operations supervisors' representatives. Moreover, UTA questioned the "cards" obtained by Hogue, and asked for a chance to verify the supervisors' wishes through an election.

10. After the Union and UTA could not come to agreement on these issues, the Union filed this lawsuit in April 2014. The Union now moves for summary judgment, asking the Court to determine, as a matter of law, that the rail operations supervisors are "employees" covered by

the Act and therefore empowered to organize and collectively bargain, and asking the Court to declare that a "card check" is a sufficiently reliable method to ascertain whether the Union "represent[s] a majority of" the rail operations supervisors.

### **STANDARD**

At issue here is a motion for summary judgment, filed pursuant to Utah R. Civ. P. 56. Rule 56 provides that summary judgment should only be granted where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). The party moving for summary judgment "must make an initial showing that he is entitled to judgment and that there is no genuine issue of material fact that would preclude summary judgment in his favor," and if he does so, "the burden then shifts to the nonmoving party to show that there is a genuine issue of material fact or a deficiency with the moving party's legal theory that would preclude summary judgment." See Jones & Trevor Mktg., Inc. v. Lowry, 2012 UT 39, ¶29, 284 P.3d 630.

### **DISCUSSION**

#### **I. THE RAIL OPERATIONS SUPERVISORS ARE "EMPLOYEES" AS THAT TERM IS USED IN THE ACT**

The Act states that "[e]mployees of a public transit system" have the right to organize and collectively bargain. The first question presented by the Motion is whether UTA's rail operations supervisors are "employees" as that term is used in the Act. For the reasons that follow, the Court is persuaded that they are.

#### **A.**

To answer the seemingly simple question of whether UTA's rail operations supervisors are "employees" of UTA as that term is used in the Act, it is first helpful to look at both the law governing the UMTA and federally-subsidized local transit districts, as well as the historical development of labor and collective bargaining rights across the country.

By the 1960s, Congress became aware of "the increasingly precarious financial condition of a number of private transportation companies across the country, and it feared that communities might be left without adequate mass transportation." See Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, 457 U.S. 15, 17 (1982) (citation omitted). In an effort to make sure that local governments had plenty of options in providing useful mass transit to their citizens, Congress in 1964 passed UMTA. Under UMTA, the federal government made federal dollars available to states for the development of local transit systems, including funds for the outright purchase by local governments of some of these "failing private transportation companies." Id. However, Congress recognized that, in many instances, these private transportation companies had unionized workers who had already collectively bargained for certain working conditions, and Congress wanted to make sure any local government takeover of these private companies would not impair the labor rights of these transit workers.

One hurdle that Congress faced, in working through the situation, was that government workers, whether at the state or federal level, were not protected by federal labor laws. Specifically, the National Labor Relations Act, at the time, already excluded "any State or political subdivision thereof" from the definition of "employer." See 29 U.S.C. § 152(2). Congress chose not to amend this definition, and chose to leave state and local governments exempt from federal labor laws, even if they were to purchase some of these failing private transportation companies. Instead, Congress looked for another way to protect the collective bargaining rights of employees of these struggling transit companies, one that could keep this exemption intact.

In the end, Congress chose to strike "a delicate balance" between state and federal law. See Amalgamated Transit Union Int'l v. Donovan, 767 F.2d 939, 950 (D.C. Cir. 1985). By passing UMTA, Congress made federal funds available to the states for the development of local transit systems, but (as is often the case with federal dollars) those funds came with strings attached. In order to qualify for federal funds, states had to demonstrate, *inter alia*, that



they had in place mechanisms designed to protect public transit employees' labor rights, and the federal Secretary of Labor had to sign off on those mechanisms as "fair and equitable" before federal funds could issue. See 49 U.S.C. § 5333(b)(1). In deciding whether to sign off on any given state's arrangements, the Secretary of Labor would endeavor to ascertain whether the employees of the public transit system would be able to enjoy "collective bargaining rights," including "at a minimum" the right "to be represented in meaningful, good faith negotiations with their employer over wages, hours and other terms and conditions of employment." See Donovan, 767 F.2d at 950. Although UMTA does not explicitly use the term "at a minimum," or speak in terms of "floors" or "ceilings," several cases discussing this issue expressly state that the Secretary of Labor was to ensure that certain minimum standards are met. As noted, the Donovan Court used the phrase "at a minimum" on two occasions in this context. See id. at 949, 950. And the Tenth Circuit, more recently, was even more clear:

[T]he purpose of Section 13(c) [of UMTA] is not to invalidate overly-protective terms in a Section 13(c) agreement, but rather to prevent federal funds from being used to destroy the collective-bargaining rights of organized workers. [Citation omitted.] To that end, § 13(c) establishes "minimal standards," Burke v. Utah Transit Auth. and Local 382, 462 F.3d 1253, at 1258 (10<sup>th</sup> Cir. 2006), and does not concern itself with other provisions to which the parties might agree.

City of Colorado Springs v. Solis, 589 F.3d 1121, 1132-33 (10<sup>th</sup> Cir. 2009).

Despite the fact that the Secretary of Labor was instructed to examine each state's arrangement to make sure that it provided transit workers with certain minimum labor rights, Congress by passing UMTA "made it absolutely clear that it did not intend to create a body of federal law applicable to labor relations between local governmental entities and transit workers." See Jackson Transit, 457 U.S. at 27. While federal labor policy would inform the Secretary's "minimal standards" inquiry, UMTA

would not supersede state law, [and] would leave intact the exclusion of local government employers from the National Labor Relations Act, and state courts would retain jurisdiction to determine the application of state policy to local government transit relations. Congress intended that [UMTA] would be an important tool to protect the collective-bargaining rights of transit workers, by

ensuring that state law preserved their rights before federal aid could be used to convert private companies into public entities. But Congress designed [UMTA] as a means to accommodate state law to collective bargaining, not as a means to substitute a federal law of collective bargaining for state labor law.

Id. at 27-28 (internal citations omitted).

In this case, both sides recognize that the question of whether the UTA rail operations supervisors can organize and collectively bargain is ultimately a question of state law, and not of federal law. See Union's Br., at 7; UTA's Br., at 3. However, UTA argues that the state-law question is to be informed by "federal labor policy," see UTA's Br., at 3, and points out that federal labor law, at least since 1947, provides that "supervisors" are not "employees" who have a right to organize or collectively bargain. UTA's assertion—that current federal labor policy does not allow "supervisors" to organize or collectively bargain—is surely correct, as discussed below. But in the Court's view, UTA misperceives the role federal labor policy plays in answering the question before the Court. The Union argues that federal labor policy supplies minimum standards—a "floor" but not a "ceiling"—below which state law protections for local transit workers cannot go without jeopardizing federal funds flowing to state transit districts, but that nothing in UMTA (or the policies behind UMTA) prevents a state, if it wishes, from providing additional labor relations protections to workers above and beyond those afforded to workers under federal law. The Court is persuaded by the Union's position on this point. The question is ultimately governed by state law, irrespective of federal labor policy, unless state law protections for transit workers fall below those minimum protections afforded by federal law.

As noted, UTA is correct when it asserts that current federal law provides no labor relations protection for "supervisors." See 29 U.S.C. § 152(3) (providing that "[t]he term 'employee' . . . shall not include . . . any individual employed as a supervisor"). And there may in fact be good policy reasons for legislative bodies to enact an exclusion for "supervisors" from the statutory definition of "employee." See, e.g., Smithfield Packing Co. v. NLRB, 510 F.3d 507, 516 (4<sup>th</sup> Cir. 2007) (stating that supervisors are not protected "for good reason: management,



like labor, must have faithful agents" and because "supervisors are management obliged to be loyal to their employer's interests"). But federal law did not always exclude "supervisors" from the statutory definition of "employee."

The National Labor Relations Act was originally passed through Congress in 1935, in the midst of the New Deal. The original law, which was known as the "Wagner Act," contained an extremely broad definition of "employee," which definition contained no exclusion for supervisors. See Union's Br., at Exhibit 2 (citing the original Wagner Act, which stated that "[t]he term employee shall include any employee," with no exception for supervisors, and containing only an exclusion for "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"). From its original passage in 1935, until 1947 (when Congress passed the Taft-Hartley Act), federal law contained this expansive definition of "employee," which applied to any "employee" whose job affected interstate commerce.

Because the Wagner Act only governed employees engaged in interstate commerce, and because in the 1930s—before widespread air travel or, certainly, the Internet—the reach of interstate commerce was not as broad as it is today, the passage of the Wagner Act did not cover all of the nation's employees. At that time, there were still quite a number of employees who worked for small businesses that did not engage in interstate commerce. To cover these employees, many states followed up passage of the Wagner Act by enacting labor relations statutes of their own, which statutes were commonly called "Little Wagner Acts." Utah was one of the states that passed a "Little Wagner Act," in 1937, and that statute is still on the books today, codified at Utah Code Ann. § 34-20-1 *et seq.* That statute was originally passed with an expansive definition of "employee" that was substantively identical to the original federal Wagner Act, without any exclusion for "supervisors"; and that definition remains more or less unchanged to this day.

Over the decades following passage of Utah's Little Wagner Act, as the reach of interstate commercial activity has gradually grown, the applicability of Utah's law has proportionately decreased, to the point where, today, the statute has more or less fallen into disuse. For instance, that statute calls for the creation of a Utah Labor Relations Board, a state agency that was for many years active and vibrant. See Utah Code Ann. § 34-20-3; see also Hotel Utah Co. v. Industrial Comm'n, 211 P.2d 200 (Utah 1949) (discussing the actions of the Utah Labor Relations Board). However, no such state labor board exists today; the parties agreed at oral argument that no such board has existed for many decades. Indeed, at oral argument, in an answer to a question from the Court, the parties could not come up with any examples of workers to whom Utah's Little Wagner Act today squarely applies.

Despite its apparent obsolescence, the statute remains on the books today, and in substantially the same form as when it was passed in the 1930s. Notably for the purposes of this case, Congress in 1947 passed the Taft-Hartley Act (over President Truman's veto), which amended the Wagner Act by, *inter alia*, adding an exclusion for "supervisors" to the definition of "employee." See Pub. L. 80-101, 61 Stat. 136, enacted June 23, 1947 (now codified at 29 U.S.C. § 152(3), and excluding from the definition of "employee" "any individual employed as a supervisor"). Thus, under federal law, in effect since 1947, "supervisors" are not "employees" who are entitled to organize and collectively bargain. However, the Utah legislature did not ever amend the Little Wagner Act in the same way, whether in 1947 or at any time thereafter. Even today, the Little Wagner Act's definition of "employee" is the same as the pre-1947 federal law, with no exclusion for "supervisors." See Utah Code Ann. § 34-20-2(4).

#### B.

With that historical background in mind, the Court now turns to the question at hand, namely, whether UTA's rail operations supervisors are "employees" under the Act, which provides that "[e]mployees of a public transit system" have certain labor relations rights, including the right to organize and collectively bargain. The Union urges the Court to apply a

"plain meaning" definition of "employee," or to look to Utah's Little Wagner Act for guidance as to how the Utah legislature intended the term to be defined. UTA, by contrast, urges the Court to look to current federal law conceptions of "employee," which since 1947 have excluded "supervisors." UTA argued passionately at oral argument that allowing these supervisors to organize would run contrary to nearly 70 years of established federal labor law and practice. In the Court's view, the Union has the better of the argument.

As noted above, the question is ultimately governed by state law. See Jackson Transit, 457 U.S. at 24 (stating that "Congress intended that labor relations between transit workers and local governments would be controlled by state law"). Under UMTA, states accepting federal aid for local transit systems must provide local transit workers with a certain basic level of protection for labor relations and collectively bargaining rights. See 49 U.S.C. § 5333(b). Federal labor policy is involved simply to provide certain "minimal standards" below which state law mechanisms put in place for protection of these rights may not fall. See Solis, 589 P.3d at 1133. The fact that Utah law may afford certain rights to workers that federal law does not provide does not violate federal law or policy. The Court is simply not persuaded by UTA's argument that federal labor law (which excludes supervisors) should trump state law (which does not). State law provides the answer to the question, unless state law provides fewer rights than federal law. Here, because state law appears to create more rights than federal law, federal law and/or policy is simply not dispositive.<sup>2</sup>

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<sup>2</sup> At oral argument, UTA argued that, if the Court rules in the Union's favor and allows UTA's rail operations supervisors to organize and collectively bargain, such a ruling would upset and run counter to well-established federal labor laws and practices. The Court considers these concerns overstated. As the Court explored with counsel at oral argument, this Memorandum Decision and Order will affect only supervisors who work for UTA. Counsel were unable to provide the Court, at oral argument, with examples of any other employees, either inside Utah or across the country, who will be affected by this decision. Indeed, UTA's supervisors—if, in fact, they are "supervisors"—may very well be the only supervisors in the United States with the right to organize and collectively bargain. And this fact, by itself, demonstrates the hyperbolic nature of UTA's concerns: if this decision only affects a small number of supervisors working for one single public transit district in one single state, it will hardly spell the end of established labor law as we know it.

In the end, the Court's task in this case is relatively straightforward: what does the term "employee" mean as used in the Act? See Utah Code Ann. § 17B-2a-813(2). If the Act itself had a definition of "employee," the Court would of course look there first. See State v. Rasabout, 2015 UT 72, ¶43, — P.3d — (Lee, J., concurring) (stating that "a threshold question is whether the legislative text conveys some specialized meaning" such as a "statutorily defined term" or a "legal term of art" and stating that, if it does, "the specialized meaning controls"). But in this case, the Utah legislature did not provide any statutory definition of the term within the Act, or otherwise within the Act provide any indication that it was using the term "employee" in some specialized or unique way. In such cases, courts are to interpret the statutory language "according to the plain meaning of [its] text." See Olsen v. Eagle Mountain City, 2011 UT 10, ¶9, 248 P.3d 465.

A "starting point" for a court's "assessment of ordinary meaning is the dictionary." See State v. Bagnes, 2014 UT 4, ¶14, 322 P.3d 719 (citing Hi-Country Prop. Rights Grp. v. Emmer, 2013 UT 33, ¶19, 304 P.3d 851). The term "employee," as used in common dictionaries and in ordinary parlance, clearly includes supervisory employees. Webster's Dictionary defines "employee" simply as "one employed by another." Dictionary.com defines "employee" as "a person working for another person or a business firm for pay." And the American Heritage Desk Dictionary defines "employee" as "a person who works for another person or business in return for salary, wages, or other compensation." See Union's Br., at 8. These definitions are all simple and plain enough, and all of them are easily broad enough to encompass the rail operations supervisors who work for UTA. The Court is aware of no dictionary definition of the word "employee" that excludes "supervisors" from its definition, and UTA cites none.

Another place that courts look to when a term is not defined within a particular section of the Utah Code is to other sections of the Utah Code. See Wasatch Crest Ins. Co. v. LWP Claims Adm'rs Corp., 2007 UT 32, ¶¶ 13-14, 158 P.3d 548 (stating that "[a]lthough the Utah Insurance Code does not define the term 'distribution,' the term is defined elsewhere in the Utah

Code as a portion of equity"); see also Territorial Sav. & Loan Ass'n v. Baird, 781 P.2d 452, 461 (Utah 1989) (stating that "[a]lthough the Utah Fraudulent Conveyances Act does not define 'good faith,' the term is defined elsewhere in the Utah Code as 'honesty in fact in the conduct or transaction concerned'"); LeBeau v. State, 2014 UT 39, ¶34, 337 P.3d 254 (stating that "[t]hough the Legislature did not specifically define 'interests of justice' in the aggravated kidnapping statute, it has provided guidance elsewhere in the Utah Code"). In this case, while the Act itself contains no definition of "employee," there is another place within the Utah Code—and, notably, within the labor relations context—where the Utah legislature has expressly defined "employee": the Little Wagner Act. And as noted, that statute, which in this respect has been unchanged for nearly 80 years, defines "employee" as "any employee unless this chapter explicitly states otherwise," without any exclusion for supervisors. See Utah Code Ann. § 34-20-2(4)(a). UTA rightly points out that it is not subject to the Little Wagner Act because it is not an "employer" under that statute, since that statute defines "employer" as excluding any "state or political subdivision of a state." See id. § 34-20-2(5)(b). But while the Little Wagner Act does not strictly apply here, it is the only place in the Utah Code where the Utah legislature has defined the term "employee" in the labor relations context, and that definition was on the books in 1969 when the Utah legislature enacted the Act. Accordingly, the Court finds the Little Wagner Act's definition to be very useful guidance in trying to determine what the Utah legislature meant when it used the term "employee" in the Act.

Certainly, the Utah legislature is (and has been for nearly 80 years) free to change its definition of "employee" in the labor relations context, both as that term is used in the Act and in the Little Wagner Act. To date, however, it has not done so, and continues to define the term, within the labor relations context, as a term that does not exclude supervisors. This Court is bound to interpret legislative enactments according to their plain meaning, even if the Court may think that the current legislature might not necessarily pass that same law. See, e.g., Carranza v. U.S., 2011 UT 80, ¶39, 267 P.3d 912 (Nehring, J., dissenting) (stating that courts "do not

interpret statutes by assuming which rights the legislature should want to protect"). Here, the term "employee" is used—both in the Act and in the Little Wagner Act—without any exclusion for supervisors, which definition squares with the plain language (or "dictionary") definition of the term. Despite the fact that this definition provides labor relations protections to persons who may not receive it under applicable federal law, the state statutes are plain enough: all employees of a public transit system, including supervisors, have the right to self-organization; to form, join or assist labor organizations; and to bargain collectively. See Utah Code Ann. § 17B-2a-813(2)(a). The Court therefore holds that UTA's rail operations supervisors are indeed "employees" as that term is currently used in Utah state labor relations law.

## **II. THE COURT WILL CONDUCT A CARD CHECK TO VERIFY THAT A MAJORITY OF THE RAIL OPERATIONS SUPERVISORS HAVE CHOSEN THE UNION**

Next, the Union asks this Court to determine that a "card check" is an appropriate method for determining whether or not a majority of UTA's rail operations supervisors have chosen the Union to be their bargaining representative. A "card check" entails simply comparing the "cards" obtained by Hogue, the Union official, with a certified list of UTA's rail operations supervisors, with the goal toward verifying that the cards were indeed signed by actual rail operations supervisors working for UTA. For its part, UTA resists using the "card check" method, and asks this Court to order that an election take place where all of UTA's rail operations supervisors will be given an opportunity to cast a secret ballot either for or against Union representation.

At root, this question is also one of statutory interpretation. The Act requires UTA to "recognize and bargain exclusively with any labor organization representing a majority of the district's employees in an appropriate unit." See Utah Code Ann. § 17B-2a-813(2)(c)(i). Neither side here contests the issue of whether the rail operations supervisors are, or would be, "an appropriate unit." Rather, the dispute centers on the language compelling UTA to bargain with any "labor organization representing a majority" of the rail operations supervisors. The Union



maintains that a "card check" is a perfectly acceptable way to verify whether or not a "majority" of the supervisors have asked for Union representation. UTA, by contrast, claims that a "card check" is less reliable than an election, before which both sides can campaign and at which each supervisor can cast a secret ballot. The Act itself, unfortunately, contains no additional guidance with regard to the appropriate method for determining whether any particular labor organization has garnered majority support.

Once again, however, the Court looks to the Little Wagner Act for guidance, even though it is not directly applicable in cases involving UTA. As noted, it is the Utah legislature's only guidance in the labor relations context, and the Court again finds that statute helpful in construing the terms of the rather spare Public Transit District Act. In the Little Wagner Act, the Utah legislature stated that the question of whether a labor organization actually does represent a particular set of employees can be answered by "tak[ing] a secret ballot of employees" or by "utiliz[ing] any other suitable method to ascertain such representatives." See Utah Code Ann. § 34-20-9(3).

This section of the Little Wagner Act was the subject of the Utah Supreme Court's decision in Hotel Utah Co. v. Industrial Comm'n, 211 P.2d 200 (Utah 1949). In that case, the Court affirmed the decision by the then-robust Utah Labor Relations Board to use a "card check" method to ascertain union representation, holding that a "card check" was indeed a "suitable method" under the Little Wagner Act, and that the Board "did not abuse the discretion vested in it by the statute" in using the card check method. Id. at 203. However, after "sustaining the Board in the method used," the Court noted that an "election" by secret ballot is the "most effective way of obtaining an untrammelled expression of the desires of the employees," and the best way to minimize the risk of "undue influence," and strongly encouraged the Board to use elections rather than card checks in the future. Id.

The Court notes, however, that the debate taking place in the Hotel Utah opinion was occurring within the context of the existence of a robust Utah Labor Relations Board, whose

task it was to oversee any such elections and to conduct any such card checks. Even today, where most labor issues are governed by federal law, the National Labor Relations Board takes care of administering union elections and overseeing card checks. Because this is not a federal issue, assistance from the National Labor Relations Board is not available. And the Utah Labor Relations Board is no longer functional. Thus, there exists no administrative body to preside over or conduct either an election or a card check in this case. And this practical reality is highly relevant to the Court's decision here.

If a robust Utah Labor Relations Board existed, the Court may well be inclined to take the Hotel Utah Court at its word, and instruct the Board to oversee and administer an election, in light of the fact that the Court went out of its way to express its view that secret ballot elections are "the most effective way" to ascertain whether a union really does represent the "majority" of employees. But that option appears to the Court, as a practical matter, to be foreclosed here simply by virtue of the absence of any competent and operational administrative body to oversee and administer any such election. UTA urges this Court to do so itself, or to appoint a special master for the purposes of overseeing an election. See UTA Br., at 11. But this strikes the Court as a task generally beyond the ordinary ken of the judiciary. Courts interpret the law, and apply it to the facts of the cases that come before them. Courts do not typically oversee or administer elections, even labor relations elections. Simply entertaining the notion brings to mind a host of unanswered questions, including: where would the election take place? What would the ballot look like? When would the election take place? What rules would be in place with regard to campaigning? Who would practically enforce any such rules? Who would physically be present to oversee the ballot process? What would be the mechanism for dealing with the inevitable disputes that would arise between the parties regarding campaigning and balloting? In the present context, the Court is simply unwilling to step into that arena.

In the absence of any functioning administrative body to oversee any such election, the Court falls back on the method that was (despite the Court's stated preference for elections)



actually sustained as "suitable" in the Hotel Utah case: a card check. See Hotel Utah, 211 P.2d at 202-03. The Court recognizes that, in the federal setting, it is the same National Labor Relations Board that conducts card checks as oversees and administers elections. The Court also recognizes that verifying card checks is, like administering elections, also not within the usual job description of a judge. But as a practical matter, a judge is much better equipped to conduct a card check than to oversee and administer an election. In practice, conducting a card check verification can be done in chambers, following the *in camera* submission of the signed cards (from the Union) and an employee list (from UTA). As noted, this method has, at least once, been sustained by the Utah Supreme Court as a "suitable method," under Utah's Little Wagner Act, to verify whether a union really does represent a majority of employees. And in the absence of any operational administrative entity to oversee elections, the Court views a card check verification as the best and most practical alternative available.

Accordingly, the Court concludes that a card check is a lawful, acceptable, and "suitable" method of verifying whether the Union really does represent a "majority" of UTA's rail operations supervisors. The Court will conduct the card check verification itself, in chambers. Within fourteen days of the issuance of this Memorandum Decision and Order, the Union shall submit the cards it believes it has procured, and UTA shall submit an official list of its rail operations supervisors. Both submissions shall be made via hand delivery to the Court's chambers. The Court will make those submissions part of the record, but those submissions will be marked "SEALED" and will not be available for review by anyone other than the party who submitted them, without further order of the Court. The Court specifically finds that these submissions need to be kept private from the other side, and that whatever interests that might exist in favor of public access to these records are substantially outweighed by the Union's and UTA's interests in making sure that their employee lists as well as the list of those alleged to have signed "cards" are kept private. As soon as practicable following *in camera* submission of the cards and the employee list, the Court will conduct an *in camera* review and comparison of the


cards to the employee list, and will make a determination as to whether a majority of the rail operations supervisors listed on the employee list have in fact signed cards authorizing the Union to represent them.

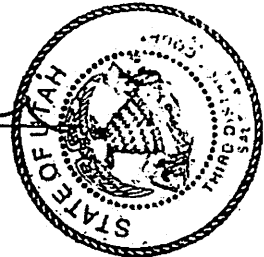
### CONCLUSION

For all of the foregoing reasons, the Union's Motion is GRANTED in its entirety. The factual dispute between these parties about whether UTA's rail operations supervisors are actually employed in a supervisory capacity is rendered moot by the decisions made herein. This case can be resolved on legal grounds. Under Utah law, UTA's rail operations supervisors are "employees" who have a right to organize and bargain collectively, regardless of whether or not they are acting in a supervisory capacity. The Court will determine, through an *in camera* review of the cards and the employee list, whether or not a majority of those rail operations supervisors have authorized the Union to represent them.

This Memorandum Decision and Order is the order of the Court with regard to the Motion, and no further writing is necessary to effectuate this decision.

DATED this 13<sup>th</sup> day of October, 2015.

  
RYAN M. HARRIS  
District Court Judge



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 140902884 by the method and on the date specified.

MANUAL EMAIL: KIMBERLY A CHILD kchild@rqn.com

MANUAL EMAIL: SCOTT A HAGEN shagen@rqn.com

MANUAL EMAIL: RUSSELL T MONAHAN russ@cooklawfirm.com

10/13/2015

/s/ AMBER HATFIELD

Date: \_\_\_\_\_

\_\_\_\_\_

Deputy Court Clerk

Tab D

# UNITED STATES CODE

1964 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS  
OF THE UNITED STATES, IN FORCE  
ON JANUARY 3, 1965

Prepared and published under authority of Title 1, U. S. Code, Section 202 (c)  
by the Committee on the Judiciary of the House of Representatives



VOLUME TEN  
TITLE 45—RAILROADS  
TO  
TITLE 49—TRANSPORTATION

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1965

which is appropriate, in the judgment of the Administrator, for a public transportation system to serve commuters or others in the locality taking into consideration the local patterns and trends of urban growth;

(5) the term "mass transportation" means transportation by bus or rail or other conveyance, either publicly or privately owned, serving the general public (but not including school buses or charter or sightseeing service) and moving over prescribed routes.

(e) Authorization of appropriations.

There are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the funds necessary to carry out all functions under this chapter except loans under section 1602 of this title. All funds appropriated under this chapter for other than administrative expenses shall remain available until expended.

(f) Regulation of operation of system, rates, rentals, or other charges; compliance with undertakings.

None of the provisions of this chapter shall be construed to authorize the Administrator to regulate in any manner the mode of operation of any mass transportation system with respect to which a grant is made under section 1602 of this title or, after such grant is made, to regulate the rates, fares, tolls, rentals, or other charges fixed or prescribed for such system by any local public or private transit agency; but nothing in this subsection shall prevent the Administrator from taking such actions as may be necessary to require compliance by the agency or agencies involved with any undertakings furnished by such agency or agencies in connection with the application for the grant. (Pub. L. 88-365, § 9, July 9, 1964, 78 Stat. 306.)

§ 1609. Labor standards.

(a) Action of Administrator.

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Administrator shall not approve any such loan or grant without first obtaining adequate assurance that required labor standards will be maintained upon the construction work.

(b) Authority of Secretary of Labor.

The Secretary of Labor shall have, with respect to the labor standards specified in subsection (a) of this section, the authority and functions set forth

in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267, and section 276c of Title 40.

(c) Interests of employees; protective arrangements: terms and conditions.

It shall be a condition of any assistance under this chapter that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2) (f) of this title. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements. (Pub. L. 88-365, § 10, July 9, 1964, 78 Stat. 307.)

REFERENCES IN TEXT

The Davis-Bacon Act, as amended, referred to in subsec. (a), is classified to sections 276a to 276a-5 of Title 40, Public Buildings, Property and Works.

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (b), is set out as a note under section 133z-15 of Title 5, Executive Departments and Government Officers and Employees.

§ 1610. Air pollution control.

In providing financial assistance to any project under section 1602 of this title, the Administrator shall take into consideration whether the facilities and equipment to be acquired, constructed, reconstructed, or improved will be designed and equipped to prevent and control air pollution in accordance with any criteria established for this purpose by the Secretary of Health, Education, and Welfare. (Pub. L. 88-365, § 11, July 9, 1964, 78 Stat. 308.)

§ 1611. Limitation on grants within one State.

Grants made under section 1602 of this title (other than grants for relocation payments in accordance with section 1606(b) of this title) for projects in any one State shall not exceed in the aggregate 12½ per centum of the aggregate amount of grant funds authorized to be appropriated pursuant to section 1603(b) of this title. (Pub. L. 88-365, § 12, July 9, 1964, 78 Stat. 308.)



Tab E

KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

United States Code Annotated  
Title 49. Transportation (Refs & Annos)  
Subtitle III. General and Intermodal Programs (Refs & Annos)  
Chapter 53. Public Transportation (Refs & Annos)

49 U.S.C.A. § 5333

§ 5333. Labor standards

Effective: October 1, 2012

Currentness

**(a) Prevailing wages requirement.**--The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under sections 3141 through 3144, 3146, and 3147 of title 40. The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 3145 of title 40.

**(b) Employee protective arrangements.**--(1) As a condition of financial assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) shall specify the arrangements.

**(2)** Arrangements under this subsection shall include provisions that may be necessary for--

**(A)** the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

**(B)** the continuation of collective bargaining rights;

**(C)** the protection of individual employees against a worsening of their positions related to employment;

**(D)** assurances of employment to employees of acquired public transportation systems;

**(E)** assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

**(F)** paid training or retraining programs.



(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11326 of this title.

(4) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and grant amendments which do not materially revise or amend existing assistance agreements, shall be certified without referral.

(5) When the Secretary is called upon to issue fair and equitable determinations involving assurances of employment when one private transit bus service contractor replaces another through competitive bidding, such decisions shall be based on the principles set forth in the Department of Labor's decision of September 21, 1994, as clarified by the supplemental ruling of November 7, 1994, with respect to grant NV-90-X021. This paragraph shall not serve as a basis for objections under section 215.3(d) of title 29, Code of Federal Regulations.

**CREDIT(S)**

(Added Pub.L. 103-272, § 1(d), July 5, 1994, 108 Stat. 835; amended Pub.L. 104-88, Title III, § 308(e), Dec. 29, 1995, 109 Stat. 947; Pub.L. 105-178, Title III, § 3029(b)(9), June 9, 1998, 112 Stat. 372; Pub.L. 107-217, § 3(n)(3), Aug. 21, 2002, 116 Stat. 1302; Pub.L. 109-59, Title III, §§ 3002(b)(4), 3031, Aug. 10, 2005, 119 Stat. 1545, 1625; Pub.L. 112-141, Div. B, § 20030(h), July 6, 2012, 126 Stat. 731.)

Notes of Decisions (39)

49 U.S.C.A. § 5333, 49 USCA § 5333

Current through P.L. 115-45. Title 26 current through 115-52.

Tab F

# LAWS

of the

## STATE OF UTAH, 1969

Passed at the

FIRST SPECIAL SESSION  
THIRTY-EIGHTH LEGISLATURE

---

### BANKS AND BANKING

#### CHAPTER 1

H. B. No. 7

(Passed May 7, 1969. In effect May 9, 1969)

#### INDUSTRIAL LOAN CORPORATIONS

**An Act Amending Chapter 17, Laws of Utah 1969 (H. B. No. 201 of the 38th Legislature); Providing For a Different Date For It to Become Effective; and Providing For an Effective Date For This Act.**

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Chapter amended.**

Chapter 17, Laws of Utah 1969, (H.B. 201 of the 38th Legislature), is amended by adding Section thereto to read as follows:

"Section 4. This act shall take effect on July 1, 1969."

**Section 2. Act effective.**

This act shall take effect upon approval.

Approved May 9, 1969.

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#### CHAPTER 2

H. B. No. 9

(Passed May 8, 1969. In effect July 1, 1969)

#### CONSUMER CREDIT CODE: CONFORMING TO FEDERAL ACT AND REGULATIONS

**An Act Amending Sections 3.104, 3.105, and 6.104 of the Utah Uniform Consumer Credit Code, as Enacted by Chapter 18, Laws of Utah 1969 (H.B. 200 of the 38th Legislature), Relating to Certain Consumer and Other Credit Transactions; Conforming This Code More Closely to the Requirements of the Federal Consumer Credit Protection Act and the Regulations Issued Thereunder; and Providing an Effective Date.**

---

be held and utilized by the university, directly or indirectly, for purposes of its own research or as common areas supervised and controlled by it and not leased to private persons or parties, even though such portions may be utilized by lessees of other areas of the research park or by other private interests in connection with the general purposes of the research park. Upon expiration or termination of any lease of property lying within such research park resulting in reversion of direct control to the university of the subject land, improvements and/or equipment, such land, improvements and equipment shall immediately become exempt from taxation and contribution in lieu thereof, and the proration of the annualized taxes or contribution in lieu thereof shall be made as of the date of such lease expiration or termination.

**Section 6. Salt Lake City to provide services — Fire — Police — Facilities.**

The board of commissioners of Salt Lake City is hereby authorized and directed to provide police and fire protection and to furnish, install and maintain customary municipal services and facilities for street lighting, traffic control, sidewalks, curb, gutter, drainage, sewage disposal and water supply with respect to all areas of the research park to be established upon lands conveyed to the University of Utah under the patent. Such services and facilities shall be provided as the need therefore shall be determined by the state board of higher education and shall be furnished and provided subject to connection fees, use charges and other service fees customarily assessed against similar persons, companies or properties within the territorial limits of Salt Lake City. No special improvement district shall be created or special taxes imposed with respect to the services and facilities provided under this section.

**Section 7. Roads part of state highway system.**

The state road commission of Utah is empowered between regular sessions of the legislature to enter into agreements with the University of Utah designating all or part of the roads within or adjacent to the research park hereby established as part of the state highway system.

**Section 8. Savings clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Approved May 15, 1969.

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**CHAPTER 12**

**PUBLIC TRANSIT DISTRICT LAW**

S. B. No. 4

(Passed May 9, 1969. In effect July 9, 1969)

**An Act Relating to the Creation, Organization and Governance of Public Transit Districts; Providing for the Powers and Functions of These Districts, Designation and Manner of Appointment of Officers, Tenure, Acquisition and Exemption From Taxation and Execution of District Property, Issuance of Bonds, Levy and Collection of Taxes, Annexation and Withdrawal From These Districts, Payment of Claims Against**

fied to the court for judgment and in that case the part of the evidence specified and the stipulation specifying the evidence shall be the record on review.

**Section 25. Written decision and findings of fact.**

Within 30 days after conclusion of the hearing the board shall render its decision in writing together with written findings of fact. Copies of the findings and decision shall be sent to the petitioners and intervenors by certified mail, postage prepaid.

**Section 26. Safety appliances and procedures.**

The district shall be subject to regulations of the public service commission relating to safety appliances and procedures, and the commission shall inspect all work done pursuant to this act and may make further additions or changes necessary for the purpose of safety to employees and the general public.

**Section 27. Subject to existing traffic laws.**

The district shall be subject, in the operation of its transportation facilities and equipment, to the laws and regulations of the State of Utah and of applicable municipalities relating to traffic and operation of vehicles upon the streets and highways of the state.

**Section 28. Power to issue bonds, borrow money, incur debts.**

The district may issue bonds, borrow money and incur debts as authorized by law or this act. The district may satisfy any indebtedness as provided in this act or in any other applicable law and may, for purposes of satisfaction of said indebtedness, incur new obligations of the type satisfied.

**Section 29. Powers of district.**

"The district may contract, accept grants, contributions or loans (directly through the sale of securities or equipment trust certificates, or otherwise) from the United States, or any department, instrumentality, or agency thereof, to establish, finance, construct, improve, maintain or operate transit facilities and equipment or to study and plan transit facilities in accordance with any legislation congress has adopted or may adopt. The district may do all things necessary within the limitation imposed by this act, including the creation of any indebtedness permitted by this act, in order to avail itself of any aid, assistance, or co-operation available under federal legislation, including, without limitations, compliance with such labor standards and the making of such arrangements for employees as may be required by the United States or any department, instrumentality or agencies thereof."

**Section 30. Rights of employees upheld.**

The rights, benefits and other employee protective conditions and remedies of section 13 (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1609(c)), as determined by the Secretary of Labor, shall apply to the establishment and operation by the district of any public transit service or system and to any lease, contract, or other arrangement to operate such system or services. Whenever the district shall operate such system or services, or enter into any lease,



contract, or other arrangement for the operation of such system or services, the district shall take such action as may be necessary to extend to employees or affected public transit service systems furnishing like services, in accordance with seniority, the first opportunity for reasonably comparable employment in any available non-supervisory jobs in respect to such operations for which they can qualify after a reasonable training period. Such employment shall not result in any worsening of the employee's position in his former employment or any loss of wages, hours, working conditions, seniority, fringe benefits and rights and privileges pertaining thereto.

**Section 31. Right of employees to organize, assist organization, bargain collectively — Striking excepted.**

Employees of any public transit system established and operated by the district shall have the right to self-organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing provided, however, that such employees and labor organizations shall not have the right to join in any strike against such public transit system. The district shall recognize and bargain exclusively with any labor organization representing a majority of its employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare and pension and retirement provisions, and, upon reaching agreement with such labor organization, to enter into and execute a written contract incorporating therein the agreements so reached.

**Section 32. Submit to arbitration board if bargaining has no results — Board membership — Determination board final — Selection of third arbitrator — Term "labor dispute" broadly construed.**

Whenever any labor disputes arise in the operation of any public transit service or system established and operated by the District and collective bargaining does not result in an agreement, the District and the labor organization shall submit such dispute to arbitration by a board composed of three (3) persons, one appointed by the District, one appointed by the labor organization representing the employees and a third member to be agreed upon by the labor organization and the District. The member agreed upon by the labor organization and the District shall act as chairman of the board. The determination of the majority of the board of arbitration thus established shall be final and binding on all matters in dispute. If, after a period of ten days from the date of appointment of the second-named of the two arbitrators representing the District and the labor organization, the third arbitrator has not been selected, then either arbitrator may request the Director of the Federal Mediation and Conciliation Service to furnish a list of five persons qualified to act as an impartial arbitrator from which list the third arbitrator shall be selected. The names submitted shall be local persons or within as close a proximity to the local area as possible. The arbitrators appointed by the District and the labor organization, promptly after the receipt of such list, shall determine by lot the order of elimination and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator. The term "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions, hours, or benefits, including health and welfare, sick leave,

Tab G

**17B-2a-813 Rights, benefits, and protective conditions for employees of a public transit district -- Strike prohibited -- Employees of an acquired transit system.**

- (1) The rights, benefits, and other employee protective conditions and remedies of Section 13(c) of the Urban Mass Transportation Act of 1964, 49 U.S.C. Sec. 5333(b), as determined by the Secretary of Labor, apply to a public transit district's establishment and operation of a public transit service or system.
- (2)
  - (a) Employees of a public transit system established and operated by a public transit district have the right to:
    - (i) self-organization;
    - (ii) form, join, or assist labor organizations; and
    - (iii) bargain collectively through representatives of their own choosing.
  - (b) Employees of a public transit district and labor organizations may not join in a strike against the public transit system operated by the public transit district.
  - (c) Each public transit district shall:
    - (i) recognize and bargain exclusively with any labor organization representing a majority of the district's employees in an appropriate unit with respect to wages, salaries, hours, working conditions, and welfare, pension, and retirement provisions; and
    - (ii) upon reaching agreement with the labor organization, enter into and execute a written contract incorporating the agreement.
- (3) If a public transit district acquires an existing public transit system:
  - (a) all employees of the acquired system who are necessary for the operation of the acquired system, except executive and administrative officers and employees, shall be:
    - (i) transferred to and appointed employees of the acquiring public transit district; and
    - (ii) given sick leave, seniority, vacation, and pension or retirement credits in accordance with the acquired system's records;
  - (b) members and beneficiaries of a pension or retirement plan or other program of benefits that the acquired system has established shall continue to have rights, privileges, benefits, obligations, and status with respect to that established plan or program; and
  - (c) the public transit district may establish, amend, or modify, by agreement with employees or their authorized representatives, the terms, conditions, and provisions of a pension or retirement plan or of an amendment or modification of a pension or retirement plan.
- (4) A pension administrator for a retirement plan sponsored by a public transit district or a person designated by the administrator shall maintain retirement records in accordance with Subsection 49-11-618(2).

Amended by Chapter 448, 2013 General Session



Tab H

# UNITED STATES CODE

1964 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS  
OF THE UNITED STATES, IN FORCE  
ON JANUARY 3, 1965

Prepared and published under authority of Title 1, U. S. Code, Section 202 (c)  
by the Committee on the Judiciary of the House of Representatives



VOLUME SEVEN  
TITLE 27—INTOXICATING LIQUORS  
TO  
TITLE 32—NATIONAL GUARD

UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1965

which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Commission and the Secretary of Labor.

"Sec. 10. [Hearings.] The Commission, or on the authorization of the Commission, any subcommittee or panel thereof, may, for the purpose of carrying out its functions and duties, hold such hearings and sit and act at such times and places as the Commission or such subcommittee or panel may deem advisable.

"Sec. 11. [Contracts.] The Commission is authorized to negotiate and enter into contracts with private organizations to carry out such studies and to prepare such reports as the Commission determines to be necessary in order to carry out its duties.

"Sec. 12. [Information from other agencies.] The Commission is authorized to secure directly from any executive department, agency, or independent instrumentality of the Government any information it deems necessary to carry out its functions under this Act; and each such department, agency, and instrumentality is authorized and directed to cooperate with the Commission and, to the extent permitted by law, to furnish such information to the Commission, upon request made by the Chairman.

"Sec. 13. [Report to the President and the Congress; termination of existence of Commission.] The Commission shall submit a final report of its findings and recommendations to the President and the Congress by January 1, 1966. The Commission shall cease to exist thirty days after submitting its final report.

"Sec. 14. [Authorization of appropriations.] There are hereby authorized to be appropriated to the Commission, out of any money in the Treasury not otherwise appropriated, such sums not in excess of \$1,000,000, as may be necessary to carry out the provisions of this Act."

EX. ORD. NO. 10918. ADVISORY COMMITTEE ON  
LABOR-MANAGEMENT POLICY

Ex. Ord. No. 10918, Feb. 16, 1961, 26 F.R. 1427, provided: By virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. There is hereby established the President's Advisory Committee on Labor-Management Policy (hereinafter referred to as the Committee). The Committee shall be composed of the Secretary of Labor, the Secretary of Commerce, and nineteen other members who shall be designated by the President from time to time. Of the nineteen designated members, five shall be from the public at large, seven shall be from labor, and seven shall be from management. The Secretary of Labor and the Secretary of Commerce shall each alternatively serve as chairman of the Committee for periods of one year, the Secretary of Labor to so serve during the first year following the date of this order.

SEC. 2. The Committee shall study, and shall advise with and make recommendations to the President with respect to, policies that may be followed by labor, management, or the public which will promote free and responsible collective bargaining, industrial peace, sound wage and price policies, higher standards of living, and increased productivity. The Committee shall include among the matters to be considered by it in connection with its studies and recommendations (1) policies designed to ensure that American products are competitive in world markets, and (2) the benefits and problems created by automation and other technological advances.

SEC. 3. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee and to furnish it such information and assistance, not inconsistent with law, as it may require in the performance of its duties.

SEC. 4. Consistent with law, the Department of Labor and the Department of Commerce shall, as may be necessary for the effectuation of the purposes of this order, furnish assistance to the Committee in accordance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691). Such assistance may include detaching employees to the Committee, one of whom may serve as executive officer of the Committee, to perform such functions, consistent with the purposes of this order, as the Committee may assign to them, and shall include the

furnishing of necessary office space and facilities to the Committee by the Department of Labor.

JOHN F. KENNEDY

§ 142. Definitions.

When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in subchapter II of this chapter as amended by this chapter.

(June 23, 1947, ch. 120, title V, § 501, 61 Stat. 161.)

§ 143. Saving provisions.

Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this chapter. (June 23, 1947 ch. 120, title V, § 502, 61 Stat. 162.)

§ 144. Separability of provisions.

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (June 23, 1947, ch. 120, title V, § 503, 61 Stat. 162.)

SUBCHAPTER II.—NATIONAL LABOR RELATIONS

§ 151. Findings and declaration of policy.

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, ch. 372, § 1, 49 Stat. 449; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 136.)

#### AMENDMENTS

1947—Act June 23, 1947, amended section generally to restate the declaration of policy and to make the finding and policy of this subchapter "two-sided".

#### EFFECTIVE DATE OF 1947 AMENDMENT

Section 104 of act June 23, 1947, provided: "The amendments made by this title [this subchapter] shall take effect sixty days after the date of the enactment of this Act [June 23, 1947], except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title [section 153 of this title] may be exercised forthwith."

#### § 152. Definitions.

When used in this subchapter—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or in-

directly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) 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, as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of



whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 153 of this title.

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means—

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of subparagraph (a) of this paragraph, and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in said paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(July 5, 1935, ch. 372, § 2, 49 Stat. 450; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 137.)

#### REFERENCES IN TEXT

The Railway Labor Act, as amended from time to time, referred to in the text, is classified to chapter 8 of Title 45, Railroads.

#### AMENDMENTS

1947—Act June 23, 1947, amended section generally to redefine the terms used in this subchapter and to define several new terms.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see chapter 23 of Title 50, War and National Defense, particularly sections 782 (4A), 784, 792a, and 841—844 of that title.

#### § 153. National Labor Relations Board.

(a) Creation, composition, appointment, and tenure; Chairman; removal of members.

The National Labor Relations Board (hereinafter called the "Board") created by this subchapter prior to its amendment by the Labor Management Relations Act, 1947, is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal.

The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 159 of this title and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) Annual reports to Congress and the President.

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

(d) General Counsel; appointment and tenure; powers and duties; vacancy.

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall

have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. (July 5, 1935, ch. 372, § 3, 49 Stat. 451; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 139; Sept. 14, 1959, Pub. L. 86-257, title VII, §§ 701(b), 703, 73 Stat. 542.)

## REFERENCES IN TEXT

The Labor Management Relations Act, 1947, referred to in text is the act of June 23, 1947, classified to this chapter.

## AMENDMENTS

1959—Subsec. (b). Pub. L. 86-257, § 701(b), authorized the Board to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under section 159(c) or 159(e) of this title and certify the results thereof.

Subsec. (d). Pub. L. 86-257, § 703, authorized the President to designate the officer or employee who shall act as General Counsel in the case of a vacancy in the office of the General Counsel.

1947—Act June 23, 1947, amended section generally by increasing membership from three to five, delegating its powers and duties to a quorum of any three members, and by appointing a General Counsel and outlining his powers and duties.

## EFFECTIVE DATE OF 1959 AMENDMENT

Section 707 of Pub. L. 86-257 provided that: "The amendments made by this title [to subsecs. (b) and (d) of this section and sections 158 (b)(4-7), (e), (f), 159(c)(3), 160 (1), (m) of this title] shall take effect sixty days after the date of the enactment of this Act [Sept. 14, 1959] and no provision of this title shall be deemed to make an unfair labor practice, any act which is performed prior to such effective date which did not constitute an unfair labor practice prior thereto."

§ 154. Same; eligibility for reappointment; officers and employees; payment of expenses.

(a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his find-

ings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this subchapter shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose. (July 5, 1935, ch. 372, § 4, 49 Stat. 451; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 139; Oct. 15, 1949, ch. 695, § 5(a), 63 Stat. 880.)

## CODIFICATION

Provisions of subsec. (a) which prescribed the basic compensation of members of the Board and the General Counsel were omitted to conform to the provisions of the Federal Executive Salary Schedule. See section 2210 et seq. of Title 5, Executive Departments and Government Officers and Employees.

## AMENDMENTS

1949—Subsec. (a). Act Oct. 15, 1949, increased compensation of members of Board and General Counsel from \$12,000 to \$15,000 per annum.

1947—Act June 23, 1947, amended section generally by increasing Board members' salaries from \$10,000 to \$12,000 per annum, by providing a salary of \$12,000 per annum for the General Counsel, omitting former subsec. (b) relating to the termination of the "Old Board", and redesignating former subsec. (c) relating to payment of expenses of Board, to be subsec. (b).

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

§ 155. Same; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member.

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case. (July 5, 1935, ch. 372, § 5, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

## AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

§ 156. Same; rules and regulations.

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this subchapter. (July 5, 1935, ch. 372, § 6(a), 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 141.)

## REFERENCES IN TEXT

The Administrative Procedure Act, referred to in the text, is classified to chapter 19 of Title 5, Executive Departments and Government Officers and Employees.

## CODIFICATION

Section 6 of act July 5, 1936, did not contain a subsection (b).

## AMENDMENTS

1947—Act June 23, 1947, provided that the rules and regulations issued by the Board should be in the manner prescribed by the Administrative Procedure Act.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

§ 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title. (July 5, 1935, ch. 372, § 7, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140.)

## AMENDMENTS

1947—Act June 23, 1947, restated rights of employees to bargain collectively and added provision that they have the right to refrain from joining in concerted activities with their fellow employees.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see chapter 23 of Title 50, War and National Defense, particularly sections 782 (4A), 784, 792a and 841—844 of that title.

§ 158. Unfair labor practices.

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment

membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159 (a) of this title;

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or



in an industry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

*Provided*, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or

discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this subchapter any other labor organization and a question concerning representation may not appropriately be raised under section 159(c) of this title,

(B) where within the preceding twelve months a valid election under section 159(c) of this title has been conducted, or

(C) where such picketing has been conducted without a petition under section 159(c) of this title being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 159(c) (1) of this title or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of

the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)–(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158–160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling,

transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection and subsection (b) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a) (3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title. (July 5, 1935, ch. 372, § 8, 49 Stat. 452; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 140; Oct. 22, 1951, ch. 534, § 1(b), 65 Stat. 601; Sept. 14, 1950, Pub. L. 86–257, title II, § 201(e), title VII, §§ 704(a)—(c), 705 (a), 73 Stat. 525, 542.)

## AMENDMENTS

1950—Subsec. (a) (3). Pub. L. 86-257, § 201(c), eliminated words "and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with sections 159 (f), (g), (h) of this title" following "such agreement when made" in cl. (1).

Subsec. (b) (4). Pub. L. 86-257, § 704(a), among other changes, substituted "induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment" for "induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment" in cl. (1), added cl. (11), and inserted provisions relating to agreements prohibited by subsection (e) of this section in cl. (A), the proviso relating to primary strikes and primary picketing in cl. (B), and the last proviso relating to publicity.

Subsec. (b) (7). Pub. L. 86-257, § 704(c), added subsec. (b) (7).

Subsec. (e). Pub. L. 86-257, § 704(b), added subsec. (e).

Subsec. (f). Pub. L. 86-257, § 705(a), added subsec. (f).

1951—Subsec. (a) (3). Act Oct. 22, 1951, substituted "and has at . . . such an agreement" "and (11) . . . to make such an agreement."

1947—Act June 23, 1947, amended section generally by stating what were unfair labor practices by a union as well as by an employer, and by adding provisions protecting the right of free speech for both employers and unions.

## EFFECTIVE DATE OF 1950 AMENDMENT

Subsecs. (b) (7), (e), and (f) of this section, and amendments to subsecs. (b) (4)—(6) of this section effective sixty days after Sept. 14, 1950, see section 707 of Pub. L. 86-257, set out as a note under section 153 of this title.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## UNFAIR LABOR PRACTICES PRIOR TO JUNE 23, 1947

Section 102 of act June 23, 1947, provided: "No provision of this title [this subchapter] shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this act [June 23, 1947] which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title [subsecs. (a) (3) and (b) (2) of this section] shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act [June 23, 1947], or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) [subd. (3) of this section] of the National Labor Relations Act prior to the effective date of this title [sixty days after June 23, 1947] unless such agreement was renewed or extended subsequent thereto."

## AGREEMENTS REQUIRING MEMBERSHIP IN A LABOR ORGANIZATION AS A CONDITION OF EMPLOYMENT

Section 705(b) of Pub. L. 86-257 provided that: "Nothing contained in the amendment made by subsection (a) [adding subsec. (f) of this section] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law."

## CROSS REFERENCES

Actions by and against labor organizations, see section 185 of this title.

Boycotts and other unlawful combinations, right to sue, see section 187 of this title.

Federal Credit Unions, providing facilities for operations of, see section 158a of this title.

30-500 O—65—vol. 7—31

Federal employment denied persons who assert right to strike against Government, see sections 188p, 118r of Title 5, Executive Departments and Government Officers and Employees.

Injunctive relief granted to Board against unfair labor practices and boycotts, see section 180(j) and (l) of this title.

Restrictions on payments and loans to employee representatives, see section 186 of this title.

Right to strike preserved, see section 163 of this title.

Strikes subject to injunction, see section 178 of this title.

## § 158a. Providing facilities for operations of Federal Credit Unions.

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this title, or acts amendatory thereof. (Dec. 6, 1937, ch. 3, § 5, 51 Stat. 5.)

## § 159. Representatives and elections.

(a) Exclusive representatives; employees' adjustment of grievances directly with employer.

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) Determination of bargaining unit by Board.

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership,



or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) Hearings on questions affecting commerce; rules and regulations.

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 160 (c) of this title.

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

(d) Petition for enforcement or review; transcript.

Whenever an order of the Board made pursuant to section 160 (c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section 160 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) Secret ballot; limitation of elections.

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 158 (a) (3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

(f)—(h) Repealed. Pub. L. 86-257, title II, § 201(d), Sept. 14, 1959, 73 Stat. 525.

(July 5, 1935, ch. 372, § 9, 49 Stat. 453; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 143; Oct. 22, 1951, ch. 534, § 1 (a), (b), 65 Stat. 601; Sept. 14, 1959, Pub. L. 86-257, title II, § 201(d), title VII, § 702, 73 Stat. 525, 542.)

AMENDMENTS

1959—Subsec. (c) (3). Pub. L. 86-257, § 702, substituted "Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike" for "Employees on strike who are not entitled to reinstatement shall not be eligible to vote."

Subsecs. (f) and (g). Pub. L. 86-257, § 201(d), repealed subsecs. (f) and (g), which required unions to file their constitutions, bylaws and a report, prescribed the contents of the report and directed the filing of annual financial reports, and are now covered by section 431 of this title.

Subsec. (h). Pub. L. 86-257, § 201(d), repealed subsec. (h), which related to affidavits showing union's officers free from Communist Party affiliation or belief.

1951—Subsec. (e). Act Oct. 22, 1951, § 1(c), deleted former subdivision (1) and renumbered subdivisions (2) and (3) as (1) and (2).

Subsecs. (f)—(h). Act Oct. 22, 1951, § 1(d), deleted "No petition under section 159(e) (1) shall be entertained" wherever appearing.

1947—Act June 23, 1947, amended section generally to allow employees to carry their grievances directly to the employer, to circumscribe certain powers of the Board, to make the union file with the Secretary of Labor its constitution, bylaws, and report before being certified as a bargaining agent, to require annual reports by labor unions, and to require labor unions to file affidavits with the Board showing that none of its officers are affiliated with or believe in the Communist Party.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of subsec. (c) (3) of this section by Pub. L. 86-257 effective sixty days after September 14, 1959.

see section 707 of Pub. L. 86-257, set out as a note under section 153 of this title.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### CERTAIN CERTIFICATIONS OF BARGAINING UNITS UNAFFECTED

Section 103 of act June 23, 1947, provided: "No provisions of this title [this subchapter] shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act [this section] prior to the effective date of this title [sixty days after June 23, 1947] until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title [sixty days after June 23, 1947], until the end of the contract period or until one year after such date, whichever first occurs."

#### COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see chapter 23 of Title 50, War and National Defense, particularly sections 782 (4A), 784, 792a and 841-844 of that title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 160. Prevention of unfair labor practices.

#### (a) Powers of Board generally.

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith.

#### (b) Complaint and notice of hearing; answer; court rules of evidence inapplicable.

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency

conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of Title 28.

#### (c) Reduction of testimony to writing; findings and orders of Board.

The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of subsection (a) (1) or (a) (2) of section 158 of this title, and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board

may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

(d) *Modification of findings or orders prior to filing record in court.*

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) *Petition to court for enforcement of order; proceedings; review of judgment.*

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28.

(f) *Review of final order of Board on petition to court.*

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) *Institution of court proceedings as stay of Board's order.*

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) *Jurisdiction of courts unaffected by limitations prescribed in sections 101—115 of this title.*

When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101—115 of this title.

(i) *Expeditious hearings on petitions.*

Petitions filed under this subchapter shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) *Injunctions.*

The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.



## (k) Hearings on jurisdictional strikes.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 158 (b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

## (l) Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 158(b) of this title, or section 158(e) of this title or section 158(b) (7) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 158(b) (7) of this title if a charge against the employer under section 158(a) (2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting

the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 158(b) (4) (D) of this title.

## (m) Priority of cases.

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a) (3) or (b) (2) of section 158 of this title, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (l) of this section. (July 5, 1935, ch. 372, § 10, 49 Stat. 453; June 25, 1936, ch. 804, 49 Stat. 1921; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 146; June 25, 1948, ch. 646, § 32 (a), (b), 62 Stat. 691; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85-791, § 13, 72 Stat. 945; Sept. 14, 1959, Pub. L. 86-257, title VII, §§ 704(d), 706, 73 Stat. 544.)

## REFERENCES IN TEXT

"Sections 101—115 of this title," referred to in the text, is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, popularly known as the Norris-LaGuardia Act.

Section 11 of that act, formerly classified to section 111 of this title, was repealed and reenacted as section 3802 of Title 18, Crimes and Criminal Procedure, by act June 26, 1948, ch. 645, § 21, 62 Stat. 882, eff. Sept. 1, 1948.

Section 12 of that act, formerly classified to section 112 of this title, was also repealed by act June 26, 1948, and is now covered by rule 42 (b), Federal Rules of Criminal Procedure, Title 18, Appendix.

## CODIFICATION

In subsec. (e), reference to the District Court of the United States for the District of Columbia, which was eliminated by Pub. L. 85-791, § 13 (b), was previously omitted on authority of act June 26, 1948.

## AMENDMENTS

1959—Subsec. (l). Pub. L. 86-257, § 704(d), included unfair labor practices within the meaning of sections 158(e) and 158(b) (7) of this title, and inserted the proviso prohibiting the officer or regional attorney from applying for any restraining order under section 158(b) (7) of this title if a charge against the employer under section 158(a) (2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue.

Subsec. (m). Pub. L. 86-257, § 706, added subsec. (m). 1958—Subsec. (d). Pub. L. 85-791, § 13(a), eliminated "a transcript of" following "until".

Subsec. (e). Pub. L. 85-791, § 13(b), eliminated "(including the United States Court of Appeals for the District of Columbia)" preceding ", or if all the courts", and substituted "file in the court the record in the proceedings, as provided in section 2112 of Title 28" for "certify and file in the court a transcript of the entire record in the proceedings including the pleadings and testimony upon which such order was entered and the findings and order of the Board" in the first sentence, in second sentence substituted "the filing of such petition" for "such filing of" and eliminated "upon the pleadings, testimony and proceedings set forth in such transcript" following "make and enter", in fifth sentence substituted "member" for "members" following "before the Board, its", and substituted "record" for "transcript", and in seventh sentence, substituted "Upon the filing of the record with it the" for "The", and "section 1254 of Title 28" for "sections 346 and 347 of Title 28".

Subsec. (f). Pub. L. 85-791, § 13(c), substituted "transmitted by the clerk of the court to" for "served upon" and "the record in the proceeding, certified by the Board, as provided in section 2112 of Title 28" for "a



transcript of the entire record in the proceeding, certified by the Board including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board" in the second sentence, and in third sentence substituted "the filing of such petition," for "such filing", and eliminated "exclusive" preceding "jurisdiction".

1947—Act June 23, 1947, amended section generally and added subsecs. (j)—(l) which gives the Board general power to petition district court for temporary relief or restraining order, directs Board to hear and determine jurisdictional strikes, and to investigate boycotts and strikes to force recognition of an uncertified labor union and to petition district court for injunctive relief.

#### CHANGE OF NAME

The "circuit courts of appeal" and the "circuit courts of appeals of the United States" have been changed to "United States courts of appeals" by act June 25, 1948, § 32 (a), as amended by act May 24, 1949.

The "District Court of the United States for the District of Columbia" was changed to the "United States District Court for the District of Columbia" by act June 25, 1948, § 32 (b), as amended by act May 24, 1949. See sections 88 and 132 of Title 28, Judiciary and Judicial Procedure.

Supreme Court of the District of Columbia was changed to "District Court of the United States for the District of Columbia" by act June 25, 1938.

Court of Appeals of the District of Columbia was changed to United States Court of Appeals for the District of Columbia by act June 7, 1934, ch. 426, 48 Stat. 926.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment of section by Pub. L. 86-257 effective sixty days after Sept. 14, 1959, see section 707 of Pub. L. 86-257, set out as a note under section 153 of this title.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### COMMUNIST ORGANIZATIONS, AND MEMBERS

Prohibitions placed on Communist organizations, and members thereof, with respect to labor, see chapter 23 of Title 50, War and National Defense, particularly sections 782 (4A), 784, 702a and 841—844 of that title.

#### FEDERAL RULES OF CIVIL PROCEDURE

Application of rules, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

### § 161. Investigatory powers of Board.

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title—

#### (1) Documentary evidence; summoning witnesses and taking testimony.

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion

such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

#### (2) Court aid in compelling production of evidence and attendance of witnesses.

In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

#### (3) Privilege of witnesses; immunity from prosecution.

No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

#### (4) Process, service and return; fees of witnesses.

Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

## (5) Process, where served.

All process of any court to which application may be made under this subchapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

## (6) Information and assistance from departments.

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

(July 5, 1935, ch. 372, § 11, 49 Stat. 455; June 25, 1936, ch. 804, 49 Stat. 1921; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 150.)

## CODIFICATION

In par. (2), reference to "the District Court of the United States for the District of Columbia" was omitted on authority of act June 25, 1948, ch. 646, § 32 (b), 62 Stat. 991, since the District of Columbia constitutes a judicial district, and the District Court of the United States for the District of Columbia is included within the term "any district court of the United States" as used in such subsection. See sections 88 and 132 of Title 28, Judiciary and Judicial Procedure.

## AMENDMENTS

1947—Act June 23, 1947, restated the section with the addition of provisions requiring the issuance of subpoenas as a matter of course on the request of any party.

## CHANGE OF NAME

Supreme Court of the District of Columbia was changed to the "District Court of the United States for the District of Columbia" by act June 25, 1936.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## FEDERAL RULES OF CIVIL PROCEDURE

Subpena, see rule 45, Title 28, Appendix, Judiciary and Judicial Procedure.

## § 162. Offenses and penalties.

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both. (July 5, 1935, ch. 372, § 12, 49 Stat. 456; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

## AMENDMENTS

1947—Act June 23, 1947, reenacted section without change.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## § 163. Right to strike preserved.

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. (July 5, 1935, ch. 372, § 13, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

## AMENDMENTS

1947—Act June 23, 1947, amended section so as to provide that except as specifically provided for in this subchapter nothing shall interfere with or diminish the right to strike and that nothing was to be construed

to affect the limitations or qualifications on the right to strike, thus recognizing that the right to strike is not an unlimited and unqualified right.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## § 164. Supervisors as union members; recognition by employers; declination of jurisdiction by Board over labor disputes; assertion of jurisdiction by State or Territorial agencies and courts.

(a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction. (July 5, 1935, ch. 372, § 14, 49 Stat. 457; June 23, 1947, title I, § 101, 61 Stat. 151; Sept. 14, 1959, Pub. L. 86-257, title VII, § 701 (a), 73 Stat. 541.)

## REFERENCES IN TEXT

The Administrative Procedure Act, referred to in subsec. (c), is classified to chapter 19 of Title 5, Executive Departments and Government Officers and Employees.

## AMENDMENTS

1959—Subsec. (c). Pub. L. 86-257 added subsec. (c). 1947—Act June 23, 1947, amended section generally by inserting new subject matter. Section formerly referred to conflict of laws and is now covered by section 165 of this title.

## EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

## § 165. Conflict of laws.

Whether the application of the provision of section 672 of Title 11 conflicts with the application of the provisions of this subchapter, this subchapter shall prevail: *Provided*, That in any situation where the provisions of this subchapter cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect. (July 5, 1935, ch. 372,

§ 5, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

#### AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 164 of this title. Section formerly referred to separability provisions and is now covered by section 160 of this title.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### § 166. Separability of provisions.

If any provision of this subchapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (July 5, 1935, ch. 372, § 18, 49 Stat. 457; June 23, 1947, ch. 120, title I, § 101, 61 Stat. 151.)

#### AMENDMENTS

1947—Act June 23, 1947, amended section generally by inserting new subject matter which was formerly covered by section 165 of this title. Section formerly referred to short title of chapter and is now covered by section 167 of this title.

#### EFFECTIVE DATE OF 1947 AMENDMENT

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### § 167. Short title of subchapter.

This subchapter may be cited as the "National Labor Relations Act". (July 5, 1935, ch. 372, § 17, as added June 23, 1947, ch. 120, title I, § 101, 61 Stat. 152.)

#### EFFECTIVE DATE

Effective date of act June 23, 1947, see note set out under section 151 of this title.

#### § 168. Validation of certificates and other Board actions.

No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 159 of this title, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 159 (f), (g), or (h) of this title prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 159 (f), (g), or (h) of this title prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this chapter upon any person for failure to honor any election or certificate referred to above, prior to October 22, 1951: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 160 (e) or (f) of this title and which have become final. (July 5, 1935, ch. 372, § 18, as added Oct. 22, 1951, ch. 534, § 1 (a), 65 Stat. 601.)

#### REFERENCES IN TEXT

Section 159 (f), (g), or (h) of this title, referred to in the text, were repealed. See section 431 of this title.

### SUBCHAPTER III.—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

#### § 171. Declaration of purpose and policy.

It is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies. (June 23, 1947, ch. 120, title II, § 201, 61 Stat. 152.)

#### § 172. Federal Mediation and Conciliation Service.

##### (a) Creation; appointment of Director.

There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment.

##### (b) Appointment of officers and employees; expenditures for supplies, facilities, and services.

The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1949, and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such



Tab I

United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 151

§ 151. Findings and declaration of policy

Currentness

The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

**CREDIT(S)**

(July 5, 1935, c. 372, § 1, 49 Stat. 449; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136.)

Notes of Decisions (566)

29 U.S.C.A. § 151, 29 USCA § 151

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 152

§ 152. Definitions

Currentness

When used in this subchapter--

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under Title 11, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C.A. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) 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 [45 U.S.C.A. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term “affecting commerce” means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term “unfair labor practice” means any unfair labor practice listed in section 158 of this title.

(9) The term “labor dispute” includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term “National Labor Relations Board” means the National Labor Relations Board provided for in section 153 of this title.

(11) The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term “professional employee” means--

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an “agent” of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term “health care institution” shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.<sup>1</sup>

#### CREDIT(S)

(July 5, 1935, c. 372, § 2, 49 Stat. 450; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 137; July 26, 1974, Pub.L. 93-360, § 1(a), (b), 88 Stat. 395; Nov. 6, 1978, Pub.L. 95-598, Title III, § 319, 92 Stat. 2678.)

Notes of Decisions (1969)

Footnotes

1 So in original. Probably should be "persons".

29 U.S.C.A. § 152, 29 USCA § 152

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 153

§ 153. National Labor Relations Board

Currentness

**(a) Creation, composition, appointment, and tenure; Chairman; removal of members**

The National Labor Relations Board (hereinafter called the "Board") created by this subchapter prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C.A. § 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

**(b) Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal**

The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 159 of this title to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 159 of this title and certify the results thereof, except that upon the filing of a request therefor with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

**(c) Annual reports to Congress and the President**

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

**(d) General Counsel; appointment and tenure; powers and duties; vacancy**

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over

all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

**CREDIT(S)**

(July 5, 1935, c. 372, § 3, 49 Stat. 451; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 139; Sept. 14, 1959, Pub.L. 86-257, Title VII, §§ 701(b), 703, 73 Stat. 542; Jan. 2, 1975, Pub.L. 93-608, § 3(3), 88 Stat. 1972; Mar. 27, 1978, Pub.L. 95-251, § 3, 92 Stat. 184; Dec. 21, 1982, Pub.L. 97-375, Title II, § 213, 96 Stat. 1826.)

Notes of Decisions (192)

29 U.S.C.A. § 153, 29 USCA § 153

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 154

§ 154. National Labor Relations Board; eligibility for  
reappointment; officers and employees; payment of expenses

Currentness

(a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No administrative law judge's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no administrative law judge shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this subchapter shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

**CREDIT(S)**

(July 5, 1935, c. 372, § 4, 49 Stat. 451; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 139; Mar. 27, 1978, Pub.L. 95-251, § 3, 92 Stat. 184.)

Notes of Decisions (3)

29 U.S.C.A. § 154, 29 USCA § 154

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 155

§ 155. National Labor Relations Board; principal office, conducting inquiries  
throughout country; participation in decisions or inquiries conducted by member

Currentness

The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

**CREDIT(S)**

(July 5, 1935, c. 372, § 5, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140.)

Notes of Decisions (4)

29 U.S.C.A. § 155, 29 USCA § 155

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 156

§ 156. Rules and regulations

Currentness

The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by subchapter II of chapter 5 of Title 5, such rules and regulations as may be necessary to carry out the provisions of this subchapter.

**CREDIT(S)**

(July 5, 1935, c. 372, § 6, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140.)

Notes of Decisions (103)

29 U.S.C.A. § 156, 29 USCA § 156

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 157

§ 157. Right of employees as to organization, collective bargaining, etc.

Currentness

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

**CREDIT(S)**

(July 5, 1935, c. 372, § 7, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140.)

Notes of Decisions (1337)

29 U.S.C.A. § 157, 29 USCA § 157

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 158

§ 158. Unfair labor practices

Currentness

<Notes of Decisions for 29 USCA § 158 are displayed in eleven separate documents. Notes of Decisions for subdivision I are contained in this document. For Notes of Decisions for subdivisions II to XI, see documents for 29 USCA § 158, post.>

(a) Unfair labor practices by employer

It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 159(e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this subchapter;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

**(b) Unfair labor practices by labor organization**

It shall be an unfair labor practice for a labor organization or its agents--

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 159(a) of this title;

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is--

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by subsection (e) of this section;

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

*Provided*, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter: *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) of this section the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this subchapter any other labor organization and a question concerning representation may not appropriately be raised under section 159(c) of this title,

(B) where within the preceding twelve months a valid election under section 159(c) of this title has been conducted, or

(C) where such picketing has been conducted without a petition under section 159(c) of this title being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 159(c)(1) of this title or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with,



a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this subsection.

**(c) Expression of views without threat of reprisal or force or promise of benefit**

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.

**(d) Obligation to bargain collectively**

For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification--

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2) to (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the

contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158, 159, and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

**(e) Enforceability of contract or agreement to boycott any other employer; exception**

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible<sup>1</sup> and void: *Provided*, That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further*, That for the purposes of this subsection and subsection (b)(4)(B) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

**(f) Agreement covering employees in the building and construction industry**

It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in subsection (a) of this section as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 159 of this title prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer

to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to subsection (a)(3) of this section: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 159(c) or 159(e) of this title.

**(g) Notification of intention to strike or picket at any health care institution**

A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of subsection (d) of this section. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

**CREDIT(S)**

(July 5, 1935, c. 372, § 8, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 140; Oct. 22, 1951, c. 534, § 1(b), 65 Stat. 601; Sept. 14, 1959, Pub.L. 86-257, Title II, § 201(e), Title VII, §§ 704(a)-(c), 705(a), 73 Stat. 525, 542 to 545; July 26, 1974, Pub.L. 93-360, § 1(c)-(e), 88 Stat. 395, 396.)

Notes of Decisions (344)

**Footnotes**

1 So in original. Probably should be "unenforceable".

29 U.S.C.A. § 158, 29 USCA § 158

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 158a

§ 158a. Providing facilities for operations of Federal Credit Unions

Currentness

Provision by an employer of facilities for the operations of a Federal Credit Union on the premises of such employer shall not be deemed to be intimidation, coercion, interference, restraint or discrimination within the provisions of sections 157 and 158 of this title, or acts amendatory thereof.

**CREDIT(S)**

(Dec. 6, 1937, c. 3, § 5, 51 Stat. 5.)

29 U.S.C.A. § 158a, 29 USCA § 158a

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 159

§ 159. Representatives and elections

Currentness

**(a) Exclusive representatives; employees' adjustment of grievances directly with employer**

Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

**(b) Determination of bargaining unit by Board**

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

**(c) Hearings on questions affecting commerce; rules and regulations**

(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board--

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 160(c) of this title.

(3) No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this subchapter in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

**(d) Petition for enforcement or review; transcript**

Whenever an order of the Board made pursuant to section 160(c) of this title is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section 160 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

**(e) Secret ballot; limitation of elections**

(1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 158(a)(3) of this title, of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.



(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

**CREDIT(S)**

(July 5, 1935, c. 372, § 9, 49 Stat. 453; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 143; Oct. 22, 1951, c. 534, § 1(c), (d), 65 Stat. 601; Sept. 14, 1959, Pub.L. 86-257, Title II, § 201(d), Title VII, § 702, 73 Stat. 525, 542.)

Notes of Decisions (3150)

29 U.S.C.A. § 159, 29 USCA § 159

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 160

§ 160. Prevention of unfair labor practices

Currentness

<Notes of Decisions for this section are displayed in two separate documents. Notes of Decisions for roman heads I through XI are contained in this document. For additional Notes of Decisions, see the second document for 29 USCA § 160.>

**(a) Powers of Board generally**

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this subchapter or has received a construction inconsistent therewith.

**(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable**

Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of Title 28.

**(c) Reduction of testimony to writing; findings and orders of Board**

The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of subsection (a)(1) or (a)(2) of section 158 of this title, and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an administrative law judge or judges thereof, such member, or such judge or judges as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

**(d) Modification of findings or orders prior to filing record in court**

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

**(e) Petition to court for enforcement of order; proceedings; review of judgment**

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings by reason of additional

evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of Title 28.

**(f) Review of final order of Board on petition to court**

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of Title 28. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

**(g) Institution of court proceedings as stay of Board's order**

The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

**(h) Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title**

When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by chapter 6 of this title.

**(i) Repealed. Pub.L. 98-620, Title IV, § 402(31), Nov. 8, 1984, 98 Stat. 3360**

**(j) Injunctions**

The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

**(k) Hearings on jurisdictional strikes**

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 158(b) of this title, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

**(l) Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process**

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 158(b) of this title, or section 158(e) of this title or section 158(b)(7) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: *Provided further*, That such officer or regional attorney shall not apply for any restraining order under section 158(b)(7) of this title if a charge against the employer under section 158(a)(2) of this title has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 158(b)(4)(D) of this title.

**(m) Priority of cases**

Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 158 of this title, such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (l) of this section.

**CREDIT(S)**

(July 5, 1935, c. 372, § 10, 49 Stat. 453; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 146; June 25, 1948, c. 646, § 32(a), (b), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Aug. 28, 1958, Pub.L. 85-791, § 13, 72 Stat. 945; Sept. 14, 1959, Pub.L. 86-257, Title VII, §§ 704(d), 706, 73 Stat. 544; Mar. 27, 1978, Pub.L. 95-251, § 3, 92 Stat. 184; Nov. 8, 1984, Pub.L. 98-620, Title IV, § 402(31), 98 Stat. 3360.)

Notes of Decisions (5974)

29 U.S.C.A. § 160, 29 USCA § 160

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 160

§ 160. Prevention of unfair labor practices

Currentness

<Notes of Decisions for this section are displayed in two separate documents. Notes of Decisions for roman heads XII through XVII are contained in this document. For additional Notes of Decisions, see the first document for 29 USCA § 160.>

Notes of Decisions (8698)

29 U.S.C.A. § 160, 29 USCA § 160

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---

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 161

§ 161. Investigatory powers of Board

Currentness

For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title--

**(1) Documentary evidence; summoning witnesses and taking testimony**

The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceedings or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

**(2) Court aid in compelling production of evidence and attendance of witnesses**

In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

**(3) Repealed. Pub.L. 91-452, Title II, § 234, Oct. 15, 1970, 84 Stat. 930.**

**(4) Process, service and return; fees of witnesses**

Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

**(5) Process, where served**

All process of any court to which application may be made under this subchapter may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

**(6) Information and assistance from departments**

The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

**CREDIT(S)**

(July 5, 1935, c. 372, § 11, 49 Stat. 455; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 150; June 25, 1948, c. 646, § 32(b), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Oct. 15, 1970, Pub.L. 91-452, Title II, § 234, 84 Stat. 930; June 11, 1960, Pub.L. 86-507, § 1(57), as added May 21, 1980, Pub.L. 96-245, 94 Stat. 347.)

Notes of Decisions (265)

29 U.S.C.A. § 161, 29 USCA § 161

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

---

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 162

§ 162. Offenses and penalties

Currentness

Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

**CREDIT(S)**

(July 5, 1935, c. 372, § 12, 49 Stat. 456; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151.)

Notes of Decisions (7)

29 U.S.C.A. § 162, 29 USCA § 162

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 163

§ 163. Right to strike preserved

Currentness

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

**CREDIT(S)**

(July 5, 1935, c. 372, § 13, 49 Stat. 457; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151.)

Notes of Decisions (49)

29 U.S.C.A. § 163, 29 USCA § 163

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 164

§ 164. Construction of provisions

Currentness

**(a) Supervisors as union members**

Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this subchapter shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

**(b) Agreements requiring union membership in violation of State law**

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

**(c) Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts**

(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to subchapter II of chapter 5 of Title 5, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

**CREDIT(S)**

(July 5, 1935, c. 372, § 14, 49 Stat. 457; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151; Sept. 14, 1959, Pub.L. 86-257, Title VII, § 701(a), 73 Stat. 541.)

Notes of Decisions (123)

29 U.S.C.A. § 164, 29 USCA § 164

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 165

§ 165. Conflict of laws

Currentness

Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U.S.C., title 11, sec. 672), conflicts with the application of the provisions of this subchapter, this subchapter shall prevail: *Provided*, That in any situation where the provisions of this subchapter cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

**CREDIT(S)**

(July 5, 1935, c. 372, § 15, 49 Stat. 457; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151.)

Notes of Decisions (1)

29 U.S.C.A. § 165, 29 USCA § 165

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 166

§ 166. Separability

Currentness

If any provision of this subchapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**CREDIT(S)**

(July 5, 1935, c. 372, § 16, 49 Stat. 457; June 23, 1947, c. 120, Title I, § 101, 61 Stat. 151.)

Notes of Decisions (2)

29 U.S.C.A. § 166, 29 USCA § 166

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 167

§ 167. Short title of subchapter

Currentness

This subchapter may be cited as the "National Labor Relations Act".

**CREDIT(S)**

(July 5, 1935, c. 372, § 17, as added June 23, 1947, c. 120, Title I, § 101, 61 Stat. 152.)

29 U.S.C.A. § 167, 29 USCA § 167

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 168

§ 168. Validation of certificates and other Board actions

Currentness

No petition entertained, no investigation made, no election held, and no certification issued by the National Labor Relations Board, under any of the provisions of section 159 of this title, shall be invalid by reason of the failure of the Congress of Industrial Organizations to have complied with the requirements of section 159(f), (g), or (h) of this title prior to December 22, 1949, or by reason of the failure of the American Federation of Labor to have complied with the provisions of section 159(f), (g), or (h) of this title prior to November 7, 1947: *Provided*, That no liability shall be imposed under any provision of this chapter upon any person for failure to honor any election or certificate referred to above, prior to October 22, 1951: *Provided, however*, That this proviso shall not have the effect of setting aside or in any way affecting judgments or decrees heretofore entered under section 160(e) or (f) of this title and which have become final.

**CREDIT(S)**

(July 5, 1935, c. 372, § 18, as added Oct. 22, 1951, c. 534, § 1(a), 65 Stat. 601.)

29 U.S.C.A. § 168, 29 USCA § 168

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United States Code Annotated

Title 29. Labor

Chapter 7. Labor-Management Relations (Refs & Annos)

Subchapter II. National Labor Relations (Refs & Annos)

29 U.S.C.A. § 169

§ 169. Employees with religious convictions; payment of dues and fees

Currentness

Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employees' employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of Title 26, chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

**CREDIT(S)**

(July 5, 1935, c. 372, § 19, as added July 26, 1974, Pub.L. 93-360, § 3, 88 Stat. 397; amended Dec. 24, 1980, Pub.L. 96-593, 94 Stat. 3452.)

Notes of Decisions (4)

29 U.S.C.A. § 169, 29 USCA § 169

Current through P.L. 115-46. Also includes P.L. 115-49 to 115-51. Title 26 current through 115-52.

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Tab J

## Chapter 20

### Employment Relations and Collective Bargaining

#### 34-20-1 Declaration of policy.

The public policy of the state as to employment relations and collective bargaining in the furtherance of which this chapter is enacted, is declared to be as follows:

- (1) It recognizes that there are three major interests involved, namely: that of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.
- (2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint, or coercion.
- (3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.
- (4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

Enacted by Chapter 85, 1969 General Session

#### 34-20-2 Definitions.

As used in this chapter:

- (1) "Affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state.
- (2) "Commerce" means trade, traffic, commerce, transportation, or communication within the state.
- (3) "Election" means a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter and includes elections conducted by the board or by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.
- (4)
  - (a) "Employee" includes any employee unless this chapter explicitly states otherwise, and includes an 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.
- (b) "Employee" does not include an individual employed as an agricultural laborer, or in the domestic service of a family or person at his home, or an individual employed by his parent or spouse.
- (5) "Employer" includes a person acting in the interest of an employer, directly or indirectly, but does not include:
- (a) the United States;
  - (b) a state or political subdivision of a state;
  - (c) a person subject to the federal Railway Labor Act;
  - (d) a labor organization, other than when acting as an employer;
  - (e) a corporation or association operating a hospital if no part of the net earnings inures to the benefit of any private shareholder or individual; or
  - (f) anyone acting in the capacity of officer or agent of a labor organization.
- (6) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.105, of the federal government.
- (7) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (8) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (9) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (10) "Labor dispute" means any controversy between an employer and the majority of the employer's employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.
- (11) "Labor organization" means an organization of any kind or any agency or employee representation committee or plan in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (12) "Labor relations board" or "board" means the board created in Section 34-20-3.
- (13) "Person" includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.
- (14) "Representative" includes an individual or labor organization.
- (15) "Secondary boycott" includes combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by:
- (a) withholding patronage, labor, or other beneficial business intercourse;
  - (b) picketing;
  - (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies; or
  - (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.
- (16) "Unfair labor practice" means any unfair labor practice listed in Section 34-20-8.

Amended by Chapter 370, 2016 General Session

### **34-20-3 Labor relations board.**

- (1)
- (a) There is created the Labor Relations Board consisting of the following:
    - (i) the commissioner of the Labor Commission;
    - (ii) two members appointed by the governor with the consent of the Senate consisting of:
      - (A) a representative of employers, in the appointment of whom the governor shall consider nominations from employer organizations; and

- (B) a representative of employees, in the appointment of whom the governor shall consider nominations from employee organizations.
- (b)
- (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every two years.
- (c) The commissioner shall serve as chair of the board.
- (d) A vacancy occurring on the board for any cause of the members appointed under Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.
- (e) The governor may at any time remove a member appointed under Subsection (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.
- (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.
- (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (i) Section 63A-3-106;
  - (ii) Section 63A-3-107; and
  - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2) A meeting of the board may be called:
- (a) by the chair; or
  - (b) jointly by the members appointed under Subsection (1)(a)(ii).
- (3) The chair may provide staff and administrative support as necessary from the Labor Commission.
- (4) A vacancy in the board does not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum.
- (5) The board shall have an official seal which shall be judicially noticed.

Amended by Chapter 348, 2016 General Session

#### **34-20-4 Labor relations board -- Employees -- Agencies -- Expenses.**

- (1) The board may employ an executive secretary, attorneys, examiners, and may employ such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the state as it may from time to time find necessary for the proper performance of its duties. The board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys employed under this section may, at the direction of the board, appear for and represent the board in any case in court. Nothing in this act shall be construed to authorize the board to employ individuals for the purpose of conciliation or mediation (or for statistical work) where and if such service may be obtained from the Labor Commission.
- (2) All of the expenses of the board, including the necessary traveling expenses, incurred by the members or employees of the board under its orders, shall be allowed and paid on the



presentation of itemized vouchers therefor approved by the board or by any individual it designates for the purpose.

Amended by Chapter 375, 1997 General Session

**34-20-5 Labor relations board -- Offices -- Jurisdiction -- Member's participation in case.**

The principal office of the board shall be at the state capitol, but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by the agents or agencies it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member who participates in the inquiry may not be disqualified from subsequently participating in a decision of the board in the same case.

Amended by Chapter 297, 2011 General Session

**34-20-6 Labor relations board -- Rules and regulations.**

The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner in which the board shall prescribe.

Enacted by Chapter 85, 1969 General Session

**34-20-7 Organization and collective bargaining -- Employees' rights.**

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

Enacted by Chapter 85, 1969 General Session

**34-20-8 Unfair labor practices.**

- (1) It shall be an unfair labor practice for an employer, individually or in concert with others:
  - (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.
  - (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
  - (c) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.
  - (d) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit; provided, that, when two or more labor

organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of the proceedings the employer may not be considered to have refused to bargain.

- (e) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit.
- (f) To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony under this chapter.
- (2) It shall be an unfair labor practice for an employee individually or in concert with others:
  - (a) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed in Section 34-20-7, or to intimidate the employee's family, picket the employee's domicile, or injure the person or property of the employee or the employee's family.
  - (b) To coerce, intimidate or induce an employer to interfere with any of the employer's employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to engage in any practice with regard to the employer's employees which would constitute an unfair labor practice if undertaken by the employer on the employer's own initiative.
  - (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.
  - (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
  - (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.
  - (f) To take unauthorized possession of property of the employer.
- (3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by Subsections (1) and (2) of this section.

Amended by Chapter 348, 2016 General Session

### **34-20-9 Collective bargaining -- Representatives -- Powers of board.**

- (1)
  - (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for those purposes shall be the exclusive representatives of all the employees in that unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, and of other conditions of employment.
  - (b) Any individual employee or group of employees may present grievances to their employer at any time.



- (2) The board shall decide in each case whether, in order to ensure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision of same.
- (3) Whenever a question affecting intrastate commerce or the orderly operation of industry arises concerning the representation of employees, the board may investigate such controversy and certify to the parties in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 34-20-10, or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.
- (4)
  - (a) Whenever an order of the board made according to Section 34-20-10 is based in whole or in part upon facts certified following an investigation under Subsection (3), and there is a petition for the enforcement or review of such order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under Section 34-20-10.
  - (b) The decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript.

Amended by Chapter 161, 1987 General Session

**34-20-10 Unfair labor practices -- Powers of board to prevent -- Procedure.**

- (1)
  - (a) The board may prevent any person from engaging in any unfair labor practice, as listed in Section 34-20-8, affecting intrastate commerce or the orderly operation of industry.
  - (b) This authority is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.
- (2) The board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) When it is charged that any person has engaged in or is engaged in any unfair labor practice, the board, or any agent or agency designated by the board, may issue and serve a notice of agency action on that person.
- (4)
  - (a) If, upon all the testimony taken, the board finds that any person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue and serve on the person an order to cease and desist from the unfair labor practice and to take other affirmative action designated by the commission, including reinstatement of employees with or without back pay, to effectuate the policies of this chapter.
  - (b) The order may require the person to make periodic reports showing the extent to which it has complied with the order.
  - (c) If, upon all the testimony taken, the board determines that no person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint.
- (5)
  - (a) The board may petition the district court to enforce the order and for appropriate temporary relief or for a restraining order.

- (b) The board shall certify and file in the court:
  - (i) a transcript of the entire record in the proceeding;
  - (ii) the pleadings and testimony upon which the order was entered; and
  - (iii) the findings and order of the board.
- (c) When the petition is filed, the board shall serve notice on all parties to the action.
- (d) Upon filing of the petition, the court has jurisdiction of the proceeding and of the question to be determined.
- (e) The court may grant temporary relief or a restraining order, and, based upon the pleadings, testimony, and proceedings set forth in the transcript, order that the board's order be enforced, modified, or set aside in whole or in part.
- (f) The court may not consider any objection that was not presented before the board, its member, agent, or agency, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.
- (g) The board's findings of fact, if supported by evidence, are conclusive.
- (h)
  - (i) If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, its member, agent, or agency, the court may order additional evidence to be taken before the board, its member, agent, or agency, and to be made part of the transcript.
  - (ii) The board may modify its findings as to the facts, or make new findings, because of the additional evidence taken and filed.
  - (iii) The board shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Amended by Chapter 382, 2008 General Session

**34-20-11 Hearings and investigations -- Power of board -- Witnesses -- Procedure.**

For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Sections 34-20-9 and 34-20-10:

- (1) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the board, its member, agent, or agency conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board, for these purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Attendance of witnesses and the production of evidence may be required from any place in the state at any duly designated place of hearing.
- (2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of Utah within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business upon application by the board shall have jurisdiction to issue to the person an order requiring the person to appear before the board, its member, agent, or agency, to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt.

- (3) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (4) Complaints, orders, and other processes and papers of the board, its member, agent, or agency, may be served either personally, by certified or registered mail, by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. The verified return by the individual serving the documents setting forth the manner of the service shall be proof of the service, and the return post office receipt or telegram receipt when certified or registered and mailed or telegraphed shall be proof of service. Witnesses summoned before the board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees paid for the same services in the courts of the state.
- (5) All departments and agencies of the state, when directed by the governor, shall furnish to the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

Amended by Chapter 296, 1997 General Session

**34-20-12 Willful interference -- Penalty.**

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents or agencies, in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than one year, or both.

Enacted by Chapter 85, 1969 General Session

**34-20-13 Right to strike.**

This chapter does not interfere with, impede, or diminish in any way the right to strike.

Amended by Chapter 201, 1991 General Session

**34-20-14 Determining joint employment status -- Franchisors excluded.**

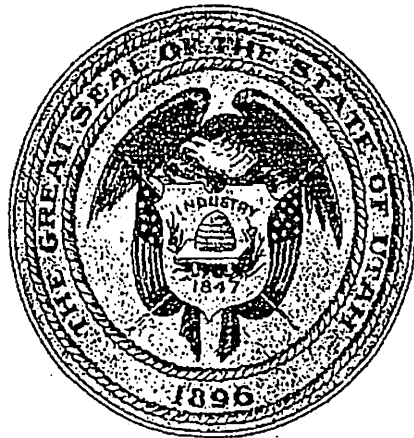
- (1) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (2)
  - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Enacted by Chapter 370, 2016 General Session



## Attachment K

THE  
COMPILED LAWS  
OF THE  
STATE OF UTAH  
1917



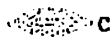
VOLUME I

Compiled, annotated, and published by authority  
of an act of the Legislature by

ALLEN T. SANFORD  
RICHARD B. THURMAN,  
Compilation Commissioners.

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Together with the Constitution of the United States,  
the Constitution of the State of Utah, the  
Enabling Act, and the Naturalization  
Laws and Regulations.



00745

shall constitute the grand jury. If more than seven of such persons are present, their names must be written by the clerk on separate ballots, folded so as to conceal the names, and placed in a box. The clerk must then draw out of the box seven ballots, and the persons whose names are thereon shall constitute the grand jury.

Grand jury to consist of seven; five may find an indictment; Con. art. 1, sec. 13; §§ 8737, 8820. Fees of grand jurors, § 2542.

**3620. (1320.) Jurors in justice's court. Summoning.** When jurors are required in any justice's court, the number required by law must, upon the order of the justice thereof, be summoned by a peace officer of the jurisdiction.

Fees of jurors in justices' courts, § 2550. Payment of fees in advance, § 2554.

**3621. (1321.) Id. Qualifications.** Such jurors must be summoned from the persons resident in either the city or precinct, competent to serve as jurors, and not exempt from such service, by notifying them orally that they are so summoned, and of the time and place at which their attendance is required.

**3622. (1322.) Id. Return.** The officer summoning such jurors must, at or before the time fixed for their appearance, return the order to the court, with a list of the persons summoned indorsed thereon.

**3623. (1323.) Id. Number summoned. How drawn.** At the time appointed for a jury trial in justices' courts, the list of jurors summoned, which shall be eight, or double the number agreed upon before the trial by the parties, must be called, and the names of those attending and not excused must be written upon separate slips of paper, folded so as to conceal the names, and placed in a box, from which the trial jury must be drawn.

Mont. Civ. C. § 340\*. Jury trial in justice's court, criminal procedure, §§ 9434-9445.  
Jury trial in justice's court, civil procedure, §§ 7435-7437.

## TITLE 58.

### LABOR.

#### CHAPTER 1.

#### BOARD OF LABOR.

**3634. (1324.) Appointment. Qualifications. Term.** Upon the approval of this chapter (March 14, 1901), the governor, by and with the consent of the senate, shall appoint three persons, not more than two of whom shall belong to the same political party, who shall be styled a state board of labor, conciliation, and arbitration. One shall be an employer of labor; another shall be an employe and be selected from some labor organization; the third shall be some person who is neither an employe nor an employer of manual labor, and shall be chairman of the board. One shall serve for one year, one for three years, and one for five years, as may be designated by the governor at the time of their appointment. At the expiration of their terms their successors shall be appointed in like manner for the term of four years. Should a vacancy occur at any time, the governor shall, in the same manner, appoint some one to serve the unexpired term, and until the appointment and qualification of his successor. Each member of said board shall, before entering upon his duties, take the constitutional oath of office.

Am'd '01, p. 68.

Authority for creation of board, Con. art. 16, sec. 2. Duties of board imposed on industrial commission, sub. 9 § 3070.

**3635. (1325.) Secretary.** The board shall select from its members a secretary and shall establish suitable rules of procedure. Am'd '01, p. 68.



**3636. (1326.) Duty of board when strike or lockout is threatened.** Whenever it shall come to the knowledge of the said board that a strike, or lockout is seriously threatened in the state, involving any employer and his employes, if he is employing not less than ten persons, it shall be the duty of the said board to put itself into communication as soon as may be with such employer and employes, and endeavor by mediation to effect an amicable settlement. Said board shall also request each of the parties to forward to its secretary an application for arbitration. R. S. '98, § 1333; '01, p. 68.

Bureau of Immigration, labor, and statistics,  
§§ 3024-3034.

Duties of this chapter imposed on the industrial commission, sub. 9, § 3076.  
Laborers may organize, §§ 3651-3658.

**3637. (1327.) Duty of board after application to arbitrate received.** As soon as practicable after receiving such applications, the board shall request each of the parties to the dispute to agree upon a written statement of facts relating to the controversy, and to submit the same to the board; *provided*, that, when such agreement and statement cannot be reached, each of said parties may separately submit to the board a written statement of grievances. Applications to the said board for arbitration on the part of employers must precede any lockout, and, on the part of the employes, any strike; *provided*, that, in case lockout or strike already exists, the board shall accord arbitration if the parties shall resume their relations with each other, as employers and employes. Said applications shall include a promise to abide by the decision of the board and shall be signed by the employer or employers, or his or their authorized agent, on the one side, and by a majority of his or their employes on the other. '01, p. 69.

**3638. (1328.) Board to arbitrate. May employ stenographer.** As soon as practicable after receiving said applications, the board shall proceed to arbitrate. When it shall be necessary, in the judgment of said board, it may engage the services of a stenographer to take and transcribe an account of any arbitration proceedings. '01, p. 69.

**3639. (1329.) May subpoena witnesses. General powers.** The board shall have power to summon as witnesses by subpoena any operative or expert in departments of business affected, and any person who keeps the record of wages earned in those departments, or any other person, and to administer oaths, and to examine said witnesses, and to require the production of books, papers, and records. In case of disobedience to a subpoena the board may invoke the aid of any court in the state in requiring the attendance and testimony of witnesses, and the production of books, papers, and documents under the provisions of this section. Any of the district courts of the state, within the jurisdiction of which such inquiry is carried on, may, in case of contumacy, or refusal to obey a subpoena issued to any such witness, issue an order requiring such witness to appear before said board and produce books and papers if so ordered, and give evidence touching the matter in question. Any refusal to obey such order of the court may be punished by such court as a contempt thereof. R. S. '98, § 1330; '01, p. 69.

**3640. (1330.) Mayors and sheriffs to notify board of threatened strikes or lockouts.** It shall be the duty of mayors of cities and sheriffs of counties, when any condition likely to lead to a strike or lockout exists in the cities or districts where they have jurisdiction, to immediately forward information of the same to the secretary of the state board of conciliation and arbitration. Such information shall include the names and addresses of persons who should be communicated with by the board. '01, p. 69.

**3641. (1331.) Sheriff to serve process.** Any notice or process issued by the state board of labor, conciliation, and arbitration shall be served by any sheriff to whom the same may be directed, or in whose hands the same may be placed for service, without charge. R. S. '98, § 1335; '01, p. 69.

**3642. (1332.) Decision of board.** As soon as practicable after the board has investigated the differences existing between employer and employes, it shall make an equitable decision, which shall state what, if anything, should

be done by either or both parties to the dispute, in order to amicably settle and adjust the differences existing between them. The findings of a majority of the board shall constitute its decision. R. S. '98, § 1331; '01, p. 70.

**3643. (1333.) Decision to be recorded and made public.** This decision shall at once be made public; shall be recorded upon the proper book of record to be kept by the secretary of said board, and a short statement thereof published in an annual report to be made to the governor before the 1st day of March, of each year. R. S. '98, § 1327; '01, p. 70.

**3644. (1334.) Compensation of members.** The members of the board shall each receive a compensation of \$4 for each day's service while engaged in arbitration, said compensation to be paid by the parties to the controversy in such proportion as the board may decide; they shall also receive the actual and necessary expenses incurred in the performance of their official duties, which expenses shall be paid out of the state treasury.

R. S. '98, § 1334; '01, p. 70.

## CHAPTER 2.

### BETTERING CONDITIONS OF LABOR.

('17, p. 210.)

**3651. Labor unions not unlawful.** It shall not be unlawful for working men and women to organize themselves into, or carry on, labor unions for the purpose of lessening the hours of labor, increasing the wages, bettering the conditions of the members of such organization; or carrying out their legitimate purposes as freely as they could do if acting singly.

Unlawful to coerce one to join or support or organization, §§ 8329, 8330. Penalty for soliciting or receiving money from employees, § 8326.

**3652. Injunctions in labor disputes prohibited.** No restraining order or injunction shall be granted by any court of the state of Utah, or a judge or the judges thereof, in any case between an employer and employes, or between employers and employes, or between employers, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property rights must be described with particularity in the application, which must be in writing and sworn to by the applicant, or by his agent or attorney.

**3653. Right to cease labor secured. Right to assemble.** And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful means and lawful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of the law of the state of Utah.

**3654. Contempts. Orders to show cause. Procedure. Bail.** Whenever it shall be made to appear to any district court or judge thereof, or to any

judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some creditable person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court; *provided, however*, that if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

**3655. Trial by jury.** In all cases within the purview of this chapter, such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

**3656. Judgment. Payments. Limitations.** If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the state of Utah, or to the complainant, or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the state of Utah exceed, in case the accused is a natural person, the sum of \$1000, nor shall such imprisonment exceed the term of six months; *provided*, that in any case the court or a judge thereof may, for good cause shown, by affidavit, or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay, and shall be admitted to bail in reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

**3657. Anti-trust laws not applicable to labor organizations.** The labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

**3658. Right of trial by jury—practice.** In all cases where persons are charged with contempt of court for the violation of writs of injunction, issued within the purview of this chapter, unless such contempt be committed in the immediate presence of the court, the accused shall have the right to a jury trial

upon demand, and, in case a jury trial be demanded, such jury shall be selected and impaneled as in criminal cases, and the trial shall conform as nearly as may be to the district court practice in criminal cases.

### CHAPTER 3.

#### EIGHT-HOUR LAW.

**3666. (1336.) On public works.** Eight hours shall constitute a day's work in all penal institutions in this state, whether state, county, or municipal, and on all works and undertakings carried on or aided by the state, county, or municipal governments. Any officer of the state or of any county or municipal government, or any person, corporation, firm, contractor, agent, manager, or foreman, who shall require or contract with any person to work in any penal institution or upon such works or undertakings longer than eight hours in one calendar day, except in cases of emergency, where life or property is in imminent danger, shall be guilty of a misdemeanor.

Am'd '01, p. 37; '03, p. 85.

**3667. (1337.) In mines and smelters.** The period of employment of working men in all underground mines or workings, and in smelters and all other institutions for the reduction or refining of ores or metals, shall be eight hours per day, except in cases of emergency, where life or property is in imminent danger. Any person, body corporate, agent, manager, or employer who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

Authorized by Con. art. 16, sec. 6.  
Limiting hours of employment of females,  
§ 3677.  
This law held to be constitutional.  
State v. Holden, 14 U. 96; 46 P. 1105.  
Ex parte Holden, 14 U. 71; 46 P. 756; affirmed  
169 U. S. 366.  
The provisions of this section and chap. 72,

p. 219, laws 1896, apply with equal force to employer and employe, and a person who works for another in a mill or reduction works more than eight hours per day cannot recover on a quantum meruit for his services during the overtime.  
Short v. Bullion B. & C. M. Co., 20 U. 20;  
57 P. 720.

### CHAPTER 4.

#### EMPLOYMENT OF FEMALES AND CHILDREN.

**3668. (1338.) In mines and smelters forbidden.** It shall be unlawful for any person, firm, or corporation to employ any child under fourteen years of age, or any female, to work in any mine or smelter in the state of Utah. Any person, firm, or corporation who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

Authorized by Con. art. 16, sec. 3.

**3669. (1339.) Proprietor to provide seats for female help.** The proprietor, manager, or person having charge of any store, shop, hotel, restaurant, or other place where women or girls are employed as clerks or help therein, shall provide chairs, stools, or other contrivances where such clerks or help may rest when not employed in the discharge of their respective duties. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor.

#### MINIMUM WAGE SCALE FOR FEMALES.

('13, p. 94.)

**3671. Unlawful to pay less than scale.** It shall be unlawful for any regular employer of female workers in the state of Utah to pay any woman less than the wage in this section specified, to wit: For minors, under the age of eighteen years, not less than 75 cents per day; for adult learners and apprentices, not less than 90 cents per day; *provided*, that the learning period of



apprenticeship shall not extend for more than one year; for adults who are experienced in the work they are employed to perform, not less than \$1.25 per day.

**3672. Certificate of apprenticeship.** All regular employers of female workers shall give a certificate of apprenticeship for time served to all apprentices.

**3673. Penalty.** Any regular employer of female workers who shall pay to any woman less than the wage specified in § 3671 shall be guilty of a misdemeanor.

**3674. Commissioner of immigration, labor, and statistics to enforce chapter.** The commissioner of immigration, labor, and statistics shall have general charge of the enforcement of this chapter, but violations of the same shall be prosecuted by all the city, state, and county prosecuting officers in the same manner as in other cases of misdemeanor.

Duties of commissioner of immigration, labor, and statistics imposed on industrial commission, § 3076.

#### EMPLOYMENT OF FEMALES.

(11, p. 265.)

**3677. Limiting hours of employment. Exceptions.** No female shall be employed in any manufacturing, mechanical, or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment, hospital or office, or by any express or transportation company in this state, more than nine hours during any one day, or more than fifty-four hours in any one week, except in cases of emergency in hospitals and in cases of emergency or where life or property is in imminent danger or where materials are liable to spoil by the enforcement of this section.

**3678. Penalty.** Any person or persons, corporation, or other association engaged in conducting or operating any of the business institutions or enterprises set forth in the foregoing section, requiring or employing any female to work longer than the period of nine hours constituting a day's labor, except as above provided, or more than fifty-four hours in any one week, shall be guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than \$25 nor more than \$100, and costs of prosecution.

Duty of commissioner of immigration, labor, and statistics, to enforce, § 3027. The industrial commission is the commissioner of immigration, labor and statistics, sub. 9, § 3076.

### CHAPTER 5.

#### BLACKLISTING.

**3680. (1340.) Forbidden.** No company, corporation, nor individual shall blacklist, or publish, or cause to be published or blacklisted, any employe, mechanic, or laborer, discharged or voluntarily leaving the service of such company, corporation, or individual, with intent and for the purpose of preventing such employe, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.

Exchange of blacklists forbidden, Con. art. 12, sec. 19; art. 16, sec. 4.

**3681. (1341.) Penalty.** If any person or any officer or agent of any company, corporation, or individual shall blacklist, or publish, or cause to be published, any employe, mechanic, or laborer, discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employe, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual, or shall in any manner conspire or contrive, by correspondence, or otherwise, to prevent such discharged employe from securing employment, he shall be

deemed guilty of a felony and, upon conviction, shall be fined not less than \$500, nor more than \$1,000, and be imprisoned in the state prison not less than sixty days nor more than one year.

## CHAPTER 6.

### FELLOW SERVANTS.

**3682. (1342.) Who are vice-principals.** All persons engaged in the service of any person, firm, or corporation, foreign or domestic, doing business in this state, who are intrusted by such person, firm, or corporation as employer with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employe in the performance of any duties of such employe, are vice-principals of such employer and are not fellow servants.

Who are fellow servants, § 3683, and note.  
Negligence cases not bearing upon any provision of the statutes are not included in this volume.

#### NOT FELLOW SERVANTS:

The conductor of a railway train with a brakeman upon the train.  
*Openshaw v. U. & N. Ry. Co.*, 6 U. 132.  
A brakeman with a car inspector.  
*Daniels v. U. P. Ry. Co.*, 6 U. 357; 23 P. 762.  
An engineer with a brakeman.  
*Brown v. Sou. Pac. Ry. Co.*, 7 U. 288; 26 P. 579.  
A switchman signaling to an engine with the men repairing the car.  
*Pool v. Sou. Pac. Co.*, 7 U. 303; see same case, 160 U. S. 438.  
A car repairer with an engineer.  
*Webb v. R. G. W. Ry. Co.*, 7 U. 363; 26 P. 981.  
Neither a section foreman nor those working under him, nor a telegraph operator, with an engineer.  
*Needley v. Sou. Pac. Ry. Co.*, 35 U. 259; 99 P. 1067.  
A yardman with the foreman of his own crew nor with the foreman of another crew working in the same yard at the same time.  
*Armstrong v. O. S. L. Ry. Co.*, 8 U. 420; 32 P. 683.  
A railroad foreman having full charge of loading cars in a gravel pit with such laborers.  
*Anderson v. Ogden Ry. and Depot Co.*, 8 U. 128; 30 P. 305.  
A laborer in car shops and foreman of switchmen in train department.  
*Pool v. S. P. Co.*, 20 U. 210; 68 P. 326.  
Plaintiff held to be a volunteer, not a servant.  
*Mickelson v. East Tittle Ry. Co.*, 23 U. 42; 64 P. 463.  
The foreman of a mine having entire charge of the underground workings with a miner working under his direction.  
*Cunningham v. U. P. Ry. Co.*, 4 U. 206; 7 P. 795.  
*Trilley v. Brooklyn Mining Co.*, 4 U. 468; 11 P. 612.  
A superintendent of a mine with a common laborer.  
*Reddon v. U. P. Ry. Co.*, 5 U. 344; 15 P. 262.  
A miner with one employed as a tool-carrier, whose only duty it is to take sharpened tools into the mine and throw them off at various levels and bring up the dull ones.  
*Jenkins v. Mammoth M. Co.*, 24 U. 513; 68 P. 815.  
A miner with one whose duty it is to manage and operate a cage by which the miners are conveyed in and out of the mine.  
Id.  
Acting foreman on telegraph line with a line-man.  
*Fritz v. Western Union T. Co.*, 25 U. 262; 71 P. 209.  
Two miners working on different levels.  
*Shields v. Silver King Coalition*, 50 U. —; 166 P. 988.  
A furnaceman with grater whom he directs,  
*Utah Con. M. Co. v. Paxton*, 150 F. 114.

A mucker called to assist in removing certain timbers from cars by means of the hoisting engine with the engineer.

*Yota v. Ohio Copper Co.*, 42 U. 129; 129 P. 349.

Employees working under a superintendent in repairing the right-of-way of a railroad, while being carried by a train to their work with the train crew.

*Jachetta v. San Pedro etc. R. R. Co.*, 36 U. 470; 105 P. 100.

Where two sections of a train are operated as two distinct and independent trains, the members of the crew of one section with the members of the crew of the other section.

*Meyers v. San Pedro etc. R. R. Co.*, 36 U. 307; 104 P. 736.

A man working on the railroad tracks with those operating the trains.

*Groo v. O. S. L. R. R. Co.*, 47 U. 26; 150 P. 970.

Where a foreman of a mine, as the agent of the company, selects an employe to take the place temporarily of another employe who is excused from work, and the person so selected is subject to the direction and control of the company, which may discharge him at any time, the relationship between him and the company is that of master and servant.

*Wilson v. Sioux Con. M. Co.*, 16 U. 392; 52 P. 626.

#### VICE PRINCIPALS:

Whatever was done by the foreman in the mine in leaving the hole in the platform was chargeable to the company.

*Downey v. Gemini M. Co.*, 24 U. 431; 68 P. 414.

Where, in an action for injuries, the uncontradicted evidence showed that B. was defendant's foreman, it was not error for the court to assume that he was a vice-principal.

*Black v. Rocky Mt. Bell Tel. Co.*, 26 U. 451; 73 P. 514.

Persons engaged in the service of the master, who are intrusted by him with the management or direction of his general work, or with some particular part thereof, are not fellow servants with the subordinate employes, but vice-principals.

*Johnson v. U. P. Coal Co.*, 28 U. 46; 76 P. 1089.

In the absence of a statute in Nevada defining fellow servants, the test to be applied is whether the negligent act which caused the injury was a breach of a positive duty owing by the master to his servant, in which case the person performing the act is a vice-principal, and not a fellow servant.

*Morrison v. San Pedro R. Co.*, 32 U. 85; 88 P. 998.

*Merrill v. O. S. L. R. R. Co.*, 29 U. 264; 31 P. 85.

*Pool v. S. P. Co.*, 20 U. 210; 68 P. 326.

Where the facts are undisputed, whether co-employees are fellow-servants is a question of law for the court; but if facts are disputed, the court should construe the statutes, and leave the question to the jury.

*Shepherd v. D. & R. G. R. R. Co.*, 41 U. 469; 126 P. 692.



In an action for wrongful death of a servant of a railroad company killed in a foreign state, it will be presumed, in the absence of evidence thereon, that laws similar to the above section and § 6505 were in force at the place of the accident, and that under such laws the employees in charge of the railroad train were not fellow servants of truck laborers.

Grow v. O. S. L. R. R. Co., 44 U. 160; 138 P. 398.

A charge in the language of the statute as to what constitutes vice-principals and fellow servants was error, but as the evidence showed that the plaintiff and the person causing the injury were not fellow servants, it was not prejudicial.

**3683. (1343.) Who are fellow servants.** All persons who are engaged in the service of such employer, and who, while so engaged, are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being intrusted by such employer with any superintendence or control over his fellow employees, are fellow servants with each other; *provided*, that nothing herein contained shall be so construed as to make the employees of such employer fellow servants with other employees engaged in any other department of service of such employer. Employees who do not come within the provisions of this section shall not be considered fellow servants.

Who are not fellow servants, § 3682, and note.

Defense of fellow servant allowed when employer carries insurance, § 3127; and denied when employer does not carry insurance, § 3129.

#### WHO ARE FELLOW SERVANTS:

The above definition of the term "fellow servants" is one that the legislature had authority to make.

Dryburg v. Mercur M. Co., 18 U. 410; 55 P. 367.

In an action for injuries received prior to fellow servant law of 1896, the relation of plaintiff and the engineer was to be determined by common law rule, and, under it, they were fellow servants.

Stoll v. Daly M. Co., 19 U. 271; 57 P. 295.

A track walker of railroad company, under common law, is fellow servant with an engineer.

Stephani v. S. P. Co., 19 U. 196; 57 P. 34.

The common law rule that a train conductor is not a fellow servant with his subordinates cannot be changed by a regulation of the company.

*Id.*

The shift bosses were, as to one another, fellow servants, and defendant was not liable for their carelessness, unless the carelessness was brought to the attention of the defendant, who negligently failed to communicate the danger to the plaintiff.

Anderson v. Daly M. Co., 16 U. 28; 50 P. 815.

In Idaho the foreman was a fellow servant of plaintiff, who was a member of a fence gang, and hence plaintiff could not recover for his

negligence in permitting the rear car to be run in violation of the rules.

An engineer who operates a mine hoist carrying miners to and from the lower level is to them a vice-principal.

Farnon v. Silver King Coalition M. Co., 50 U. —; 167 P. 676.

One having the general control and supervision of railroad repair work and giving general directions respecting the movements of work trains is a vice-principal of the laborers employed to do repair work.

Jechetta v. San Pedro, etc., R. R. Co., 36 U. 470; 105 P. 100.

Sartin v. O. S. L. R. R. Co., 27 U. 447; 76 P. 219.

Instruction defining fellow servants held sufficient.

Bruegger v. O. S. L. R. R. Co., 24 U. 391; 68 P. 140.

In Nevada, whose statutes do not define who are fellow servants, a foreman is a fellow servant with one of bridge crew.

Owens v. San Pedro Co., 31 U. 208; 89 P. 825.

Decisions on the test to be applied in Nevada, note to § 3682.

Where an injury is the result of two concurring causes, and the master is responsible for or contributed to one of them, he is not exempt from liability because a fellow servant who is responsible for the other cause may have also been culpable. The servant assumes the risk and negligence of a fellow servant, but not that of the master.

Jenkins v. Mammoth M. Co., 24 U. 513; 68 P. 845.

Hendley v. Daly M. Co., 15 U. 176; 49 P. 295.

Pool v. S. P. Co., 20 U. 210; 58 P. 326.

The employer is liable for an injury to an employee from the concurrent negligence of the master and fellow servants.

Hicks v. S. P. Co., 27 U. 526; 76 P. 625.

Merrill v. O. S. L. R. R. Co., 29 U. 264; 81 P. 85.

Wright v. Sou. Pac. Co., 15 U. 421; 46 P. 374.

A laborer engaged in the construction of a road bed and a brakeman on a construction train hauling gravel for the road bed are fellow servants.

Lukie v. So. Pac. Co., 160 P. 135.

## CHAPTER 7.

### WAGES A PREFERRED DEBT.

**3684. (1344.) When business is suspended.** When any property of any company, corporation, firm, or person shall be seized upon by any process of any court, or when their business shall be suspended by the act of creditors, or be put into the hands of a receiver, assignee, or trustee, either by voluntary or involuntary action, the wages, not to exceed \$400 to each claimant, owing to workmen, clerks, traveling or city salesmen, or servants for work or labor performed within five months next preceding the seizure or transfer of such

property or merchandise, shall be considered and treated as preferred debts, and such workmen, clerks, traveling or city salesmen, or servants shall be preferred creditors and shall first be paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs; *provided, however*, that no officer, director, or general manager of such a corporation nor any member in such association or partnership shall be entitled to the preference herein provided. Am'd '13, p. 26.

Lien of mechanics, etc., § 3722.

Wages preferred in assignments, § 296.

The claims of the operatives of a street railroad for work performed sixty days next preceding the appointment of a receiver are entitled to priority over a trust deed on the company's property, since such work is done for the benefit of the mortgagees.

Litzenberger v. Jarvis-Conklyn Trust Co., 8 U. 15; 28 P. 871.

Chap. 30, laws of 1892, declaring that debts due for services performed by laborers within six months before the seizure of the debtor's property on process, or the suspension of his business by the action of creditors, or before his property shall be put in the hands of a receiver or trustee, shall be treated as preferred,

does not affect the rights of the existing grantees, mortgages, or lienholders.

Salt Lake Litho. Co. v. Ilex M. and S. Co., 16 U. 440; 49 P. 763.

Id., 16 U. 445; 49 P. 832.

A court of equity, when called upon to appoint a receiver of railroad property, with power to operate the road and conduct its business pending a foreclosure suit, may, in the exercise of its judicial discretion, as a condition of issuing the order, direct the receiver, out of money coming to his hands from such business, to pay the outstanding debts for labor, supplies, equipments, or permanent improvements of the mortgaged property as may under the circumstances of the order be reasonable.

Central Trust Co. v. Utah Cent. Ry. Co., 16 U. 12; 60 P. 813.

**3685. (1345.) Claim. Notice to persons interested.** Any such employee, laborer, or servant desiring to enforce his claim for wages under this chapter shall present a statement, under oath, showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person, or court charged with such property, within ten days after the seizure thereof on any writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver, assignee, or trustee; any person with whom any such claim shall have been filed shall give immediate notice thereof by mail to all persons interested; and it shall be the duty of the person or the court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized, if the claim be not contested as provided in the next succeeding section.

**3686. (1346.) Contest of claim. Costs.** Any person interested may contest such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, within ten days after the notice of presentment of said statement, and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof, before any part thereof shall be paid, and the party contesting shall be made a party defendant in any such action and shall have the right to contest such claim, and the prevailing party shall recover proper costs.

## CHAPTER 8.

### ATTORNEYS' FEES IN SUITS FOR WAGES.

**3687. (1347.) When allowed. Amount.** Whenever a mechanic, artisan, miner, laborer, servant, or employee shall have cause to bring suit for wages earned and due according to the terms of his employment, and shall establish by the decision of the court or verdict of the jury that the amount for which he has brought suit is justly due, and that a demand had been made in writing, at least fifteen days before suit was brought, for a sum not to exceed the amount so found due, then it shall be the duty of the court before which the case shall be tried to allow to the plaintiff a reasonable attorney's fee in addition to the amount found due for wages, to be taxed as costs of suit. In a justice's court such attorney's fee shall not be more than \$5, and in

the district court not more than \$10, except in cases on appeal from a justice's court to the district court, when he plaintiff may recover an attorney's fee, not exceeding \$25.

Attorneys' fees generally, § 346.  
Attorneys' fees in foreclosure of lien for labor, etc., § 3750; in action on bond for public work, § 3755; on appeal from industrial commission, § 3148.

Sec. 3750 providing for attorneys' fee to lien claimant held unconstitutional prior to amendment of 1899.  
Brubaker v. Bennett, 19 U. 401; 57 P. 170.

## CHAPTER 9.

### INTERFERENCE WITH PERSONAL RIGHTS.

**3688. (1347x.) Unlawful to interfere with the rights of any individual.** It shall be unlawful for any person, persons, association of persons, combination of persons, or body of persons to interfere with the rights of any individual engaged in labor, to exercise his full privileges under the constitution of this state or of the United States, as to where he shall be employed, by whom he shall be employed and at what compensation he shall be employed. Any one violating the provisions of this section shall be guilty of a misdemeanor.

'07, p. 82.

Rights of the individual, Con. art. 1, sec. 1-27.  
Intimidating an employee a misdemeanor, § 8493.

Unlawful coercion prohibited, § 8329.  
Workers may organize, § 3651.

## TITLE 59.

### LEGISLATURE.

('11, p. 2.)

**3690. Bills and documents to be engrossed or typewritten.** All bills and other documents ordered enrolled or engrossed by the legislature shall be delivered to the engrossing clerk of the house ordering the enrollment or engrossment, who shall, without delay, have them properly engrossed with pen and ink or typewritten with record ink on suitable paper in the order received by him.

## TITLE 60.

### LIBEL.

**3692. (1348.) Libel published in good faith. Retraction. Damages.** If it shall appear on the trial of any action brought for the publication of any alleged libel in any newspaper published in this state, that the said alleged libel was published in good faith, that the publication thereof was due to mistake or misapprehension of the facts, and that a full and fair retraction of any statement therein alleged to be erroneous was published in the next regular issue of such newspaper, or in case of daily papers, within three days after such mistake or misapprehension was brought to the notice of such publisher or publishers, at the head of the second column on the editorial page in the same type as was the article complained of as libelous, for three days, reference to such retraction to be made also on the local page of such paper; *provided*, that if such libel was published in the Sunday edition of such newspaper, one of the publications of the retraction herein provided for shall be in an edition of such newspaper published on a Sunday; then the plaintiff in such cases shall recover only actual damages; *provided*, that the provisions of this title shall



# Attachment L

THE  
STATUTES AT LARGE  
OF THE  
UNITED STATES OF AMERICA

FROM

JANUARY 1935 TO JUNE 1936

CONCURRENT RESOLUTIONS  
RECENT TREATIES AND CONVENTIONS, EXECUTIVE  
PROCLAMATIONS AND AGREEMENTS

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EDITED, PRINTED, AND PUBLISHED BY AUTHORITY OF CONGRESS  
UNDER THE DIRECTION OF THE SECRETARY OF STATE

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VOL. XLIX

IN TWO PARTS

PART 1—Public Acts and Resolutions.

PART 2—Private Acts and Resolutions, Concurrent Resolutions,  
Treaties and Conventions, Executive Proclamations  
and Agreements.

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PART 1

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UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1936

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of the United States of Mexico. In the event that such lands are so determined to be lands subject to the jurisdiction of the United States of Mexico and that as a result of such determination the owners or their assignees lose their title thereto and the lease is canceled, the United States shall pay to the owners or their assignees the fair value of the building at the completion of its construction (but not in excess of the actual cost of construction), less an amount equal to one-third of 1 per centum of such cost or value for each month that the lease was in effect prior to such determination.

SEC. 2. There is authorized to be appropriated such amounts as may be necessary to pay the installments of rent provided for in such lease."

Approved, July 3, 1935.

Payment to owners.

Deduction.

Appropriation authorized.

[CHAPTER 372.]

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

July 5, 1935.

[S. 1958.]

[Public, No. 195.]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

National Labor Relations Act.  
Findings and policy.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers



of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

## Definitions.

## DEFINITIONS

## SEC. 2. When used in this Act—

- "Person." (1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- "Employer." (2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.
- "Employee." (3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act 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.
- "Representatives." (4) The term "representatives" includes any individual or labor organization.
- "Labor organization." (5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- "Commerce." (6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.
- "Affecting commerce." (7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.
- "Unfair labor practice." (8) The term "unfair labor practice" means any unfair labor practice listed in section 8.
- "Labor dispute." (9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.
- "National Labor Relations Board." (10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 26, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133<sup>1</sup> approved June 14, 1935.

## NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of \$10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease

"Old Board."

Executive Order 6763.  
Vol. 48, p. 1183.  
Executive Order 7074.  
Vol. 48, p. 195.  
*Anne*, p. 375.

National Labor Relations Board.

Composition; appointment.  
*Post*, p. 1177.

Terms of office.

Chairman.  
Removals.

Quorum, seal, etc.

Annual report.

Salaries.  
*Post*, p. 1112.

Appointment of personnel.  
Vol. 46, p. 1003; U. S. C., p. 85.

Attorneys, regional directors, etc.

Agencies available.

Appointment of mediators; restriction.

Old Board abolished.

<sup>1</sup> So in original.

- Transfer of employ-  
ees, records, etc. to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.
- Expense allowances. (c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.
- Principal office. Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.
- Prosecution of in-  
quiries. Sec. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.
- Administrative rules.

## RIGHTS OF EMPLOYEES

- Rights of employees  
specified. SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
- Unfair labor prac-  
tices. SEC. 8. It shall be an unfair labor practice for an employer—
- (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
  - (2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
  - (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.
- Vol. 48, p. 195; *Ante*,  
p. 375.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

#### REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain<sup>1</sup> such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

#### PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing

Representatives and elections.

Majority rule principle in collective bargaining, etc.

*Provided*. Individual right to present grievances.

Standards for appropriate bargaining, etc.

Representatives of employees. Method for selecting, etc.

Hearings.

Board orders based on foregoing results.

Enforcement or review.

Prevention of unfair labor practices, affecting commerce. Authority of Board.

Complaints; filing.

Service of charges.

Notice of hearing.

Amendment of complaint.

<sup>1</sup> So in original.



Appearance and answer of accused.	or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.
Prevailing rules of evidence; effect of.	
Preservation of testimony.	(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.
Cease and desist orders.	
Reports of compliance; requirement. Dismissal of complaint.	(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.
Modification, etc., of order.	
Enforcement. Board authorized to petition any circuit court of appeals.	(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such addi-
Temporary restraining order provided.	
Papers to be filed.	
Notice; jurisdiction and powers of court.	
Objections; consideration of.	
Findings conclusive of facts. Additional evidence.	

tional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

Modification by Board.

Jurisdiction of court. Decree final; review allowed.

U. S. C., p. 1271.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Application to set aside orders.

Procedure, etc.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

Board's order not stayed by commencement of proceedings.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

Jurisdiction of equity courts not impaired.

Vol. 47, p. 70.  
U. S. C., p. 132.

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

Expeditions hearings.

#### INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

Investigatory powers. *Ante*, p. 453.

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated

Examinations, securing evidence, etc.



Subpena powers.	or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.
Administration of oaths, etc.	
Witnesses, etc.	
Contumacy or refusal to obey subpoenas. Punishment for.	(2) In case of contumacy or refusal to obey a subpoena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.
Privilege of witnesses.	(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
Personal immunity.	
Service of orders, etc.	(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.
Witness fees, etc.	
Venue provisions.	(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.
Government agencies to assist.	(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.
Protection of Board members, etc.	SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or

# UNITED STATES CODE

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and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia. (Mar. 23, 1932, ch. 90, § 13, 47 Stat. 73.)

#### § 114. Invalidity of provisions of chapter; validity of remaining provisions.

If any provision of sections 101-115 of this title or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of such sections and the application of such provisions to other persons or circumstances shall not be affected thereby. (Mar. 23, 1932, ch. 90, § 14, 47 Stat. 73.)

#### § 115. Repeal of conflicting acts.

All acts and parts of acts in conflict with the provisions of sections 101-115 of this title are hereby repealed. (Mar. 23, 1932, ch. 90, § 15, 47 Stat. 73.)

### Chapter 7.—NATIONAL LABOR RELATIONS

- Sec. 151. Findings and declaration of policy.
- 152. Definitions.
- 153. National Labor Relations Board; creation and composition; annual reports.
- 154. Same; salaries; officers and employees; termination of "Old Board"; payment of expenses.
- 155. Same; principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member.
- 156. Same; rules and regulations.
- 157. Right of employees as to organization, collective bargaining, etc.
- 158. Unfair labor practices by employer defined.
- 158a. Providing facilities for operations of Federal Credit Unions.

- Sec. 159. Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.
- 160. Prevention of unfair labor practices.
  - (a) Powers of Board generally.
  - (b) Complaint and notice of hearing; answer; court rules of evidence inapplicable.
  - (c) Reduction of testimony to writing; findings and orders of Board.
  - (d) Modification of findings or orders prior to filing record in court.
  - (e) Petition to court for enforcement of order; proceedings; review of judgment.
  - (f) Review of final order of Board on petition to court.
  - (g) Institution of court proceedings as stay of Board's order.
  - (h) Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of this title.
  - (i) Expeditious hearings on petitions.
- 161. Investigatory powers of Board.
  - (1) Documentary evidence; summoning witnesses and taking testimony.
  - (2) Court aid in compelling production of evidence and attendance of witnesses.
  - (3) Privilege of witnesses; immunity from prosecution.
  - (4) Process, service and return; fees of witnesses.
  - (5) Process, where served.
  - (6) Information and assistance from departments.
- 162. Offenses and penalties.
- 163. Right to strike preserved.
- 164. Conflict of laws.
- 165. Separability clause.
- 166. Citation of chapter.

#### § 151. Findings and declaration of policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of com-

merce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, ch. 372, § 1, 49 Stat. 449.)

#### § 152. Definitions.

When used in sections 151–166 of this title—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151–163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter 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.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 153 of this title.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to section 702a of Title 15 approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to chapter 15 of Title 15 as amended and continued by sections 702 and 705a of Title 15. (July 5, 1935, ch. 372, § 2, 49 Stat. 450.)

#### CROSS REFERENCE

Termination of existence of "old Board," see subsection (b) of section 154 of this title.

#### § 153. National Labor Relations Board; creation and composition; annual reports.

(a) There is created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed. (July 5, 1935, ch. 372, § 3, 49 Stat. 451.)



## Attachment M

In the Matter of UNITED STATES STAMPING COMPANY *and* PORCELAIN  
ENAMEL WORKERS' UNION No. 18630

*Case No. R-14*

DIRECTION FOR ELECTION

*January 13, 1936*

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8 of the National Labor Relations Board Rules and Regulations—Series 1, it is

DIRECTED that as part of the investigation authorized by the Board in the above case to ascertain representatives for collective bargaining with the United States Stamping Company, Moundsville, West Virginia, an election by secret ballot shall be conducted within a period of one week from the date of this direction of election, under the direction and supervision of the Regional Director for the Sixth Region, acting in this matter as the agent of the National Labor Relations Board and subject to Article III, Section 9 of said Rules and Regulations, among the employees engaged in the production and maintenance department of the United States Stamping Company on November 5, 1935 and those employed between that date and the date of this direction of election in the production and maintenance department, excepting foremen, assistant foremen, supervisory and clerical employees, and those who quit or have been discharged for cause during such period, to determine whether or not they desire to be represented by the Porcelain Enamel Workers' Union No. 18630.

[SAME TITLE]

*Decision, February 11, 1936*

*Stamping and Enameling Industry—Strike—Representatives:* proof of choice: comparison of cancelled pay-roll checks with statements designating; membership in union—*Unit Appropriate for Collective Bargaining:* community of interest; functional coherence; employees on hourly and piece rate basis; distinctiveness of occupation; production and maintenance employees—*Election Ordered:* question affecting commerce: prior strike caused by employer's refusal



to recognize representatives—controversy concerning representation of employees; majority status disputed by employer; request by substantial number in appropriate unit—*Certification of Representatives*.

*Mr. Robert H. Klee* for the Board.

*Mr. Martin Brown*, of Moundsville, W. Va., for the Company:

*Mr. Joseph Rosenfarb*, of counsel to the Board.

## DECISION

### STATEMENT OF CASE

On November 4, 1935, H. G. Flaugh, an organizer of the American Federation of Labor and representing the Porcelain Enamel Workers' Union No. 18630, hereinafter called the union, filed with the Regional Director for the Sixth Region a petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, approved July 5, 1935. The petition alleges that the union represents approximately 283 employees out of about 414 in the production and maintenance department of the United States Stamping Company, Moundsville, West Virginia, hereinafter called the company, that no other individuals or labor organizations claim to represent any of the employees, and that a question has arisen concerning the representation of the employees. The petition further alleges that the question concerning representation is one affecting commerce within the meaning of Section 2 (7) of the Act.

On November 12, 1935, the Board, pursuant to Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, authorized the Regional Director for the Sixth Region to conduct an investigation and to provide for an appropriate hearing upon due notice. Notice of hearing was issued and duly served, and hearings were held on November 25th and 27th, 1935, before a Trial Examiner designated by the Board.

The company, through its counsel, filed a motion to dismiss the petition and an answer wherein, *inter alia*, the constitutionality of the National Labor Relations Act was raised and the position taken that the case was not within the jurisdiction of the National Labor Relations Board. The company was represented at the hearing by counsel who cross-examined the witnesses called by the Board but who introduced no evidence in behalf of the company. The motion to dismiss the petition is hereby denied.

From the evidence adduced at the hearing and from the entire record now before it the National Labor Relations Board promulgates the following:

## FINDINGS OF FACT

1. The United States Stamping Company is a corporation created and existing under the laws of the State of West Virginia and has its principal office, main plant and place of business in the City of Moundsville, in the County of Marshall and State of West Virginia. It is engaged in the manufacture, sale and distribution of enamel cooking utensils.

2. A great variety of materials, including cartons, steel, enamel, oxides, flint, borax, clay, feldspar, sand, acid, bailwoods, excelsior, silicates, wire, chrome covers, wooden handles, knobs and oil board, is used in the manufacture of the finished products of the company, 95 per cent of which is purchased from without the State of West Virginia, f. o. b. shipping point.

At least 90 per cent of the company's finished products is normally shipped to destinations outside of the State of West Virginia, to points in almost all of the States of the United States, all sales being made f. o. b. Moundsville, West Virginia.

The shipments to and from the company are by freight, express, trucks and boats of independent companies. The following freight figures covering shipments to and by the company over the Baltimore & Ohio Railroad, representing likewise the approximate average for express shipments, were picked at random by the agent for that Railroad:

## SHIPMENTS TO COMPANY

1935	From States outside West Virginia	Within State of West Virginia
August.....	9 carloads.....	None
September.....	7 carloads.....	1 carload.
October.....	7 carloads.....	None

## SHIPMENTS FROM COMPANY

	To States outside West Virginia	Within State of West Virginia
Aug 12.....	26 shipments.....	1 shipment.
Aug 13.....	49 shipments.....	1 shipment
Sept 24.....	43 shipments.....	1 shipment
Sept 25.....	30 shipments.....	None
Oct 8.....	28 shipments.....	1 shipment.
Oct 9.....	16 shipments.....	None.

3. In 1933, Local No. 18630 of the Porcelain Enamel Workers' Union, a labor organization affiliated with the American Federation of Labor, was organized among the employees of the United States Stamping Company. The Financial Secretary of the union

testified that the paid-up membership of the union was 229 at the time of the hearing.

During June of 1935 difficulties arose between the management and the committee of the union over the negotiation of a new collective agreement concerning wages, hours and conditions of work. The management refused to deal with the committee on the ground that the union did not represent a majority of the employees of the company.

4. On August 17, 1935, the union held a meeting which was open to all of the employees of the production and maintenance department of the company. At this meeting cards of identical tenor were circulated among those present addressed to the National Labor Relations Board, marked "(Strictly Confidential) For Government Use Only", designating the Porcelain Enamel Workers' Union No. 18630 as the agency for collective bargaining with the company, "for the purpose of negotiating an agreement on wages, hours and working conditions and for the purpose of other mutual aid and protection." 282 such cards were signed at the meeting and subsequently, and were then turned over to Ernest Dunbar, an Examiner of the National Labor Relations Board. Dunbar advised Mr. F. S. Earnshaw, Secretary and Treasurer of the company, that the cards represented a majority of the production and maintenance employees, but Mr. Earnshaw still refused to meet the committee of the union for the reason that the union did not represent a majority of the employees and for the further reason that he would, under no circumstances, deal with the representatives of a union, especially one affiliated with the American Federation of Labor, but would meet them as representatives of the employees of the company.

5. Dunbar, with the consent of Earnshaw, compared the signatures on the cards with the signatures on cancelled checks of employees supplied by the company. He found the signatures on 242 of the cards to be the same or identical with those on the cancelled checks, 19 signatures on the cards to be doubtful, and 21 to be impossible of location among the checks.

This would give the union a clear majority of the 411 production and maintenance employees whom the company employed during this period. However, the evidence presented by the cards is entirely *ex parte* in character. Although the Board may of course act on *ex parte* evidence and make findings of fact based thereon, we feel that under all the circumstances of this case an election should be held.

6. Failing to obtain recognition of the union for bargaining purposes after repeated unsuccessful attempts to settle the matter amicably, the employees of the company went out on strike on or about November 6, 1935, causing a complete shutdown of the company's

o

plant. The value of shipments from the company, which for the period of two weeks prior to the date of the strike amounted to \$50,000, over 90 per cent of which was interstate, dropped to \$7,000 for the three days succeeding the strike, and then the shipments ceased altogether except for desultory parcel post or express shipments. The shipment of raw materials to the company, 95 per cent of which was also interstate, must have been correspondingly affected, although no evidence on the point appears in the record.

7. As reported to the West Virginia Compensation Board, the United States Stamping Company had a total of 460 employees as of October 31, 1935, exclusive of officials of the company. Of this number there were 27 employed on the office force, 15 were foremen and assistant foremen, and 7 have since been laid off, leaving a total of 411 employed in production and maintenance.

The office force includes typists, clerks and the sales manager. In general, it is clear that they constitute a group with functions sharply distinguished from that of the employees engaged in actual processing operations, are paid on a salary basis as against piece-rate and hour-rate bases governing the production and maintenance group, are paid on the 15th and 30th of each month while the production and maintenance employees are paid on the 7th and 23rd of each month, and are regarded by the latter and by themselves as a distinct department. At the hearing they made no claim to be recognized as an independent bargaining unit or to be included in a total employer unit.

The foremen and assistant foremen are paid respectively on a salary and an hourly basis and ought also to be excluded as having supervisory authority and duties that relate them more directly to the management than to the workers.

The one unit clearly defined as to function and interest in establishing a mechanism for collective bargaining is the production and maintenance unit engaged in the actual processing of enamelware and incident activities, and not the total number of employees of the company as contended for by counsel for the company. The production and maintenance department was described in the testimony as consisting of welding, press, enameling, dipping, spraying, beading, baking, packing, shipping, pickling, maintenance, day laborers and night watchmen.

#### CONCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The United States Stamping Company is a corporation created and existing under the laws of the State of West Virginia and has its principal office, main plant and place of business in the City of Moundsville, County of Marshall and State of West Virginia. It is engaged in the manufacture and sale of enamel cooking utensils. As

of October 31, 1935 it employed 411 persons engaged in the production and maintenance department.

2. A great variety of materials is used in the manufacturing of the finished products of the company, 95 per cent of which is purchased from without the State of West Virginia, f. o. b. shipping point. At least 90 per cent of the company's finished products is normally shipped to destinations outside of the State of West Virginia to points in almost all of the states of the United States, all sales being made f. o. b. Moundsville, West Virginia.

3. The Porcelain Enamel Workers' Union No. 18630 is a labor organization organized in 1933 and affiliated with the American Federation of Labor, whose membership is composed of employees of the company engaged in the production and maintenance department. The Financial Secretary of the union testified at the hearing that the paid-up membership of the union was then 229. The evidence tends to indicate that 242 employees in the production and maintenance department have designated the union as their representative for the purposes of collective bargaining.

4. The employees engaged in the production and maintenance department of the company constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

5. Repeated attempts have been made by the union to negotiate with the management of the company as the authorized representative of the production and maintenance employees for the purpose of collective bargaining. The company refused to deal with the union as the representative of the employees of the company engaged in the production and maintenance department for the purpose of collective bargaining, for an alleged reason, *inter alia*, that the union did not represent a majority of the production and maintenance employees of the company.

6. This controversy finally led on November 6, 1935 to a strike of the employees of the company, precipitating a complete shutdown of the production plant of the company and a cessation of production, with a consequent interruption of commerce and the free flow of commerce.

7. A question concerning representation has arisen among the production and maintenance employees of the company, within the meaning of Section 9 (c) of the Act.

8. The question concerning representation which has arisen has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

9. It is the conclusion of the National Labor Relations Board that a question affecting commerce has arisen concerning the representa-



tion of the production and maintenance employees of the United States Stamping Company, within the meaning of Section 9 (c) of the Act, and that an election by secret ballot should be conducted to ascertain who shall represent such employees.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES .

*February 11, 1936*

A petition for certification of representatives having been duly filed, an investigation and hearing having been duly authorized and conducted, and an election by secret ballot having been conducted on January 20, 1935 among the production and maintenance employees of the United States Stamping Company, located at Moundsville, West Virginia, pursuant to the National Labor Relations Board's Direction for Election dated January 13, 1935, and an intermediate report finding that Porcelain Enamel Workers' Union No. 18630 had been selected by a majority of such employees having been prepared by the Regional Director for the Sixth Region and served upon the parties, and no substantial and material issue with respect to the conduct of the ballot having been raised by the objections filed with this Board by the Company, pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series 1,

THEREFORE, by virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, approved July 5, 1935, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1,

IT IS HEREBY CERTIFIED that Porcelain Enamel Workers' Union No. 18630 has been selected by a majority of the production and maintenance employees of the United States Stamping Company as their representative for the purposes of collective bargaining and that pursuant to the provisions of Section 9 (a) of said Act, Porcelain Enamel Workers' Union No. 18630 is the exclusive representative of all the production and maintenance employees of the United States Stamping Company for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

MR. SMITH took no part in the consideration of the above Certification of Representatives.



Tab N

# **LAWS**

of the

## **STATE OF UTAH**

passed at the

### **REGULAR SESSION**

of the

### **TWENTY-SECOND LEGISLATURE**

Convened at the Capitol in the City of Salt Lake

January 11, 1937

and adjourned sine die on

March 11, 1937

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Published by authority

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## LABOR

## CHAPTER 52

S. B. No. 25.  
(Passed February 4, 1937. In effect February 15, 1937.)

**LABOR DISPUTES  
DEPUTIZING EMPLOYEES**

An Act Providing That Sheriffs, Chiefs of Police, Town Marshals, Officers of the Highway Patrol, or Other Peace Officers Shall Not Deputize the Employees of a Private Employer When a Strike, Lockout, or Labor Dispute Exists Directly Concerning Such Employer.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Strikes or Lockouts, Peace Officers Not to Deputize Employees.**

No employee of any employer whose employees are on strike or lockout for any reason shall be deputized for any purpose arising from or in connection with such strike by any sheriff, chief of police, town marshal, officer of the highway patrol, or any other peace officer during the time such strike or lockout exists.

**Section 2. Penalty.**

Any person who violates the provisions of this act shall be guilty of a misdemeanor.

**Section 3. Effective Date.**

This act shall take effect upon approval.

Approved February 15, 1937.

## CHAPTER 53

S. B. No. 27.  
(Passed February 5, 1937. In effect February 10, 1937.)

**LABOR DISPUTES  
REGISTERING EMPLOYEES DURING  
STRIKE**

An Act Requiring Registration With the Industrial Commission of Utah Before Accepting Employment During a Labor Strike.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Registration.**

It is the duty of every person before commencing employment with any person, firm or corporation whose employees are out on labor strike called by a national recognized union to register with the industrial commission of Utah.

**Section 2. Id. Information Required.**

Such registration shall be accomplished by

giving to the industrial commission the following information, to be given in person or by registered letter duly addressed to the Utah state industrial commission at Salt Lake City, Utah:

(a) Name of person.

(b) Place of residence during the five years immediately preceding registration for work.

(c) Name of person, firm or corporation for which he intends to work.

(d) Time when he expects to commence work.

(e) Nature of work to be performed.

**Section 3. Records Open to Inspection.**

The said industrial commission shall keep a record of the information herein required and the record shall be open for public inspection.

**Section 4. Violation a Misdemeanor.**

The violation of any of the provisions of this act shall be considered as a misdemeanor.

**Section 5. Effective Date.**

This act shall take effect upon approval.

Approved February 16, 1937.

## CHAPTER 54

S. B. No. 34.  
(Passed February 10, 1937. In effect February 20, 1937.)

**LABOR DISPUTES—SETTLEMENT**

An Act Amending Section 49-1-3, Revised Statutes of Utah, 1933, Relating to the Duties of the Industrial Commission of Utah to Effect Settlements of Labor Disputes, and Repealing Sections 49-1-6 and 49-1-7, Revised Statutes of Utah, 1933.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Section Amended.**

Section 49-1-3, Revised Statutes of Utah, 1933, is amended to read as follows:

**49-1-3. Duties of Industrial Commission—Endeavor to Effect Settlements.**

As soon as practicable after receiving such application the commission shall request each of the parties to the dispute to agree upon a written statement of facts relating to the controversy, and to submit the same to it. When such agreement cannot be reached each of the parties may separately submit to the commission a written statement of grievances. Applications to the commission for adjustment must precede any lockout on the part of employers and any strike on the part of employees in the majority and

shall include a promise to abide by the decision of the commission and must be signed by the employer on the one side and by a majority of his employees on the other. As soon as practicable after receiving such application the commission shall proceed to a hearing and determination. When it appears to the industrial commission that an amicable settlement by conciliation or mediation may not be had the said commission shall request both parties to the controversy to submit in writing a full statement of its grievances to the said commission. A majority of the employees, at a meeting called for that purpose, may appoint a committee to prepare such statement on behalf of such employees. The industrial commission shall at all times use its office in an effort to adjust the matters in dispute and it may hold hearings thereon at which each party may submit evidence in support of its cause. The said commission may require the attendance of witnesses and may issue subpoenas to assure their attendance. After being fully advised in the premises the said commission shall make findings and recommendations which shall be submitted to each of the parties to the controversy and also to the governor. In the event that the said parties, within five days after having received a copy of such findings and recommendations, fail to reach an agreement, then, upon request of either party, the said findings and recommendations shall be published by the commission.

#### Section 2. Disobeying Subpoenas—Contempt Proceedings.

In the event of a person having been duly subpoenaed to appear before the commission in said hearings and wilfully fails to appear the commission may file a petition with the district court in the county where the hearing is being held, stating the facts and praying for a citation against said person for contempt. Upon the filing of said petition, it shall be the duty of the court to issue a citation requiring such person to appear at a time and place certain and then and there show cause why he should not be punished for contempt of court and, in the event the court finds that such person has wilfully disobeyed the subpoena issued by the commission, it shall be the duty of the court to punish said person for contempt.

#### Section 3. Sections Repealed.

Sections 49-1-6 and 49-1-7, Revised Statutes of Utah, 1933, are repealed.

#### Section 4. Effective Date.

This act shall take effect upon approval.

Approved February 20, 1937.

### CHAPTER 55

H. B. No. 03.  
(Passed March 11, 1937. In effect March 22, 1937.)

#### UTAH LABOR RELATIONS ACT

An Act Repealing Chapter 1, Title 49, Revised Statutes of Utah, 1933, Creating the "Labor Relations Board," and Designating the Industrial Commission of the State of Utah to Act as the "Labor Relations Board"; Defining Terms Used in the Act; Prescribing the Powers and Duties of the "Labor Relations Board"; Giving Labor the Right to Bargain Collectively; Prescribing Certain Rights and Duties of Employees; Prohibiting Unfair Labor Practice on the Part of Employers; Providing for the Investigation, Hearing, and Disposition of Labor Disputes and Unfair Labor Practice by the "Labor Relations Board"; Authorizing the "Labor Relations Board" to Petition the Supreme Court to Enforce the Orders of the "Labor Relations Board"; Providing the Aggrieved Persons May Obtain Writs From the Supreme Court to Review Orders of the "Labor Relations Board"; Manner of Issuing Subpoenas and Enforcing Attendance of Witnesses and Taking Testimony by the "Labor Relations Board"; Providing the "Labor Relations Board" May Obtain Data From Other State Boards; Providing Penalties for Violation of the Provisions of this Act; Appropriating Funds to Put Into Effect the Provisions of This Act.

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Chapter Repealed.

Chapter 1, Title 49, Revised Statutes of Utah, 1933, is repealed.

#### Section 2. Declaration of Policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing intrastate commerce by (a) impairing the efficiency, safety or operation of the instrumentalities of intrastate commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods from or into the channels of intrastate commerce, or the prices of such materials or goods in intrastate commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of in-



trastate commerce and the orderly operation of industry.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the state of Utah to eliminate the causes of certain substantial obstructions to the free operation of industry and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

### Section 3. Definitions.

When used in this act—(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any state or political subdivision thereof, or any person subject to the railway labor act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the act 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 employer by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication within the state of Utah.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state of Utah.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 9.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer or employee.

(10) The term "labor relations board" means the industrial commission of Utah.

### Section 4. Labor Relations Board.

(a) The industrial commission of Utah is designated as the labor relations board herein-after referred to as the board.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall, at all times, constitute a quorum. The board shall have an official seal which shall be judicially noticed.

(c) The board shall at the close of each fiscal year make a report in writing to the legislature and to the governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.

### Section 5. Employees—Expenses of Board.

(a) The board may employ an executive secretary, and such attorneys, examiners, and may employ such other employees with regard to existing laws applicable to the employment and



compensation of officers and employees of the state of Utah as it may from time to time find necessary for the proper performance of its duties. The board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys employed under this section may, at the direction of the board, appear for and represent the board in any case in court. Nothing in this act shall be construed to authorize the board to employ individuals for the purpose of conciliation or mediation (or for statistical work) where and if such service may be obtained from the department of labor.

(b) All of the expenses of the board, including the necessary traveling expenses, incurred by the members or employees of the board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the board or by any individual it designates for the purpose.

#### Section 6. Offices.

The principal office of the board shall be at the state capitol but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the state of Utah. A member who participates in such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

#### Section 7. Rules and Regulations.

(a) The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner which the board shall prescribe.

#### Section 8. Self-Organization — Collective Bargaining.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

#### Section 9. Unfair Labor Practices.

It shall be an unfair labor practice for an employer—(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 8.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; *provided*, that subject to rules and regulations made and published by the board pursuant to section 7 (a) an employer shall not be pro-

hibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; *provided*, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 10, (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 10 (a).

#### Section 10. Collective Bargaining — Representatives.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment; *provided*, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

##### *Appropriate Unit.*

(b) The board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

##### *Questions Affecting Intrastate Commerce.*

(c) Whenever a question affecting intrastate commerce or the orderly operation of industry arises concerning the representation of employees, the board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 11 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

*Id. Review—Transcript.*

(d) Whenever an order of the board made pursuant to section 11 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 11 (e) or 11 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony and proceedings set forth in such transcript.

**Section 11. Unfair Practices — Powers of Board to Prevent.**

(a) The board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 9) affecting intrastate commerce or the orderly operation of industry. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise.

*Hearings.*

(b) Whenever it is charged that any person has engaged in or is engaged in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent or agency at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

*Id. Report of Hearings—Orders of Board.*

(c) The testimony taken by such member, agent, or agency or the board shall be reduced to writing and filed with the board. Thereafter in its discretion, the board upon notice may take further testimony or hear argument. If upon all the testimony taken the board shall be of

the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue and cause to be served on such person an order to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the said complaint.

*Time in Which Board May Modify Orders.*

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it may deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

*Petitions to Supreme Court to Enforce Orders.*

(e) The board shall have power to petition the supreme court of Utah (wherein the unfair labor practice in question occurred or wherein such person resides or transacts business) for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, its member, agent or agency, the court may order such additional evi-

dence to be taken before the board, its member, agent or agency, and to be made part of the transcript. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the state supreme court shall be exclusive and its judgment and decree shall be final.

*Persons Aggrieved by Order of Board—Review.*

(f) Any person aggrieved by a final order, the board granting or denying in whole or in part the relief sought, may obtain a review of such order in the supreme court of Utah by filing in such court a written petition praying that the order of the board be modified or set aside. A copy of such petition shall be forthwith served upon the board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the board under subsection (e), and shall have the same exclusive jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the board; and the findings of the board as to the facts, if supported by evidence, shall in like manner be conclusive.

*Proceedings Not a Stay of Orders.*

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

*Petitions to be Heard Within Ten Days.*

(h) Petitions filed under this act shall be heard expeditiously, and if possible within ten days after they have been docketed.

**Section 12. Securing Evidence—Witnesses.**

For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 11—(1) the board or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.

Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the board, its member, agent or agency conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the state of Utah at any duly designated place of hearing.

*Subpoenas, Refusal to Obey.*

(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of Utah within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business upon application by the board shall have jurisdiction to issue to such person an order requiring such person to appear before the board, its member, agent or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

*Immunity.*

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents or other evidence in obedience to the subpoena of the board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

*Service of Processes.*

(4) Complaints, orders and other processes and papers of the board, its member, agent or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and return post office receipt or telegram receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Wit-



nesses summoned before the board, its member, agent or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of Utah and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the state of Utah.

*State Agencies Required to Furnish Information.*

(5) The several state departments and agencies of the state when directed by the governor shall furnish the board, upon its request all records, papers, and information in their possession relating to any matter before the board.

**Section 13. Wilful Interference—Penalty.**

Any person who shall wilfully resist, prevent, impede or interfere with any member of the board or any of its agents or agencies in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

**Section 14. Right to Strike.**

Nothing in this act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

**Section 15. Partial Invalidity—Saving Clause.**

If any provision of this act, or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**Section 16. Short Title.**

This act may be cited as the "Utah Labor Relations Act."

**Section 17. Appropriation.**

There is hereby appropriated from the general funds of the state of Utah, not otherwise appropriated, the sum of \$10,000 for the coming biennium for the purpose of carrying out the provisions of this act.

**Section 18. Effective Date.**

This act shall take effect upon approval.

Approved March 22, 1937.

**CHAPTER 56**

S. B. No. 28.

(Passed February 4, 1937. In effect February 15, 1937.)

**REGISTRATION OF LABOR ORGANIZATIONS**

An Act Requiring the Registration With the Industrial Commission of All Labor Organizations or Unions in the State of Utah.

*Be it enacted by the Legislature of the State of Utah:*

**Section 1. Registration.**

It is the duty of every labor organization or labor union within the state of Utah, on or before sixty days after this act becomes effective, to register such labor organization or union with the industrial commission of the state of Utah.

**Section 2. Information Required.**

Such registration shall be made by the president or secretary giving to the said industrial commission in writing on January 1st of each year the following information:

(a) The name and address of such labor organization or union.

(b) The names and addresses of its local officers.

(c) The name and address of the national or international organization or union, if any, with which it is affiliated.

**Section 3. Changes Reported.**

Notice of all changes in organization, addresses or any of the information required by section 1 of this act shall be reported to the industrial commission within ten days after the changes are made.

**Section 4. Violations a Misdemeanor.**

The violation of any of the provisions of this act shall be considered as a misdemeanor.

**Section 5. Effective Date.**

This act shall take effect upon approval.

Approved February 15, 1937.

## CHAPTER 57

S. B. No. 10.  
(Passed February 13, 1937. In effect February 20, 1937.)

### ASSIGNMENTS FOR BENEFIT OF LABOR AND FARM ORGANIZATIONS

An Act Making It the Duty of Employers and of Processors, or Dealers in Farm Products to Recognize Assignments of Their Employees or of Producers for the Benefit of Labor Organizations or Farm Organizations, or Any Other Organization of Employees or Farmers, and Providing a Penalty for Breach of Such Duty.

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Assignments to Labor Unions—Effect.

Whenever an employee of any person, firm, school district, private or municipal corporation within the state of Utah executes and delivers to his employer an instrument in writing whereby such employer is directed to deduct a sum at the rate not exceeding three per cent per month, from his wages and to pay the same to a labor organization or union or any other organization of employees as assignee, it shall be the duty of such employer to make such deduction and to pay the same monthly or as designated by employee to such assignee and to continue to do so until otherwise directed by the employee through an instrument in writing.

#### Section 2. Assignments to Farm Organizations—Effect.

Whenever any producer of farm products within the state of Utah executes and delivers to a dealer or processor of farm products, either as a clause in a sales agreement or other instrument in writing whereby such processor or dealer is directed to deduct a sum or a rate not exceeding three per cent of the price to be paid for any such produce, such processor or dealer shall deduct from the price to be paid for any farm product being sold by any such producer to any such processor or dealer, the amount so authorized and the producer or dealer shall pay the same to a farm organization as assignee.

#### Section 3. Failure to Comply, Penalty.

Any employer, dealer or processor who willfully fails to comply with the duty here imposed shall be guilty of a misdemeanor.

#### Section 4. Exceptions From Act.

The provisions of this act shall not apply to carriers as that term is defined in the railway labor act, passed by the Congress of the United States June 21, 1934. 48 Statutes 1189, U. S. Code, Title 45, Section 151.

#### Section 5. Partial Invalidity—Saving Clause.

Should any part of this act be declared unconstitutional it shall not in any way invalidate the remainder of this act.

#### Section 6. Effective Date.

This act shall take effect upon approval.

Approved February 20, 1937.

## CHAPTER 58

H. B. No. 0.  
(Passed February 25, 1937. In effect March 0, 1937.)

### RIGHT TO WORK FREE FROM INTERFERENCE

#### DISSUADING PATRONAGE OF BUSINESS

An Act Repealing Sections 49-2-4, 49-2-5, Revised Statutes of Utah, 1933, Pertaining to Dissuading Patronage of a Business.

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Sections Repealed.

Sections 49-2-4, 49-2-5, Revised Statutes of Utah, 1933, are repealed.

#### Section 2. Effective Date.

This act shall take effect upon approval.

Approved March 9, 1937.

## CHAPTER 59

H. B. No. 05.  
(Passed February 25, 1937. In effect March 8, 1937.)

### EIGHT-HOUR LAW

An Act Amending Section 49-3-2, Revised Statutes of Utah, 1933, Relating to the Period of Employment of Working Men in Underground Mines or Workings and in Smelters and All Other Institutions for the Reduction or Refining of Ores or Metals, Providing That the Period of Employment for Underground Mines or Workings Shall Be Eight Hours Per Day.

*Be it enacted by the Legislature of the State of Utah:*

#### Section 1. Section Amended.

Section 49-3-2, Revised Statutes of Utah, 1933, is amended to read as follows:

#### 49-3-2. A Day's Work—Mines and Smelters.

The period of employment of working men in smelters and all other institutions for the reduction or refining of ores or metals, shall be eight hours per day, and the period of employment of working men in all underground mines or

workings shall be not more than eight hours per day, such eight hour period shall be computed from the time men go under ground until they return to the surface, except in cases of emergency where life or property is in imminent danger; *provided, however*, when under ground hoists or pumps are in continuous operation, hoistmen and pumpmen employed on such hoists or pumps may be permitted to be underground not to exceed eight hours and thirty minutes. Any employer who violates any of the provisions of this section is guilty of a misdemeanor.

## Section 2. Effective Date.

This act shall take effect upon approval.

Approved March 8, 1937.

## CHAPTER 60

H. B. No. 11.

(Passed March 8, 1937. In effect May 11, 1937.)

### PAYMENT OF WAGES

An Act to Regulate the Payment of Wages or Compensation for Labor or Service in Private Employments; Establishing Regular Pay Days, Providing That Notices as to Pay Days Must Be Kept Posted by the Employer and Making Failure to Keep Such Notices Posted Prima Facie Evidence of Violation of the Act; Providing Criminal Penalties for the Violation of Its Provisions, Authorizing the Industrial Commission of Utah to Enforce This Act; Defining the Duties of District Attorneys and County Attorneys Relative to Its Enforcement; Providing for the Collection of Certain Penalties by Civil Action at the Direction of the Industrial Commission of Utah for Failure to Maintain Regular Pay Days and the Disposition of Penalties so Collected; Providing a Civil Penalty for Failure of the Employer to Pay Discharged Employees or Employees Who Quit, and Permitting Such Employees to Sue Directly or Through an Assignee for Such Penalties as Well as Permitting the Industrial Commission of Utah to Sue for Same in Such Cases as They May Deem Proper, and Repealing Sections 49-9-2, 49-9-3, 49-9-4, 49-9-5, 49-9-6, 49-9-7, 49-9-9, Revised Statutes of Utah, 1933.

*Be it enacted by the Legislature of the State of Utah:*

## Section 1. Sections Repealed.

Sections 49-9-2, 49-9-3, 49-9-4, 49-9-5, 49-9-6, 49-9-7, 49-9-9, Revised Statutes of Utah, 1933, are repealed.

## Section 2. Definitions.

(a) Whenever used in this act, "employer" includes every person, firm, partnership, asso-

ciation, corporation, receiver or other officer of a court of this state, and any agent or officer of any of the above mentioned classes, employing any person in this state.

(b) "Wages" shall mean all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis or other method of calculating such amount.

## Section 3. Regular Pay Days.

Every employer shall pay to his employees the wages earned semimonthly or twice during each calendar month, on days to be designated in advance by the employer as the regular pay day; *provided*, that the employer shall pay for services rendered during each semimonthly period within ten days after the close of such period. Whenever the employer hires his employees on a yearly salary basis, then said employer may pay the employee on a monthly scale, said wage shall be paid by the seventh of the month following the month for which services were rendered. He shall pay such wages in full, in lawful money of the United States, or checks on banks, convertible into cash on demand at full face value thereof.

## Section 4. Notice as to Pay Days—Posting.

(a) It shall be the duty of every employer to notify his employees at the time of hiring of the day, and place of payment, of the rate of pay and of any change with respect to any of these items prior to the time of said change. Alternatively, however, every employer shall have the option of giving such notification by posting the aforementioned facts, and keeping them posted, conspicuously at or near the place of work where such posted notice can be seen by each employee as he comes or goes to his place of work.

### *Abstract of Law Posted—Exemptions From Act.*

(b) Every employer shall post and keep posted, in a similar manner as prescribed for the posting in paragraph (a) of this section, an abstract of this furnished by the industrial commission; *provided, however*, that the provisions of paragraph (b) of this section shall not apply to domestic labor in private homes or agricultural labor. None of the provisions of this act shall apply to employers or employees engaged in farm, dairy, agricultural, viticultural or horticultural pursuits or to banks and mercantile houses, or to stock or poultry raising or to household domestic service.

### *Failure to Post—Penalty.*

(c) Failure to post and to keep posted any notice or abstract as well as any failure to give written notice as prescribed in this section shall be deemed a misdemeanor, and punishable as such.



### Section 5. Employee Removed From Pay Roll—Failure to Pay—Penalty.

(a) Whenever an employer separates an employee from the pay roll the unpaid wages or compensation of such employee shall become due immediately, and the employer shall pay such wages to the employee within 24 hours of the time of separation at the specified place of payment.

In case of any failure to pay wages due an employee within 24 hours of a demand therefor, the wages of such employee shall continue from the date of separation until paid at the same rate which said employee received at the time of the separation. The employee may recover the penalty thus accruing to him in a civil act. Said action must be commenced within 60 days from the date of separation; *provided, however*, that any employee who has not made a demand for payment shall not be entitled to any such penalty under this paragraph.

#### *Employee Resigning, Payment of Wages.*

(b) Whenever an employee (not having a written contract for a definite period) quits or resigns his employment, the wages or compensation earned shall become due and payable not later than 72 hours thereafter, unless such employee shall have given 72 hours' previous notice of his intention to quit, in which latter case such employee shall receive his wages and compensation at the specified place of payment at the time of quitting.

#### *Suspension of Work as Result of Dispute, Payment of Wage.*

(c) In the event of the suspension of work as the result of an industrial dispute, the wages and compensation earned and unpaid at the time of said suspension shall become due and payable at the next regular pay day, as provided in section 2 of this act, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the duties of the employment.

### Section 6. Dispute Over Wage—Notice and Payment.

In case of a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay such amount without condition within the time set by this act; *provided*, that acceptance by the employee of any payment made hereunder shall not constitute a release as to the balance of his claim.

### Section 7. Construction of Act.

Nothing contained in this act shall in any way limit or prohibit the payment of wages or com-

pensation at more frequent intervals, or in greater amounts or in full when or before due, but no provision of this act can in any way be contravened or set aside by a mutual agreement.

### Section 8. Employer Liable to Employees of Subcontractor.

(a) Whenever an employer shall contract with another, herein called the subcontractor, for the performance of the employer's work, then it shall be the duty of such an employer to provide in such contract that the employees of the subcontractor shall be paid according to the provisions of this act; and in the event that such subcontractor shall fail to pay wages to his employees as specified in this act, such employer shall become civilly liable to the employees of the subcontractor to the extent that such work is performed under such contract in the same manner as if said employees were directly employed by such employer.

(b) The provisions of paragraph (a) of this section shall likewise be deemed applicable to any person, firm, partnership, association or corporation who not being an employer, and hereinafter referred to in this act as an "indirect employer," contracts with a subcontractor for the performance of his work.

### Section 9. Enforcement of Act.

(a) It shall be the duty of the industrial commission to insure compliance with the provisions of this act, to investigate as to any violations of this act, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder. The industrial commission may hold hearings to satisfy itself as to the justice of any claim, and it shall cooperate with any employee in the enforcement of a claim against his employer or any "indirect employer" as defined in section 7, in any case, however, in his opinion, the claim is just and valid.

(b) It shall be mandatory upon all district attorneys and county attorneys of this state to prosecute all cases both civilly and criminally which shall be referred by the industrial commission to such officers.

(c) It shall be the duty of all such officers to prosecute actions, both civil and criminal, for such violations of this act as come to their knowledge and to enforce the provisions hereof independently.

### Section 10. Records of Employers.

(a) Every employer shall keep a true and accurate record of time worked and wages paid each pay period to each employee who is employed on an hourly or a daily basis in such form as may be prescribed by the industrial commission. He shall keep such records on file for at least one year after the entry of the record.

*Right of Visitation.*

(b) The industrial commission and its authorized representatives shall have the right to enter any place of employment during business hours for the purpose of inspecting such records and seeing that all provisions of this act are complied with; *provided, however*, that paragraphs (a) and (b) of this section shall not apply to domestic service in private homes, nor to agricultural labor.

*Obstructing Commission in Performing Duties.*

(c) Any effort of an employer to obstruct the industrial commission and its authorized representatives in the performance of their duties shall be deemed a violation of this act and punishable as such.

*Witnesses.*

(d) The industrial commission and its authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, pay rolls, documents, and testimony, and to take depositions and affidavits in any proceeding before said industrial commission.

*Refusal to Testify—Contempt Proceedings.*

(e) In case of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county, or the judge thereof, on application by the commission to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

**Section 11. Commission May Employ Assistants.**

The industrial commission, pursuant to the law of this state, may employ such clerical and other assistants as may be necessary to carry out the purposes of this act, and shall fix the compensation of such employees and may also, to carry out such purposes, incur reasonable and necessary traveling expenses for the said commission, its deputies, and assistants.

**Section 12. Failure to Comply With Act—Penalty.**

(a) Any employer who shall violate or fail to comply with any of the provisions of this act, shall forfeit \$10 for each such violation or noncompliance. Each day of failure to pay wages due such employees at the time specified in this act shall raise a separate and distinct forfeiture. All such forfeitures shall be recovered in an action of debt in the name of the state of Utah.

(b) Any employer who shall violate, or fail to comply with any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than \$25 nor more than \$50 for each separate offense.

(c) Any employer who, shall refuse to pay the wages due and payable when demanded, as in this act provided, or who shall falsely deny the amount thereof, or that the same is due, with intent to secure for himself, or any other person, any discount upon such indebtedness, with intent to annoy, harass, oppress, hinder, delay or defraud, the person to whom such indebtedness is due, or who hires additional employees without advising each of them of every wage claim due and unpaid and of every judgment that the employer has failed to satisfy, shall in addition to any other penalty imposed upon him by this act, be guilty of a misdemeanor, punishable by a fine of not less than \$50 and not exceeding \$100.

**Section 13. Assignment of Wage Claims—Powers of Commission.**

The industrial commission shall have power and authority to take assignments of wage claims, rights of action for penalties provided by section 4 of this act, mechanics' and other liens of workers, not to exceed \$200 in the case of any one claim without being bound by any of the technical rules with reference to the validity of such assignments; and shall have power and authority to prosecute actions for the collection of such claims which are valid and enforceable in the courts. The commission shall have power to join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

**Section 14. Actions by Commission as Assignee—Costs—Bonds.**


(a) In all actions brought by the industrial commission as assignee under section 12 of this act, no court costs of any nature shall be required to be advanced nor shall any bond or other security therefor be required from the said commission in connection with the same.

(b) Any sheriff, constable or other officer requested by the said commission to serve summons, writs, complaints, orders, including any garnishment papers and all necessary and legal papers, within his jurisdiction, shall do so without requiring the commission to advance the fees or furnish any security or bond therefor.

(c) Whenever the commission shall require the sheriff, constable or other officer whose duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage claim judgment to perform any such duty, said officer shall do so without requiring the commission to furnish any security or bond in such

Tab O



 KeyCite Red Flag - Severe Negative Treatment  
Superseded by Statute as Stated in N.L.R.B. v. Town & Country Elec.,  
Inc., U.S., November 28, 1995

67 S.Ct. 789  
Supreme Court of the United States

PACKARD MOTOR CAR CO.  
v.  
NATIONAL LABOR RELATIONS BOARD.

No. 658.

|  
Argued Jan. 9, 1947.

|  
Decided March 10, 1947.

Petition by the National Labor Relations Board to enforce an order issued against the Packard Motor Car Company, wherein the Foreman's League for Education and Association and another intervened. To review a judgment decreeing enforcement of the order, 6 Cir., 157 F.2d 80, the Packard Motor Car Company brings certiorari.

Affirmed.

Mr. Justice DOUGLAS, Mr. Chief Justice VINSON, Mr. Justice BURTON, and Mr. Justice FRANKFURTER, dissenting.

On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

#### Attorneys and Law Firms

**\*\*790 \*486** Mr. Louis F. Dahling, of Detroit, Mich., for petitioner.

Mr. Gerhard P. Van Arkel, of Washington, D.C., for respondent.

#### Opinion

Mr. Justice JACKSON delivered the opinion of the Court.

The question presented by this case is whether foremen are entitled as a class to **\*\*791** the rights of self-organization, collective bargaining, and other concerted activities as assured to employees generally by the National Labor

Relations Act. 29 U.S.C.A. s 151 et seq. The case grows out of conditions of the automotive industry, and so far as they are important to the legal issues here the facts are simple.

**\*487** The Packard Motor Car Company employs about 32,000 rank and file workmen. Since 1937 they have been represented by the United Automobile Workers of America affiliated with the Congress of Industrial Organizations. These employees are supervised by approximately 1,100 employees of foremen rank consisting of about 125 'general foremen,' 643 'foremen,' 273 'assistant foremen,' and 65 'special assignment men.' Each general foreman is in charge of one or more departments, and under him in authority are foremen and their assistant foremen. Special assignment men are described as 'trouble-shooters.'

The function of these foremen in general is typical of the duties of foremen in mass production industry generally. Foremen carry the responsibility for maintaining quantity and quality of production, subject, of course, to the overall control and supervision of the management. Hiring is done by the labor relations department, as is the discharging and laying off of employees. But the foremen are provided with forms and with detailed lists of penalties to be applied in cases of violations of discipline, and initiate recommendations for promotion, demotion and discipline. All such recommendations are subject to the reviewing procedure concerning grievances provided in the collectively-bargained agreement between the Company and the rank and file union.

The foremen as a group are highly paid and, unlike the workmen, are paid for justifiable absence and for holidays, are not docked in pay when tardy, receive longer paid vacations, and are given severance pay upon release by the Company.

These foremen determined to organize as a unit of the Foremen's Association of America, an unaffiliated organization which represents supervisory employees exclusively. Following the usual procedure, after the Board had decided that 'all general foremen, foremen, assistant foremen, **\*488** and special assignment men employed by the Company at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9(b) of the Act,'<sup>1</sup> the Foremen's Association was certified as the bargaining representative. The Company asserted that

foremen were not 'employees' entitled to the advantages of the Labor Act, and refused to bargain with the union. After hearing on charge of unfair labor practice, the Board issued the usual cease and desist order. The Company resisted and challenged validity of the order. The judgment of the court below decreed its enforcement, and we granted certiorari. 329 U.S. 707, 67 S.Ct. 357.

<sup>1</sup> 61 N.L.R.B. 26.

The issue of law as to the power of the National Labor Relations Board under the National Labor Relations Act is simple and our only function is to determine whether the order of the Board is authorized by the statute.

[1] [2] The privileges and benefits of the Act are conferred upon employees, and s 2(3) of the Act, so far as relevant, provides 'The term 'employee' shall include any employee \* \* \*.' 49 Stat. 450. The point that these foremen are employees both in the most technical sense at common law as well as in common acceptance of the term, is too obvious to be labored. The Company, however, turns to the Act's definition of employer, which it contends reads foremen out of the employee class and into the class of employers. Section 2(2) reads: 'The term 'employer' includes any person acting in the interest of an employer, directly or indirectly \* \* \*.' 49 Stat. 450. The context of the Act, we think, leaves no room for a construction of this section to deny the organizational privilege \*\*792 to employees because they act in the interest of an employer. Every employee, from the very fact of employment in the master's business, is required to act in his interest. He \*489 owes to the employer faithful performance of service in his interest, the protection of the employer's property in his custody or control, and all employees may, as to third parties, act in the interests of the employer to such an extent that he is liable for their wrongful acts. A familiar example would be that of a truck driver for whose negligence the Company might have to answer.

The purpose of s 2(2) seems obviously to render employers responsible in labor practices for acts of any persons performed in their interests. It is an adaptation of the ancient maxim of the common law, respondeat superior, by which a principal is made liable for the tortious acts of his agent and the master for the wrongful acts of his servants. Even without special statutory provision, the rule would apply to many relations. But Congress was creating a new class of wrongful acts to be known as unfair labor practices, and it could not be certain that the

courts would apply the tort rule of respondeat superior to those derelictions. Even if it did, the problem of proof as applied to this kind of wrongs might easily be complicated by questions as to the scope of the actor's authority and of variance between his apparent and his real authority. Hence, it was provided that in administering this act the employer, for its purposes, should be not merely the individual or corporation which was the employing entity, but also others, whether employee or not, who are 'acting in the interest of an employer.'

Even those who act for the employer in some matters, including the service of standing between management and manual labor, still have interests of their own as employees. Though the foreman is the faithful representative of the employer in maintaining a production schedule, his interest properly may be adverse to that of the employer when it comes to fixing his own wages, hours, seniority rights or working conditions. He does not lose his right to serve himself in these respects because he \*490 serves his master in others. And we see no basis in this Act whatever for holding that foremen are forbidden the protection of the Act when they take collective action to protect their collective interests.

[3] The company's argument is really addressed to the undesirability of permitting foremen to organize. It wants selfless representatives of its interest. It fears that if foremen combine to bargain advantages for themselves, they will sometimes be governed by interests of their own or of their fellow foremen, rather than by the company's interest. There is nothing new in this argument. It is rooted in the misconception that because the employer has the right to wholehearted loyalty in the performance of the contract of employment, the employee does not have the right to protect his independent and adverse interest in the terms of the contract itself and the conditions of work. But the effect of the National Labor Relations Act is otherwise, and it is for Congress, not for us, to create exceptions or qualifications at odds with its plain terms.

Moreover, the company concedes that foremen have a right to organize. What it denies is that the statute compels it to recognize the union. In other words, it wants to be free to fight the foremen's union in the way that companies fought other unions before the Labor Act. But there is nothing in the Act which indicates that Congress intended to deny its benefits to foremen as employees, if they choose to believe that their interests as employees would be better served by organization than by individual competition.<sup>2</sup>

N.L.R.B. v. Skinner & Kennedy Stationery Co., 8 Cir., 113 F.2d 667; see N.L.R.B. v. Armour & Co., 10 Cir., 154 F.2d 570, 574.

2 If a union of vice presidents, presidents or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporate officers elected by the board of directors.

**\*\*793 \*491 [4] [5]** There is no more reason to conclude that the law prohibits foremen as a class from constituting an appropriate bargaining unit than there is for concluding that they are not within the Act at all. Section 9(b) of the Act confers upon the Board a broad discretion to determine appropriate units. It reads, 'The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies \* \* \* of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.' 49 Stat. 453. Our power of review also is circumscribed by the provision that findings of the Board as to the facts, if supported by evidence, shall be conclusive. s 10(e), 49 Stat. 454. So we have power only to determine whether there is substantial evidence to support the Board, or its order oversteps the law. N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 61 S.Ct. 358, 85 L.Ed. 368; Pittsburgh Plate Glass Co. v. N.L.R.B., 313 U.S. 146, 61 S.Ct. 908, 85 L.Ed. 1251.

[6] [7] There is clearly substantial evidence in support of the determination that foremen are an appropriate unit by themselves and there is equal evidence that, while the foremen included in this unit have different degrees of responsibility and work at different levels of authority, they have such a common relationship to the enterprise and to other levels of workmen that inclusion of all such grades of foremen in a single unit is appropriate. Hence the order insofar as it depends on facts is beyond our power of review. The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion and the decision of the Board, if not final, is rarely to be disturbed. While we do not say that a determination of a unit of representation cannot be so unreasonable and arbitrary as to exceed the Board's

power, we are clear that **\*492** the decision in question does not do so. That settled, our power is at an end.

[8] We are invited to make a lengthy examination of views expressed in Congress while this and later legislation was pending to show that exclusion of foremen was intended. There is, however, no ambiguity in this Act to be clarified by resort to legislative history, either of the Act itself or of subsequent legislative proposals which failed to become law.

[9] Counsel also would persuade us to make a contrary interpretation by citing a long record of inaction, vacillation and division of the National Labor Relations Board in applying this Act to foremen. If we were obliged to depend upon administrative interpretation for light in finding the meaning of the statute, the inconsistency of the Board's decisions would leave us in the dark.<sup>3</sup> But there are difficult questions of policy involved in these cases which, together with changes in Board membership, account for the contradictory views that characterize their history in the Board. Whatever special questions there are in determining the appropriate bargaining unit for **\*493** foremen are for **\*\*794** the Board, and the history of the issue in the Board shows the difficulty of the problem committed to its discretion. We are not at liberty to be governed by those policy considerations in deciding the naked question of law whether the Board is now, in this case, acting within the terms of the statute.

3 The Board had held that supervisory employees may organize in an independent union, Union Collieries Coal Co., 41 N.L.R.B. 961, 44 N.L.R.B. 165; and in an affiliated union, Godchaux Sugars, Inc., 44 N.L.R.B. 874. Then it held that there was no unit appropriate to the organization of supervisory employees. Maryland Drydock Co., 49 N.L.R.B. 733; Boeing Aircraft Co., 51 N.L.R.B. 67; Murray Corp. of America, 51 N.L.R.B. 94; General Motors Corp., 51 N.L.R.B. 457; In this case, 61 N.L.R.B. 4, 64 N.L.R.B. 1212; in L. A. Young Spring & Wire Corp., 65 N.L.R.B. 298; Jones & Laughlin Steel Corp., 66 N.L.R.B. 386, 71 N.L.R.B. 1261; and in California Packing Corp., 66 N.L.R.B. 1461, the Board re-embraced its earlier conclusions with the same progressive boldness it had shown in the Union Collieries and Godchaux Sugars cases. In none of this series of cases did the Board hold that supervisors were not employees. See Soss Manufacturing Co., 56 N.L.R.B. 348.



It is also urged upon us most seriously that unionization of foremen is from many points bad industrial policy, that it puts the union foreman in the position of serving two masters, divides his loyalty and makes generally for bad relations between management and labor. However we might appraise the force of these arguments as a policy matter, we are not authorized to base decision of a question of law upon them. They concern the wisdom of the legislation; they cannot alter the meaning of otherwise plain provisions.

The judgment of enforcement is

Affirmed.

Mr. Justice DOUGLAS, with whom The CHIEF JUSTICE and Mr. Justice BURTON concur, dissenting.

First. Over thirty years ago Mr. Justice Brandeis, while still a private citizen, saw the need for narrowing the gap between management and labor, for allowing labor greater participation in policy decisions, for developing an industrial system in which cooperation rather than coercion was the dominant characteristic.<sup>1</sup> In his view, these were \*494 measures of therapeutic value in dealing with problems of industrial unrest or inefficiency.

<sup>1</sup> 'The greater productivity of labor must not only be attainable, but attainable under conditions consistent with the conservation of health, the enjoyment of work, and the development of the individual. The facts in this regard have not been adequately established. In the task of ascertaining whether proposed conditions of work do conform to these requirements, the laborer should take part. He is indeed a necessary witness. Likewise in the task of determining whether in the distribution of the gain in productivity justice is being done to the worker, the participation of representatives of labor is indispensable for the inquiry which involves essentially the exercise of judgment.' Brandeis, *Business—A Profession*, pp. 52—53.

The present decision may be a step in that direction. It at least tends to obliterate the line between management and labor. It ends the sanctions of federal law to unionization at all levels of the industrial hierarchy. It tends to emphasize that the basic opposing forces in industry are not management and labor but the operating group on the one hand and the stockholder and bondholder group

on the other. The industrial problem as so defined comes down to a contest over a fair division of the gross receipts of industry between these two groups. The struggle for control or power between management and labor becomes secondary to a growing unity in their common demands on ownership.

I do not believe this is an exaggerated statement of the basic policy questions which underly the present decision. For if foremen are 'employees' within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as the management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application. But once vice-presidents, managers, superintendents, foremen all are unionized, management and labor will become more of a solid phalanx than separate factions in warring camps. Indeed, the thought of some \*495 labor leaders that if those in the hierarchy above the workers are unionized, they will be more sympathetic with the claims of those below them, is a manifestation of the same idea.<sup>2</sup>

<sup>2</sup> The Foreman Abdicates, XXXII *Fortune*, No. 3, p. 150, 152; Levenstein, *Labor Today and Tomorrow* (1946) ch. VII.

I mention these matters to indicate what \*\*795 tremendously important policy questions are involved in the present decision. My purpose is to suggest that if Congress, when it enacted the National Labor Relations Act, had in mind such a basic change in industrial philosophy, it would have left some clear and unmistakable trace of that purpose. But I find none.

Second. 'Employee' is defined to include 'any' employee. s 2(3), 49 Stat. 449, 450, 29 U.S.C. s 152, 29 U.S.C.A. If we stop there, foremen are included as are all employees from the president on down. But we are not warranted in stopping there. The term 'employee' must be considered in the context of the Act. *National Labor Relations Board v. Hearst Publications*, 322 U.S. 111, 124, 64 S.Ct. 851, 857, 88 L.Ed. 1170; *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U.S. 177, 191, 61 S.Ct. 845, 851, 85 L.Ed. 1271, 133 A.L.R. 1217. When it is so considered it does not appear to be used in an all-embracing sense.

Rather, it is used in opposition to the term 'employer'. An 'employer' is defined to include 'any person acting in the interest of an employer'. s 2(2). The term 'employer' thus includes some employees. And I find no evidence that one personnel group may be both employers and employees within the meaning of the Act. Rather, the Act on its face seems to classify the operating group of industry into two classes; what is included in one group is excluded from the other.

It is not an answer to say that the two statutory groups are not exclusive because every 'employee' while on duty—whether driving a truck or stoking a furnace or \*496 operating a lathe—is 'acting in the interest' of his employer and is then an 'employer' in the statutory sense. The Act was not declaring a policy of vicarious responsibility of industry. It was dealing solely with labor relations. It put in the employer category all those who acted for management not only in formulating but also in executing its labor policies.<sup>3</sup>

<sup>3</sup> Daykin, *The Status of Supervisory Employees under the National Labor Relations Act*, 29 Iowa L.Rev. 297; Rosenfarb, *The National Labor Policy* (1940) pp. 54—56, 116—120; Twentieth Century Fund, *How Collective Bargaining Works* (1942) pp. 512—514, 547, 557—558, 628, 780.

Foremost among the latter were foremen. Trade union history shows that foremen were the arms and legs of management in executing labor policies. In industrial conflicts they were allied with management. Management indeed commonly acted through them in the unfair labor practices which the Act condemns.<sup>4</sup> When we upheld the imposition of the sanctions of the Act against management, we frequently relied on the acts of foremen through whom management expressed its hostility to trade unionism.<sup>5</sup>

<sup>4</sup> See cases collected in Daykin, *op. cit. supra*, note 3, pp. 298—299.

<sup>5</sup> *International Association of Machinists, Tool and Die Makers v. National Labor Relations Board*, 311 U.S. 72, 79, 80, 61 S.Ct. 83, 88, 85 L.Ed. 50; *H. J. Heinz Co. v. National Labor Relations Board*, 311 U.S. 514, 520, 521, 61 S.Ct. 320, 323, 85 L.Ed. 309.

Third. The evil at which the Act was aimed was the failure or refusal of industry to recognize the right of workingmen to bargain collectively. In s 1 of the Act Congress noted

that such an attitude on the part of industry led 'to strikes and other forms of industrial strife or unrest' so as to burden or obstruct interstate commerce. We know from the history of that decade that the frustrated efforts of workingmen, of laborers, to organize led to strikes, strife, and unrest. But we are pointed to no instances where foremen were striking; nor \*497 are we advised that managers, superintendents, or vice-presidents were doing so.<sup>6</sup>

<sup>6</sup> It is true that for many years some unions included supervisory employees. Beatrice and Sydney Webb, *Industrial Democracy* (1902) p. 546, fn. 2; *Union Membership and Collective Bargaining by Foremen*, U.S. Department of Labor Bull. No. 745 (1943); *Report of Panel of War Labor Board in Disputes Involving Supervisors* (1945) IX; Twentieth Century Fund, *op. cit. supra*, note 3, pp. 67, 216; Northrup, *Unionization of Foremen*, 21 Harv.Bus.Rev. 496. But organization of foremen on a broad scale is a development of the last few years. Daykin, *op. cit. supra*, note 3, p. 314; Rosenfarb, *Foremen on the March*, 7 Fed.Bar.J. 168; Note, 59 Harv.L.Rev. 606, 607; Comment, 55 Yale L.J. 754, 756; *Foremen's Unions*, IX Advanced Management Quarterly J. 110.

Indeed, the problems of those in the supervisory categories of management did \*\*796 not seem to have been in the consciousness of Congress. Section 1 of the Act refers to 'wage rates', 'wage earners', 'workers'. There is no phrase in the entire Act which is descriptive of those doing supervisory work. Section 2(3) exempts from laborer'. But if 'employee' includes a the term 'employee' any 'agricultural foreman, it would be most strange to find Congress exempting 'agricultural laborers', but not 'agricultural foremen'. The inference is strong that since it exempted only agricultural 'laborers', it had no idea that agricultural 'foremen' were under the Act.

If foremen were to be included as employees under the Act, special problems would be raised—important problems relating to the unit in which the foremen might be represented. Foremen are also under the Act as employers. That dual status creates serious problems. An act of a foreman, if attributed to the management, constitutes an unfair labor practice; the same act may be part of the foreman's activity as an employee. In that event the employer can only interfere at his peril.<sup>7</sup> The complications \*498 of dealing with the problems of supervisory employees strongly suggest that if Congress had planned to include them in its project, it would have

made some special provision for them. But we find no trace of a suggestion that when Congress came to consider the units appropriate for collective bargaining,<sup>8</sup> it was aware that groups of employees might have conflicting loyalties. Yet that would have been one of the most important and conspicuous problems if foremen were to be included. The failure of Congress to formulate a policy respecting the peculiar and special problems of foremen suggests an absence of purpose to bring them under the Act. And the notion is hard to resist that the very absence of a declaration by Congress of its policy respecting foremen is the reason the Board has been so much at large in the treatment of the problem under the Act. See the cases collected in note 3 of the opinion of the Court.

<sup>7</sup> Cf. *Jones and Laughlin Steel Corp. v. National Labor Relations Board*, 5 Cir., 146 F.2d 833; Comment, 55 Yale L.J. 754, 767—774; Rosenfarb, op. cit., supra, note 6.

<sup>8</sup> Section 9(b) of the Act provides: 'The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies \* \* \* of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.'

Fourth. When we turn from the Act to the legislative history, we find no trace of Congressional concern with the problems of supervisory personnel. The reports and debates are barren of any reference to them, though they are replete with references to the function of the legislation in protecting the interests of 'laborers' and 'workers'.<sup>9</sup>

<sup>9</sup> See H. Rep. No. 969, 74th Cong., 1st Sess.; H. Rep. No. 972, 74th Cong., 1st Sess.; H. Rep. No. 1147, 74th Cong., 1st Sess.; S. Rep. No. 573, 74th Cong., 1st Sess., pp. 6—7; Hearings, Senate Comm. on Educ. and Labor on S. 2926, 73d Cong., 2d Sess.; Hearings, House Comm. on Labor on H.R. 6288, 74th Cong., 1st Sess.; Hearings, Senate Comm. on Educ. and Labor on S. 1958, 74th Cong., 1st Sess.; 79 Cong.Rec. 2371, 7365, 7648, 7668, 8537, 9676, 9713, 9736, 10720.

\*499 Fifth. When we turn to other related legislation, we find that when Congress desired to include managerial officials or supervisory personnel in the category of employees, it did so expressly. The Railway Labor Act of 1926, 44 Stat. 577, 45 U.S.C. s 151, 45 U.S.C.A. s 151,

defines 'employee' to include 'subordinate official'. The Merchant Marine Act of 1936, 52 Stat. 953, 46 U.S.C. s 1101 et seq., 46 U.S.C.A. s 1101 et seq., which deals with maritime labor relations as a supplement to the National Labor Relations Act (see 46 U.S.C. s 1252, 46 U.S.C.A. s 1252) defines 'employee' \*\*797 to include 'subordinate official'. 46 U.S.C. s 1253(c), 46 U.S.C.A. s 1253(c). And the Social Security Act, 49 Stat. 620, 647, 42 U.S.C. s 1301, 42 U.S.C.A. s 1301, includes an officer of a corporation in the term employee.<sup>10</sup> The failure of Congress to do the same when it wrote the National Labor Relations Act has some significance, especially where the legislative history is utterly devoid of any indication that Congress was concerned with the collective bargaining problems of supervisory employees.

<sup>10</sup> Cf. Federal Employers Liability Act, 35 Stat. 65, as amended, 45 U.S.C. s 51, 45 U.S.C.A. s 51, under which the term 'any employee of a carrier' has been applied to foremen. *Owens v. Union Pac. R. Co.*, 319 U.S. 715, 63 S.Ct. 1271, 87 L.Ed. 1683; *Ellis v. Union Pac. R. Co.*, 329 U.S. 649, 67 S.Ct. 598.

Sixth. The truth of the matter is, I think, that when Congress passed the National Labor Relations Act in 1935, it was legislating against the activities of foremen, not on their behalf. Congress was intent on protecting the right of free association—the right to bargain collectively—by the great mass of workers, not by those who were in authority over them and enforcing oppressive industrial policies. Foremen were instrumentalities of those industrial policies. They blocked the wage earners' path to fair collective bargaining. To say twelve years later that foremen were treated as the victims of that anti-labor policy seems to me a distortion of history.

\*500 If we were to decide this case on the basis of policy, much could be said to support the majority view.<sup>11</sup> But I am convinced that Congress never faced those policy issues when it enacted this legislation. I am sure that those problems were not in the consciousness of Congress. A decision of these policy matters cuts deep into our industrial life. It has profound implications throughout our economy. It involves a fundamental change in much of the thinking of the nation on our industrial problems. The question is so important that I cannot believe Congress legislated unwittingly on it. Since what Congress wrote is consistent with a restriction of the Act to workingmen and laborers, I would leave its extension over supervisory employees to Congress.

- 11 Daykin, op. cit. supra, note 3, p. 313; Rosenfarb, op. cit. supra, note 6; Gartenbaus, *The Foreman goes Union*, 113 New Republic 563; Comment 55 Yale L.J. 754; Hearings, House Comm. on Military Affairs on Bills relating to the Full Utilization of Manpower, 78th Cong., 1st Sess., p. 299; Northrup, *The Foreman's Association of America*, 23 Harv.Bus.Rev. 187; cf. American Management Association, *Relation Between Management and Foremen in American Industry* (1944); Id. *The Foreman in Labor Relations* (1944); Id. *Should Management be Unionized?* (1945).

I have used the terms foremen and supervisory employees synonymously. But it is not the label which is important; it is whether the employees in question represent or act for management on labor policy matters. Thus one might be a supervisory employee without representing management in those respects. And those who are called foremen may perform duties not substantially different from those of skilled laborers.

What I have said does not mean that foremen have no right to organize for collective bargaining. The general

law recognizes their right to do so. See *American Steel Foundries v. Tri-City Council*, 257 U.S. 184, 209, 42 S.Ct. 72, 78, 66 L.Ed. 189, 27 A.L.R. 360; *Texas & N.O.R. Co. v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548, 570, 50 S.Ct. 427, 433, 74 L.Ed. 1034. And \*501 some States have placed administrative machinery and sanctions behind that right.<sup>12</sup> But as I read the federal Act, Congress has not yet done so.

- 12 The state laws are discussed in Northrup, *The Foreman's Association of America*, 23 Harv.Bus.Rev. 187, 199—200.

Mr. Justice FRANKFURTER agrees with this opinion except the part marked 'First' as to which he expresses no view.

#### All Citations

330 U.S. 485, 67 S.Ct. 789, 91 L.Ed. 1040, 19 L.R.R.M. (BNA) 2397, 12 Lab.Cas. P 51,240



Tab P

# UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS  
ENACTED DURING THE FIRST SESSION OF THE  
EIGHTIETH CONGRESS  
OF THE UNITED STATES OF AMERICA

1947

AND

PROCLAMATIONS, TREATIES, INTERNATIONAL  
AGREEMENTS OTHER THAN TREATIES,  
REORGANIZATION PLANS, AND PROPOSED  
AMENDMENT TO THE CONSTITUTION

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COMPILED, EDITED, INDEXED, AND PUBLISHED BY AUTHORITY OF LAW  
UNDER THE DIRECTION OF THE SECRETARY OF STATE

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VOLUME 61

IN SIX PARTS

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PART 1

PUBLIC LAWS  
REORGANIZATION PLANS  
PROPOSED AMENDMENT TO THE CONSTITUTION



UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1948



## [CHAPTER 114]

## AN ACT

June 21, 1947  
[H. R. 1874]  
[Public Law 100]

To amend the Act entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes", approved July 11, 1916, as amended and supplemented, and for other purposes.

58 Stat. 640.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That paragraph (d) of section 4 of the Federal-Aid Highway Act of 1944, Public Law 521, Seventy-eighth Congress, approved December 20, 1944, is hereby amended by striking out the term "one year" where it appears in said paragraph and inserting in lieu thereof the term "two years".

Approved June 21, 1947.

## [CHAPTER 120]

## AN ACT

June 23, 1947  
[H. R. 3020]  
[Public Law 101]

To amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SHORT TITLE AND DECLARATION OF POLICY

SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

## TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

49 Stat. 440.  
29 U. S. C. §§ 151-166.

SEC. 101. The National Labor Relations Act is hereby amended to read as follows:

## "FINDINGS AND POLICIES

"SECTION 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the

current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

"The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

"Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

"Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

*Policy of the United States.*

#### "DEFINITIONS

*Post, p. 161.*

"SEC. 2. When used in this Act—

"(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

"(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

*44 Stat. 577.  
45 U. S. C. §§ 151-163, 181-188.*

"(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act 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

44 Stat. 577.  
46 U. S. C. §§ 151-  
163, 181-183.

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, as amended from time to time, or by any other person who is not an employer as herein defined.

"(4) The term 'representatives' includes any individual or labor organization.

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

"(7) The term 'affecting commerce' means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

*Post*, p. 140.

"(8) The term 'unfair labor practice' means any unfair labor practice listed in section 8.

"(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

"(10) The term 'National Labor Relations Board' means the National Labor Relations Board provided for in section 3 of this Act.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"(12) The term 'professional employee' means—

"(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

"(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

"(13) In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

#### "NATIONAL LABOR RELATIONS BOARD

"SEC. 3. (a) The National Labor Relations Board (hereinafter called the 'Board') created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(b) The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

"(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

"(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

"SEC. 4. (a) Each member of the Board and the General Counsel of the Board shall receive a salary of \$12,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment

Continuance.

Removal of Board member.

Delegation of powers, etc.

Seal.

Report to Congress and to President.

General Counsel.

Post, p. 146.

Salaries.

Employees.



Review of trial examiner's report.	as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No trial examiner's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no trial examiner shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.
Use, etc., of other agencies and services.	
Payment of expenses.	"(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.
Principal office.	"Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.
Rules and regulations.	"Sec. 6. The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act, such rules and regulations as may be necessary to carry out the provisions of this Act.

#### "RIGHTS OF EMPLOYEES

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

#### "UNFAIR LABOR PRACTICES

Employer.

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

"(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8 (a) of this Act as an unfair labor



practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; and (ii) if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

Labor organization  
or agents.

"(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his

Engaging in certain  
strikes, etc.

employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

Excessive or discriminatory fees.

"(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

Payment by employer for services not performed.

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

"To bargain collectively."

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later: The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Intervening certification of Board.

Loss of status by employee.

#### "REPRESENTATIVES AND ELECTIONS

"SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: *Provided*, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Decision of Board regarding appropriate unit.

Investigation of petition; hearing.

"(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a), or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9 (a); or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9 (a);

Election by secret ballot.

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

"(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10 (c).

"(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees on strike who are not entitled to reinstatement shall not be eligible to vote. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

"(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

"(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

Post, p. 147.

"(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Petition to make agreement with employer.

"(e) (1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organ-



ization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer.

"(2) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to section 8 (a) (3) (ii), of a petition alleging they desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit, and shall certify the results thereof to such labor organization and to the employer.

"(3) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.

"(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

Filing of constitution, etc., prior to action by Board.

"(1) the name of such labor organization and the address of its principal place of business;

"(2) the names, titles, and compensation and allowances of its three principal officers and of any of its other officers or agents whose aggregate compensation and allowances for the preceding year exceeded \$5,000, and the amount of the compensation and allowances paid to each such officer or agent during such year;

"(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

"(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

"(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

"(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to, (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

"(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

Report showing receipts, etc.

"(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor.



Obligation of labor organizations to file annual reports.

"(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall issue under section 10 with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection.

Affidavit that labor officer is not member of Communist Party, etc.

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35 A of the Criminal Code shall be applicable in respect to such affidavits.

52 Stat. 197.  
18 U. S. C. §§ 80,  
83-85.

#### "PREVENTION OF UNFAIR LABOR PRACTICES

Powers of Board.

"Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

Issuance of complaint, etc.

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing

or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

“(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

“(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

“(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district

48 Stat. 1064.  
28 U. S. C. §§ 723b,  
723c.  
Testimony.

Back pay.

Applicability of  
rules of decision, etc.

Order dismissing  
complaint, etc.

Modification, etc.,  
by Board of finding or  
order.

Petition to court for  
enforcement of order,  
etc.

Findings of Board.

Jurisdiction of court,  
etc.36 Stat. 1157.  
Review of order.

court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

“(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with

respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

"(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

"(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order on the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

"(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

"(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging

47 Stat. 70,  
29 U. S. C. §§ 101-  
115.

Petition to court for  
temporary relief, etc.

Power of Board to  
determine dispute.

Preliminary investi-  
gation of charge.

Petition for injunc-  
tive relief.



party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

*Ante*, p. 142.

#### "INVESTIGATORY POWERS

"SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

*Ante*, p. 143.

Access to evidence.

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

Issuance of subpoenas.

Administration of oaths, etc.

Refusal to obey subpoena, etc.

"(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

"(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is



compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

"(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

"(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

"SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

#### "LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

"SEC. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

"(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

"SEC. 15. Wherever the application of the provisions of section 272 of chapter 10 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898, and Acts amendatory thereof and supplementary thereto (U. S. C., title 11, sec. 672), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

"SEC. 16. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Service of complaints, orders, etc.

Payment of witnesses.

Records of departments, etc.

Penalty.

Right to strike.

Supervisors.

Execution of agreements requiring membership, etc.

Conflict with other laws.

62 Stat. 904.

Separability of provisions.

Short title.

"SEC. 17. This Act may be cited as the 'National Labor Relations Act'."

## EFFECTIVE DATE OF CERTAIN CHANGES

Unfair labor practice.

*Ante*, pp. 140, 141.

SEC. 102. No provision of this title shall be deemed to make an unfair labor practice any act which was performed prior to the date of the enactment of this Act which did not constitute an unfair labor practice prior thereto, and the provisions of section 8 (a) (3) and section 8 (b) (2) of the National Labor Relations Act as amended by this title shall not make an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title, if the performance of such obligation would not have constituted an unfair labor practice under section 8 (3) of the National Labor Relations Act prior to the effective date of this title, unless such agreement was renewed or extended subsequent thereto.

Certification of representatives, etc.

49 Stat. 453.  
29 U. S. C. § 159.  
*Ante*, p. 143.

SEC. 103. No provisions of this title shall affect any certification of representatives or any determination as to the appropriate collective-bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title until one year after the date of such certification or if, in respect of any such certification, a collective-bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs.

Amendments made by Title I.

*Ante*, p. 139.

SEC. 104. The amendments made by this title shall take effect sixty days after the date of the enactment of this Act, except that the authority of the President to appoint certain officers conferred upon him by section 3 of the National Labor Relations Act as amended by this title may be exercised forthwith.

## TITLE II—CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

SEC. 201. That it is the policy of the United States that—

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective-bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the

terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

SEC. 202. (a) There is hereby created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service", except that for sixty days after the date of the enactment of this Act such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall receive compensation at the rate of \$12,000 per annum. The Director shall not engage in any other business, vocation, or employment.

(b) The Director is authorized, subject to the civil-service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with the Classification Act of 1923, as amended, and may, without regard to the provisions of the civil-service laws and the Classification Act of 1923, as amended, appoint and fix the compensation of such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefor approved by the Director or by any employee designated by him for that purpose.

(c) The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 8 of the Act entitled "An Act to create a Department of Labor", approved March 4, 1913 (U. S. C., title 29, sec. 51), and all functions of the United States Conciliation Service under any other law are hereby transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after the date of enactment of this Act. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

#### FUNCTIONS OF THE SERVICE

SEC. 203. (a) It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the

Federal Mediation  
and Conciliation Service.  
Post, p. 616.

Director.

Appointment, etc.  
of personnel.

42 Stat. 1498.  
5 U. S. C. §§ 661-674.

Expenditures.

Principal office, etc.

Delegation of authority.

Report to Congress.

Transfer of functions, etc.

37 Stat. 733.

Conciliation and mediation.

Proffer of services.

request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. 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. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lock-out, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act.

(d) Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Maintenance of agreements, etc., by employers and employees.

SEC. 204. (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall—

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act for the purpose of aiding in a settlement of the dispute.

National Labor-Management Panel.  
Post, p. 615.

SEC. 205. (a) There is hereby created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be selected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of \$25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

Pay and allowances.

Duty.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner



in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

#### NATIONAL EMERGENCIES

SEC. 206. Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Board of inquiry.  
*Post*, p. 613.

SEC. 207. (a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

Report.

Members; powers.

(b) Members of a board of inquiry shall receive compensation at the rate of \$50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

Pay and expenses.

(c) For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U. S. C. 19, title 15, secs. 49 and 50, as amended), are hereby made applicable to the powers and duties of such board.

Attendance of witnesses, etc.

38 Stat. 722, 723.

SEC. 208. (a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out—

Enjoining of strike, etc.

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

(b) In any case, the provisions of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall not be applicable.

47 Stat. 70.  
29 U. S. C. §§ 101-115.

(c) The order or orders of the court shall be subject to review by the appropriate circuit court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 29, secs. 346 and 347).

36 Stat. 1157.  
28 U. S. C. §§ 346, 347.

SEC. 209. (a) Whenever a district court has issued an order under section 208 enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to



adjust and settle their differences, with the assistance of the Service created by this Act. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

**Reconvening of board of inquiry.** (b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement.

**Secret ballot of employees.** The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

**Discharge of injunction.** SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

**Report to Congress.**

#### COMPILATION OF COLLECTIVE BARGAINING AGREEMENTS, ETC.

SEC. 211. (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

#### EXEMPTION OF RAILWAY LABOR ACT

SEC. 212. The provisions of this title shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act, as amended from time to time.

44 Stat. 577.  
45 U. S. C. § 151-  
163, 181-183.

### TITLE III

#### SUITS BY AND AGAINST LABOR ORGANIZATIONS

**Violation of contracts.**

SEC. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

**Acts of agents.**

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer

whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or 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 in a district court of the United States 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.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Jurisdiction of district courts.

Service of summons upon agent, etc.

#### RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

SEC. 302. (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or

Payment, etc., by employer.

Acceptance, etc., by representative.

Nonapplicability of section.

Written assignment from employee.

Payments held in trust for benefit of employees, etc.

death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

Penalty.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.

38 Stat. 737.

38 Stat. 731, 739.

47 Stat. 70.

Nonapplicability of section.

Contributions to trust funds.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U. S. C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., title 29, secs. 101-115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

#### BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport,

or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

*Ante*, p. 143.

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

*Ante*, p. 143.

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

*Ante*, p. 136.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

#### RESTRICTION ON POLITICAL CONTRIBUTIONS

SEC. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

43 Stat. 1074.

"Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of

Penalty.



"Labor organization."

this section shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

#### STRIKES BY GOVERNMENT EMPLOYEES

SEC. 305. It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment, and shall forfeit his civil service status, if any, and shall not be eligible for reemployment for three years by the United States or any such agency.

### TITLE IV

#### CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

Joint Committee on Labor-Management Relations.

SEC. 401. There is hereby established a joint congressional committee to be known as the Joint Committee on Labor-Management Relations (hereafter referred to as the committee), and to be composed of seven Members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven Members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives. A vacancy in membership of the committee shall not affect the powers of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. The committee shall select a chairman and a vice chairman from among its members.

Study and investigation.

SEC. 402. The committee, acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employees and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective-bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

Report to Congress.

SEC. 403. The committee shall report to the Senate and the House



of Representatives not later than March 15, 1948, the results of its study and investigation, together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than January 2, 1949.

SEC. 404. The committee shall have the power, without regard to the civil-service laws and the Classification Act of 1923, as amended, to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties, including consultants who shall receive compensation at a rate not to exceed \$35 for each day actually spent by them in the work of the committee, together with their necessary travel and subsistence expenses. The committee is further authorized, with the consent of the head of the department or agency concerned, to utilize the services, information, facilities, and personnel of all agencies in the executive branch of the Government and may request the governments of the several States, representatives of business, industry, finance, and labor, and such other persons, agencies, organizations, and instrumentalities as it deems appropriate to attend its hearings and to give and present information, advice, and recommendations.

SEC. 405. The committee, or any subcommittee thereof, is authorized to hold such hearings; to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Eightieth Congress; to require by subpoena or otherwise the attendance of such witnesses and the production of such books, papers, and documents; to administer oaths; to take such testimony; to have such printing and binding done; and to make such expenditures within the amount appropriated therefor; as it deems advisable. The cost of stenographic services in reporting such hearings shall not be in excess of 25 cents per one hundred words. Subpenas shall be issued under the signature of the chairman or vice chairman of the committee and shall be served by any person designated by them.

SEC. 406. The members of the committee shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the committee, other than expenses in connection with meetings of the committee held in the District of Columbia during such times as the Congress is in session.

SEC. 407. There is hereby authorized to be appropriated the sum of \$150,000, or so much thereof as may be necessary, to carry out the provisions of this title, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman.

Powers.

42 Stat. 1488.  
5 U. S. C. §§ 661-674.

Reimbursement for expenses.

Appropriation authorized.  
Post, p. 611.

## TITLE V

### DEFINITIONS

Ante, p. 137.

SEC. 501. When used in this Act—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slow-down or other concerted interruption of operations by employees.

(3) The terms "commerce", "labor disputes", "employer", "employee", "labor organization", "representative", "person", and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act.

Ante, p. 136.

## [CHAPTER 121]

## AN ACT

To provide for emergency flood-control work made necessary by recent floods, and for other purposes.

June 23, 1947  
[H. R. 3792]  
[Public Law 103]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of \$15,000,000 is hereby authorized to be appropriated as an emergency fund to be expended under the direction of the Secretary of War and the supervision of the Chief of Engineers for the repair, restoration, and strengthening of levees and other flood-control works which have been threatened or destroyed by recent floods, or which may be threatened or destroyed by later floods: *Provided*, That pending the appropriation of said sum, the Secretary of War may allot, from existing flood-control appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriation herein authorized when made: *Provided further*, That funds allotted under this authority shall not be diverted from the unobligated funds from the appropriation "Flood control, general", made available in War Department Civil Functions Appropriation Acts for specific purposes.

Appropriation au-  
thorized.  
Post, p. 187.

Allotments from  
existing appropria-  
tions.

SEC. 2. The provisions of section 1 shall be deemed to be additional and supplemental to, and not in lieu of, existing general legislation authorizing allocation of flood-control funds for restoration of flood-control works threatened or destroyed by flood.

Approved June 23, 1947.

## [CHAPTER 124]

## AN ACT

To amend the Act entitled "An Act to provide for a permanent Census Office", approved March 6, 1902, as amended (the collection and publication of statistical information by the Bureau of the Census).

June 25, 1947  
[S. 614]  
[Public Law 103]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 7 of the Act entitled "An Act to provide for a permanent Census Office", approved March 6, 1902, as amended (U. S. C., title 13, sec. 111), is amended by adding at the end of the first sentence thereof the words: "*Provided*, That where the doctrine, teaching, or discipline of any religious denomination or church prohibits the disclosure of information relative to membership, such information shall not be required."

32 Stat. 62.

Approved June 25, 1947.

## [CHAPTER 125]

## AN ACT

To regulate the marketing of economic poisons and devices, and for other purposes.

June 25, 1947  
[H. R. 1237]  
[Public Law 104]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## TITLE

SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act".

## DEFINITIONS

SEC. 2. For the purposes of this Act—

a. The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, weeds, and other forms of plant

"Economic poison."

Tab Q

80TH CONGRESS 1st Session	} HOUSE OF REPRESENTATIVES {	REPORT No. 245
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## LABOR-MANAGEMENT RELATIONS ACT, 1947

APRIL 11, 1947.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HARTLEY, from the Committee on Education and Labor, submitted the following

## REPORT

[To accompany H. R. 3020]

The Committee on Education and Labor, to whom was referred the bill (H. R. 3020) to prescribe fair and equitable rules of conduct to be observed by labor and management in their relations with one another which affect commerce, to protect the rights of individual workers in their relations with labor organizations whose activities affect commerce, to recognize the paramount public interest in labor disputes affecting commerce that endanger the public health, safety, or welfare, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as so amended do pass.

The amendments are as follows:

Page 4, line 20, before "labor dispute", insert "current".

Page 5, in paragraph (5) before "dealing", strike out "or" and insert "of".

Page 9, line 20, strike out "Procedures and practices relating to".

Page 11, line 7, after "who", insert "by the nature of his duties".

Page 15, line 15, strike out "\$15,000" and insert "\$12,000".

Page 16, line 24, strike out "\$15,000" and insert "\$12,000".

Page 19, before the period at the end of section 7 (a), insert the following:

and shall also have the right to refrain from any or all of such activities: *Provided*, That nothing herein shall preclude an employer from making and carrying out an agreement with a labor organization as authorized in section 8 (d) (4).

Page 21, in subsection (b), strike out "thereof" where it first appears and insert "of a representative".

Page 22, strike out "2 (ii)" and insert in lieu thereof "2 (11)".

Page 24, after "the overthrow of the United States Government by force", insert "or by any illegal or unconstitutional methods".



Page 25, after "to direct or call a strike", insert "or make any request to the Administrator under section 2 (11) for a strike ballot."; and in the same paragraph strike out "strike" where it appears the second time and insert in lieu thereof "action".

Page 25, at the beginning of subsection (d), strike out "The" and insert in lieu thereof "Notwithstanding any other provision of this section, the".

Page 29, strike out "(c)" at the beginning of the subsection designated "(c)" and insert in lieu thereof "(e)".

Page 33, in the phrase "that believe in or teaches" strike out "believe" and insert in lieu thereof "believes".

Page 33, after "United States Government by force", insert "or by any illegal or unconstitutional methods".

Page 42, in the phrase "certification complained of was entered and the findings and order on certification of the Board", strike out "on" and insert "or".

Page 44, in the phrase "at any designated place or hearing" strike out "or" and insert in lieu thereof "of".

Page 46, strike out the paragraph designated as paragraph (6).

Page 49, after subsection (e), insert a new section reading as follows:

"SEC. 13. Nothing in this Act shall be construed to invalidate any State law or constitutional provision which restricts the right of an employer to make agreements with labor organizations requiring as a condition of employment membership in such labor organization, and all such agreements, insofar as they purport to impose such requirements contrary to the provisions of the law or constitution of any State, are hereby divested of their character as a subject of regulation by Congress under its power to regulate commerce among the several States and with foreign nations, to the extent that such agreements shall, in addition to being subject to any applicable preventive provisions of this Act, be subject to the operation and effect of such State laws and constitutional provisions as well.

Page 50, renumber sections 13 and 14 as sections 14 and 15, respectively.

In section 201 (c) strike out ", and utilize the facilities and personnel of such agencies when adequate and when available without cost".

In section 204 (a) strike out "United States Conciliation Service of the Department of Labor" and insert in lieu thereof "Director of Conciliation".

In section 204 (b) strike out "National Labor Relations Board" wherever appearing therein and insert in lieu thereof "Administrator of the National Labor Relations Act".

In section 204 (c) strike out "Secretary of Labor" and insert in lieu thereof "Director of Conciliation".

After the first sentence in section 204 (c) insert a new sentence reading as follows:

If for any reason the Chief Justice is unable to serve he shall appoint another judge of the United States Court of Appeals for the District of Columbia to act in his place and stead.

In section 204 (d) strike out "National Labor Relations Board" and insert in lieu thereof "Administrator of the National Labor Relations Act".

After section 205 insert a new section reading as follows:

SEC. 206. Until the transfer of functions under section 201 (c) becomes effective, the functions of the Director of Conciliation under section 204 shall be



performed by the Secretary of Labor. Until the Administrator of the National Labor Relations Act first appointed qualifies and takes office, his functions under section 204 shall be performed by the National Labor Relations Board.

In section 303 (a) strike out "thirty" wherever appearing therein and insert in lieu thereof "sixty", and before "every labor organization" insert "the principal officers of".

In section 303 (a) (2), before "the name and address of the organization" insert "a detailed financial report including a balance sheet and an operating statement and showing".

At the end of section 303 (a) insert a new sentence reading as follows:

In the case of a report required under this section prior to the expiration of one year from the date of the enactment of this Act, if any of the required information is not available an answer "no information" shall be sufficient.

In section 304 strike out "1935" and insert in lieu thereof "1925".

The committee's recommendation stems from an exhaustive investigation made by the committee of the causes and effects of industrial strife. In the hearings before the committee, extending over a period of more than 6 weeks, 137 witnesses appeared. They came from all parts of the country, from many walks of life, and represented all points of view.

The committee acknowledges the vast amount of work done on the subject by the many Members of Congress, who prepared and introduced bills for consideration by the committee. They, as well as countless private citizens by correspondence with members of the committee, have made contributions of inestimable value to the formulation of the bill herewith reported.

The committee also had the benefit of the studies of committees of previous Congresses—and particularly that of the Special Committee To Investigate the National Labor Relations Board, created in the Seventy-sixth Congress, many of whose recommendations are included in the bill herewith reported.

#### NECESSITY FOR LEGISLATION

During the last few years, the effects of industrial strife have at times brought our country to the brink of general economic paralysis. Employees have suffered, employers have suffered—and above all the public has suffered.

The enactment of comprehensive legislation to define clearly the legitimate rights of employers and employees in their industrial relations, in keeping with the protection of the paramount public interest, is imperative.

The bill herewith reported does just that. It prescribes the rights of all parties having a stake in harmonious industrial relations, and requires that each party respect the rights of the others.

The committee believes that the enactment of the bill will have the effect of bringing widespread industrial strife to an end, and that employers and employees will once again go forward together as a team united to achieve for their mutual benefit and for the welfare of the Nation the highest standard of living yet known in the history of the world.

During the 6 years preceding the enactment of the National Industrial Recovery Act of 1933, the United States had an average of 753

strikes a year, involving an average of 297,000 workers; during the next 6 years 2,541 strikes per year involving an average of 1,181,000 workers; and during the next 5 years—that is, through 1944—3,514 strikes a year involving an average of 1,508,000 workers.

In 1945 approximately 38,000,000 man-days of labor were lost as a result of strikes. And that total was trebled in 1946, when there were 116,000,000 man-days lost and the number of strikes hit a new high of 4,985. The resulting loss in national wealth is staggering.

The above figures do not take into account the man-days lost as a result of the indirect effects of these strikes.

In the face of this record there are few who would have the temerity to assert that labor relations in the United States are today satisfactory. The American people, and their representatives of both parties in Congress, are insistent that some means be found by legislation to reverse this alarming trend and to bring about industrial peace.

In approaching the problem of general labor legislation, the committee was impressed by the absolute necessity of steering a course which would recognize the rights of all interested parties in labor relations and which would be scrupulously fair to each—the employer, the employees, and the public. While the right of the public must, in the last analysis, be treated as paramount, it was the belief of the committee, that, except in extraordinary circumstances, the right of the public will be adequately protected if in turn adequate protection is afforded to employers and employees in the exercise of their legitimate rights.

Accordingly the bill herewith reported has been formulated as a bill of rights both for American workingmen and for their employers.

For the last 14 years, as a result of labor laws ill-conceived and disastrously executed, the American workingman has been deprived of his dignity as an individual. He has been cajoled, coerced, intimidated, and on many occasions beaten up, in the name of the splendid aims set forth in section 1 of the National Labor Relations Act. His whole economic life has been subject to the complete domination and control of unregulated monopolists. He has on many occasions had to pay them tribute to get a job. He has been forced into labor organizations against his will. At other times when he has desired to join a particular labor organization he has been prevented from doing so and forced to join another one. He has been compelled to contribute to causes and candidates for public office to which he was opposed. He has been prohibited from expressing his own mind on public issues. He has been denied any voice in arranging the terms of his own employment. He has frequently against his will been called out on strikes which have resulted in wage losses representing years of his savings. In many cases his economic life has been ruled by Communists and other subversive influences. In short, his mind, his soul, and his very life have been subject to a tyranny more despotic than one could think possible in a free country.

The employer's plight has likewise not been happy. He has witnessed the productive efficiency in his plants sink to alarmingly low levels. He has been required to employ or reinstate individuals who have destroyed his property and assaulted other employees. When he has tried to discharge Communists he has been prevented from doing

so by a board which called this valid reason for the discharge a mere pretext. He has seen the loyalty of his supervisors undermined by the compulsory unionism imposed upon them by the National Labor Relations Board. He has been required by law to bargain over matters to which it was economically impossible for him to accede, and when he refused to accede has been accused of failing to bargain in good faith. He has been compelled to bargain with the same union that bargains with his competitors and thus to reveal to his competitors the secrets of his business. He has had to stand helplessly by while employees desiring to enter his plant to work have been obstructed by violence, mass picketing, and general rowdyism. He has had to stand mute while irresponsible detractors slandered, abused, and vilified him.

His business on occasions has been virtually brought to a standstill by disputes to which he himself was not a party and in which he himself had no interest. And finally, he has been compelled by the laws of the greatest democratic country in the world—or at least by their administrators—to treat his employees as if they belonged to a different class or caste of society.

This sordid story was unfolded before the committee in its hearings. Those hearings demonstrate the need for action by Congress—and action now.

The bill attacks the problem in a comprehensive—not in a piecemeal—fashion. It is neither drastic, oppressive, nor punitive. It does not restrict or in any manner interfere with employees' rights to organize and to bargain collectively when they wish to do so. It does not restrict in any way employees' rights to engage in lawful strikes. It does not take away any rights guaranteed by the existing National Labor Relations Act.

It does, however, go to the root of the evils and provides a fair, workable, and long-overdue solution of the problem. In brief outline, the bill accomplishes the following:

(1) It abolishes the existing discredited National Labor Relations Board, and creates in lieu thereof a new board of fair-minded members to exercise quasi-judicial functions only.

(2) It establishes a new official to exercise the various prosecuting and investigative functions under the National Labor Relations Act, to be entirely independent of the Board.

(3) It requires the Board to act only upon the weight of credible legal evidence, and it gives to the courts of the United States a real, rather than a fictitious, power to review decisions of the Board.

(4) It outlaws the closed shop and monopolistic industry-wide bargaining.

(5) It exempts supervisors from the compulsory features of the National Labor Relations Act.

(6) It imposes on both parties to labor disputes the duty of bargaining and requires that the employees themselves be given a voice in the bargaining arrangements through the device of providing for a secret ballot of the employees on their employer's last offer of settlement of the dispute.

(7) It protects the existence of labor organizations which are not affiliated with one of the national federations.

(8) It prohibits certification by the Board of labor organizations having Communist or subversive officers.

(9) It prescribes the rights which an individual member of a labor organization can justly claim of his union, and gives him protection in the exercise of those rights.

(10) It outlaws sympathy strikes, jurisdictional strikes, illegal boycotts, collusive strikes by employees of competing employers, as well as sit-down strikes and other concerted work interferences conducted by remaining on the employer's premises.

(11) It outlaws strikes to remedy practices for which an administrative remedy is available under the bill or to compel an employer to violate the law.

(12) It outlaws mass picketing and other forms of violence designed to prevent individuals from entering or leaving a place of employment.

(13) It outlaws picketing of a place of business where the proprietor is not involved in a labor dispute with his employees.

(14) For unlawful concerted activities it gives the person injured thereby a right to sue civilly any person responsible therefor.

(15) It prescribes unfair labor practices on the part of employees and their representatives as well as by employers.

(16) It creates a new and independent conciliation agency.

(17) It removes the exemption of labor organizations from the antitrust laws when such organizations, acting either alone or in collusion with employers, engage in unlawful restraints of trade.

(18) It makes labor organizations equally responsible with employers for contract violations and provides for suit by either against the other in the United States district courts.

(19) It provides a means for stopping strikes which imperil or threaten to imperil the public health, safety, or interest.

(20) It guarantees to employees, to employers, and to their respective representatives, the full exercise of the right of free speech.

All of the above provisions are explained in detail in the "Analysis of Provisions" portion of this report. Some of them may well be elaborated upon here with the reasons which the committee had for including them.

#### OLD BOARD ABOLISHED

The committee found that, while there are a number of important defects in the National Labor Relations Act itself, there are even more in the way the National Labor Relations Board has administered it. The bill therefore abolishes the existing National Labor Relations Board, and creates in its place a new bipartisan Board of three fair and impartial persons. Unlike the old Board, it will not act as prosecutor, judge, and jury. Its sole function will be to decide cases. A new and independent officer, the Administrator of the new act, will investigate cases and present the evidence to the new Board, and the new Board must decide the cases, not according to prejudice and caprice, as the old Board so often has done, but according to the facts.

Besides abolishing the old Board, the bill prevents the new Board from repeating the old Board's mistakes. The new Board, unlike the old, will be unable to condone strikes to compel employers to deprive employees of their rights under the act, illegal boycotts, violence, mass picketing, industry-wide bargaining, strikes against public health and safety, and dictatorial control of workers by unscrupulous union leaders.

The bill does not undertake to punish anyone—employers, employees, or unions—for evils that have arisen under the old act. Rather it undertakes to define the rights of those who are concerned in the broad and important field of labor relations, and to protect the rights of each from interference by any other. The bill thus seeks to reduce strife and ill will by getting rid of many of their causes, but without impairing just rights.

#### RIGHTS OF WORKERS

Important among the provisions of the bill are those that really assure to workers freedom in their organizing and bargaining activities. The old act purported to do this, but in the Board's hands it often had the opposite effect.

The bill prescribes rules for the new Board to follow in setting up units for collective bargaining and in holding elections to determine whether or not employees wish labor unions to bargain for them. These rules do away with practices of the old Board by which it has subjected literally millions of workers to control by labor unions notwithstanding that the employees did not wish the unions to represent them and voted against the unions in the Board's elections. Similarly the bill prevents the new Board from continuing the past practice of depriving workers of the right to designate independent unions as their bargaining agents merely because they happened to be independent.

When workers wish a union to represent them, the bill enables the workers to keep greater control of the union's affairs than, in many cases, they have enjoyed in the past. They will be protected against excessive admission fees, fines, dues, and assessments. They will have a voice in deciding upon important questions, and will be assured of the right to speak freely on matters that concern them, to vote in elections of union officers, and to vote on the matter of striking. The committee has done this in response to pleas of many sincere union people who regard democracy in unions as indispensable to the healthy growth of unionism. On the other hand, the bill recognizes the right of the union to maintain discipline in the ranks, and to expel members who are disloyal to the union or who act in ways that bring it into disrepute.

The bill further adds to the freedom of workers by permitting them not only to present grievances to their employers, as the old Board heretofore has permitted them to do, but also to settle the grievances when doing so does not violate the terms of a collective-bargaining agreement, which the Board has not allowed.

The bill also requires that unions that undertake to bargain collectively for workers must actually perform this important duty, and makes it an unfair labor practice for unions, as well as for employers, to refuse to bargain collectively. At the same time, the bill defines the procedure of collective bargaining, and by setting forth the matters on which one side may require the other to bargain, limits bargaining to matters of interest to the employer and to the individual man at work.

By dealing with industry-wide bargaining, the bill enables the workers to keep closer control of the bargaining in their behalf. Although the bill permits international officers, executive boards, and



other officials far removed from the shops to advise and guide the workers, it does not subject the workers to control by the union's central office, as the evidence before the committee has shown so frequently to have been the case.

#### FREE SPEECH

Although the old Labor Board protests it does not limit free speech, it is apparent from decisions of the Board itself that what persons say in the exercise of their right of free speech has been used against them. The bill provides that the new Board is prohibited from using as evidence against an employer, an employee, or a union any statement that by its own terms does not threaten force or economic reprisal.

#### RIGHTS OF EMPLOYERS

As in the Case bill, which passed the House by a vote of more than 2 to 1 last year, the bill forbids the Board to regard as employees foremen and other representatives of management who act for employers in their dealings with employees and their unions. The evidence before the committee showed conclusively that so-called independent unions of foremen are not in fact independent, but that the unions of men the foremen supervise actually control them. The evidence further shows that management must have in the plants agents who are entirely loyal, just as representatives of the workers must be undivided in their loyalty to the workers.

#### EQUAL RESPONSIBILITY BEFORE THE LAW

When employers violate rights that the Labor Act gives to employees or to unions, the Board can issue orders against them. When employers violate rights of employees or of unions under other laws, they must answer in court for what they do. Under the bill, when unions and their members violate rights given to employers and to employees, the new Board can issue orders protecting the employers and the employees. Thus, if a union refuses to bargain collectively, if it intimidates workers, if it extorts unlawful payments from its members, or refuses to conduct its affairs fairly and according to democratic practices, it commits an unfair labor practice and the Board can issue an order against it. The bill also lists acts for which, under existing laws, unions and their leaders and members often escape liability but for which all other citizens must answer in court. These acts include violating collective-bargaining contracts, violence in strikes, mass picketing, strikes to force employers to violate the Labor Act or other laws. They also include illegal boycotts, sympathy strikes, jurisdictional strikes, featherbedding, and agreements by which unions and employers seek to restrain trade contrary to the antitrust laws. For all these acts and others like them, unions and their members will be equally responsible with other persons under law.

#### INDUSTRY-WIDE BARGAINING

The bill is the first serious attempt to deal with one of our country's greatest and more pressing problems, industry-wide bargaining and

industry-wide strikes that paralyze our economy and that imperil the health and safety of our people.

The committee has dealt with this problem in two ways:

First, by amending the National Labor Relations Act, the bill forbids the Board to certify one union as the bargaining agent for employees of two or more competing employers, and also forbids employees of two or more competing employers to conspire together to strike at the same time. There are two exceptions to these rules. One union can represent less than 100 employees of each of several competing employers if the employers' plants are not more than 50 miles apart. This permits small groups of employees to bargain together and permits small employers to bargain together, but limits the kind of bargaining that so often leads to price fixing and other monopolistic practices. The second exception permits unions that represent employees of competing employers to affiliate or associate together if their bargaining, striking and other concerted activities are not subject to common control. Under this exception, national and international unions would be able to perform for local unions functions like those that trade associations perform for member companies now, but would not be able to dictate to them.

Second, the bill arms the President with the authority to seek injunctions against strikes that imperil the public health and safety, and authorizes courts to issue injunctions in such cases without regard to the Norris-LaGuardia Act.

#### COMPULSORY UNIONISM

The bill bans the closed shop. Under carefully drawn regulations it permits an employer and a union voluntarily to enter into an agreement requiring employees to become and remain members of the union a month or more after the employer hires them or after the agreement is signed. Such agreements are lawful, however, only if the employees by secret ballot have selected the union as their bargaining agent, and if the majority of all the employees, by a separate secret ballot, authorize the union to enter into the agreement, and if the agreement is not prohibited by State law. An employee may be expelled from the union and thus forced to leave his job only if the expulsion is by reason of his failing to pay fees and dues imposed upon employees generally. Under this clause, employers may select their own employees. Employees have 30 days to decide whether or not to join the union. Unions may not cause the discharge of employees by discriminating against them. The agreement must be voluntary. Unions may not strike to compel employers to enter into such agreements. They are subject to loss of bargaining rights if they do so.

#### CONCILIATION

The bill takes the United States Conciliation Service out of the Department of Labor, which Department is now charged by statute with the conflicting duties of representing labor and, at the same time, trying to serve as a mediator. This bill transfers such conciliation and mediation functions to an impartial agency under a Director of Conciliation, and defines his duties.

## MISCELLANEOUS

Besides these major reforms, the bill permits employees, employers, and unions that lose in the Board's elections to appeal from the Board's rulings. Under the present act, as the Board administers it, only employers can appeal, and then only in cumbersome proceedings and at the risk of being branded "unfair" by the Board. The bill, however, permits employers to ask for elections when they are in doubt as to the legality of a union's claim to representation.

Finally the bill provides that the new Board shall not certify as bargaining agents for workers unions whose officers are Communists or follow the "party line," and that unions may expel from membership Communists and fellow travelers.

## ANALYSIS OF PROVISIONS

The bill is divided into three titles. Title I amends the National Labor Relations Act to achieve the purposes heretofore referred to. Title II creates a new independent Office of Conciliation to which are transferred the existing conciliation functions of the Department of Labor. Title II also contains provisions arming the President with the power necessary to deal with strikes which imperil the public health, safety, or interest. Title III amends the Clayton Act to limit the exemptions of labor organizations to lawful activities thereof. It also contains provisions making labor organizations suable like all other persons for contract violations, provisions requiring financial reports by labor organizations to their members, and provisions continuing the existing prohibitions on political contributions, etc., by labor organizations.

## TITLE I—AMENDMENT OF NATIONAL LABOR RELATIONS ACT

*Section 1.*—The present preamble of the Labor Act, besides reflecting a highly prejudiced approach to the problems with which the act attempted to deal, contains certain assertions that seem not to have been correct when the bill was passed and that experience under the act certainly shows not to be true now. The act did not reduce industrial strife. Under the act strikes increased and, up to the very time this Congress met, they continued to increase. The effect was to impede commerce, not to promote its flow as the act undertook to do.

Section 1 of the act as proposed to be amended does not abuse anyone. It does not contain assertions of facts not proved. It deletes matters of this kind that appear in the first three paragraphs of section 1 of the old act. It then declares, as does the last paragraph of that section, that it is the policy of Congress, in the exercise of its constitutional function—

to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred.

According to its terms, the old act undertook to accomplish its purpose (1) by "encouraging the practice and procedure of collective bargaining" and (2) by "protecting the exercise by workers" of their organizing and bargaining rights. Congress clearly intended this to mean that workers should be protected in exercising these rights, but

only when they wished to do so. The Labor Board, however, appears to have taken this language as a mandate to it to force employees to bargain collectively, even against their will. It also appears to have assumed that when Congress said it wished to protect the rights of "workers" it meant to protect labor organizations (at least those organized into national and international federations), even when the labor organizations exploited the workers or engaged in other activities that were inconsistent with the interests of workers. To the Board, the interests of the unions, not those of the workers, seem to have been of paramount importance. The Board has had little regard for the rights of employees, and its misconception of its duties doubtless has increased industrial strife.

Consistently with later clauses, section 1 of the act, as proposed to be amended, states its purpose to promote the flow of commerce by protecting the rights not only of employees, but also of those of employers and those of labor organizations, and to prevent any of these parties from acting unfairly toward the others. It protects employees against abuses by their unions, as well as against abuses by employers. It protects unions against abuses by employers, by employees, and by other unions. It protects employers against abuses by unions and their members.

#### DEFINITIONS

*Section 2.*—This section in the old act defines 11 terms. In the bill it defines 16 terms, 8 of which appeared in section 2 of the old act and 8 of which are new. The terms defined, and changes in the definitions, are as follows:

(1) "Person": Although in most cases labor organizations are "associations" or "corporations", both of which are included in the definition of "person", it was deemed desirable, in the interest of clarity, to include them in the definition specifically.

(2) "Employer": There are three changes in the definition of this term:

(A) The old act included in the definition of "employer" "any person acting in the interest of an employer". Under this language the Board frequently "imputed" to employers anything that anyone connected with an employer, no matter how remotely, said or did, notwithstanding that the employer had not authorized what was said or done, and in many cases even had prohibited it. By such rulings, the Board often was able to punish employers for things they did not do, did not authorize, and had tried to prevent. (See *Matter of American Steel Scraper Co.*, 29 N. L. R. B. 939; *Matter of Shult Trailers, Inc.*, 28 N. L. R. B. 975, 993; *Matter of John & Ollier Engraving Co.*, 24 N. L. R. B. 896; *Matter of Schwarze Electric Co.*, 16 N. L. R. B. 246; *Matter of Swift & Co.*, 15 N. L. R. B. 992; *Matter of American Oil Co., Inc.*, 14 N. L. R. B. 990; *Matter of Frost Rubber Works*, 23 N. L. R. B. 1071; *Matter of California Walnut Growers Assn.*, 18 N. L. R. B. 493.)

The bill, by defining as an "employer" "any person acting as an agent of an employer" makes employers responsible for what people say or do only when it is within the actual or apparent scope of their authority, and thereby makes the ordinary rules of the law of agency equally applicable to employers and to unions.

(B) Under the old act, the term "employer" does not include the United States. The same exemption that applies to the Government should apply equally to instrumentalities of the Government. The bill therefore excludes "the United States or any instrumentality thereof" from the definition of "employer". Up to now, the Board, apparently has not applied the act to any of the many instrumentalities of the United States, but whether or not it should do so, Congress, not the Board, should decide.

(C) Churches, hospitals, schools, colleges, and societies for the care of the needy are not engaged in "commerce" and certainly not in interstate commerce. These institutions frequently assist local governments in carrying out their essential functions, and for this reason should be subject to exclusive local jurisdiction. The bill therefore excludes from the definition of "employer" institutions that qualify as charities under our tax laws. In this respect, the bill is consistent with similar laws in a number of States, notably New York, Pennsylvania, and Wisconsin. The bill does not exclude from the definition institutions organized for profit or those a substantial part of whose activities is carrying on propaganda or attempting to influence legislation.

(3) "Employee": The changes in the definition of this term are as follows:

(A) The old act provides that an employee shall not lose his status as an employee under the act, even though his work has ceased "as a consequence of, or in connection with any current labor dispute" if the employee "has not obtained substantially equivalent employment". The new act will likewise provide that an employee remains an employee under the act notwithstanding that his "work has ceased as a consequence of a current labor dispute". The phrase—in the present act—"or in connection with" is vague and indefinite. The purpose of the whole clause is to prevent a man's losing his job when he engages in a lawful strike. The clause accomplishes its purpose without this vague and indefinite phrase. No case in which the Board has had to use the phrase to protect the rights of employees has come to the attention of the committee. The bill therefore deletes the phrase.

The Board now says that an employer may replace an "economic" striker, one who strikes for higher pay or other changes in working conditions. The bill writes this rule into the act, saying that a striker remains an "employee" "unless such individual has been replaced by a regular replacement"; and, at the end of the subsection, it defines a "replacement" as being an individual who replaces a striker "if the duration of his employment is not to be determined with reference to the existence or duration of such labor dispute". Thus, "strikebreakers" may not be regarded as "replacements".

As under the present act, a striker, under the bill, would lose his status as an "employee" if he obtained "other regular and substantially equivalent employment" while the strike was in progress.

A few States pay strikers after the fifth, sixth, or seventh week of a strike. This clearly is a perversion of the purposes of the social-security laws, which Congress intended to provide for unemployment compensation for those out of work involuntarily and through no fault of their own. We therefore have provided that a striker's status as an "employee" stops when he starts receiving unemployment compen-



sation from any State. He may receive relief from his union, from local welfare funds, or from charity without losing that status.

(B) The next significant change in section 2 (3) concerns "supervisors". The bill, by excluding foremen and other supervisory personnel from the definition of "employee", deprives the Board of jurisdiction over them.

The evidence before the committee showed this to be one of the most important and most critical problems. When Congress passed the Labor Act, we were concerned, as we said in its preamble, with the welfare of "workers" and "wage earners", not of the boss. It was to protect workers and their unions against foremen, not to unionize foremen, that Congress passed the act. In few trades, and in none of the great mass-producing industries, were foremen unionized. It was not until about 7 years after Congress passed the Labor Act that anyone asked the Labor Board to establish a unit composed of supervisors. Notwithstanding that in the act Congress had defined as an "employer" "any person acting in the interest of an employer", the Board held, in the first such case, that supervisors in coal mines are "employees", and it certified as the bargaining agent of supervisors of Union Collieries Coal Co. a union that claimed to be "independent" but that turned out to be a stalking horse for the United Mine Workers of America, and that now is part of the catch-all District 50 of that union (*Matter of Union Collieries Coal Company*, 41 N. L. R. B. 96 (1942)). A little later the Board certified as the bargaining agent of foremen of Godchaux Sugars, Inc., the union of rank and file workers whom the foremen were supposed to supervise (44 N. L. R. B. 874 (1942)).

As a result of the Board's certifying unions of foremen in the Union Collieries and Godchaux Sugars cases, there was introduced in Congress a bill taking foremen out of the Labor Act (H. R. 2239, 78th Cong.). While the bill was pending in the Military Affairs Committee of the House, the Board, on May 10, 1943, in *Matter of Maryland Drydock Company* (49 N. L. R. B. 733), reversed itself, holding that, except in trades where foremen organized in 1935, it would not find units of supervisors appropriate for the purposes of collective bargaining under the Wagner Act. The Military Affairs Committee then dropped H. R. 2239.

In deciding the Maryland Drydock case, the Board pointed out that unionizing foremen under the Labor Act would be bad for output, which the act was intended to promote, bad for the rank and file, and bad for the foremen themselves. In several cases, the Board confirmed its decision in the Maryland Drydock case (*Matter of Boeing Aircraft Company*, 51 N. L. R. B. 66; *Matter of Murray Corporation of America (Ecorse Plant)*, 51 N. L. R. B. 94; *Matter of General Motors Corporation (Detroit Diesel Engine Division)*, 51 N. L. R. B. 457). Then, in *Matter of Packard Motor Car Company* (61 N. L. R. B. 4 (1945)), the Board changed its mind again, certifying as the bargaining agent of five ranks of Packard's foremen the Foremen's Association of America, which it had held it ought not to certify as the bargaining agent for foremen of General Motors, Murray Corp., and other companies. Later the Board certified a division of District 50 of the United Mine Workers of America as the bargaining agent of supervisors in the mines, and subjected

them to the discipline and control of the United Mine Workers and its leaders.

As a result of the Board's ruling in the Packard case, both Houses of Congress, by overwhelming majorities, passed the so-called Case bill, exempting supervisors from the operation of the Labor Act. The President vetoed the bill, and the Board continued to unionize foremen at an accelerated pace.

The evidence before the committee shows clearly that unionizing supervisors under the Labor Act is inconsistent with the purpose of the act to increase output of goods that move in the stream of commerce, and thus to increase its flow. It is inconsistent with the policy of Congress to assure to workers freedom from domination or control by their supervisors in their organizing and bargaining activities. It is inconsistent with our policy to protect the rights of employers; they, as well as workers, are entitled to loyal representatives in the plants, but when the foremen unionize, even in a union that claims to be "independent" of the union of the rank and file, they are subject to influence and control by the rank and file union, and, instead of their bossing the rank and file, the rank and file bosses them. The evidence shows that rank and file unions have done much of the actual organizing of foremen, even when the foremen's union professes to be "independent". Without any question, this is why the unions seek to organize the foremen.

One of the most important items of evidence in this question came to light after the committee concluded the hearings. In November 1942, Ford Motor Co. recognized the Foreman's Association of America as the representative of several ranks of supervisors. In 1944, the Ford Co. made a full collective-bargaining agreement with the association. In testifying before our committee, the president of the association urged the relation between Ford and the association as ground for unionizing foremen. Other evidence showed, however, that after Ford recognized the association, there were more strikes and stoppages by foremen at Ford's than in any other company. Although the president of the association claimed that productivity was high in plants it had organized, we had quoted to us statements by Mr. Henry Ford II that productivity declined after the foremen organized, and this evidence was supported by evidence from other companies.

On April 8, 1947, Mr. John S. Bugos, vice president and director of industrial relations at Ford's, terminated Ford's contract with the Foreman's Association. His letter to the association constitutes the clearest evidence that supervisors are not properly subject to the Labor Act:

This is to advise you of the decision of the Ford Motor Co. to terminate the present agreement between the Foreman's Association and the Ford Motor Co.

As you know, under the terms of the agreement it may be terminated on May 9, 1947, provided either your association or the company gives 30 days' notice. It is the purpose of this letter to give such notice.

Our present agreement with you was entered into voluntarily on May 9, 1944. At that time we took the position that whether or not we believed that foremen's unions or associations were sound, we would undertake a practical test. This is in line with our policy of always seeking workable solutions to our human relations problems here at Ford. As you are aware, this company, in reaching the 1944 agreement with you, took a position not supported by the general opinion of industry.

At that time, representatives of your association argued that recognition of a foreman's union would result in making foremen more effectively a part of management than before.

After 3 years' experience—a period which seems to us ample for a test—it is our conclusion that the results have been the opposite of what we have hoped for. Rather than exerting its efforts to draw foremen into closer relationship with the rest of management, your association has worked in the opposite direction. We feel that your association under the agreement has failed to meet the test of practice.

As recently as last Saturday—April 5, 1947—33 foremen, all except 3 from the Rouge rolling mill, walked off the job without permission, and contrary to specific instructions to remain. They stayed off the job about 2½ hours, attending a meeting of the association. This unauthorized absence involved grave risks to our employees in the rolling mill. The fact that no damage came to men or property was fortunate, but it is something which the absent members of your association could not guarantee.

Efforts were made—we are glad to say unsuccessfully—to induce foremen in the open hearth department to leave their jobs at the same time. There is no need to point out the risk to men and property in leaving open hearth furnaces unattended.

Your association recently instructed its members not to comply with company requirements that they check employees under their supervision at various locations away from the job where they were felt to be loitering. Spokesmen for your association did not agree with the company as to the proper technique for handling an admittedly bad situation. It is clearly the responsibility of the company, and not of your association, to determine the procedure in such situations.

Several months ago we proposed a number of constructive amendments designed to improve our relationships, to define more clearly our separate areas of responsibility, and to close the gulf between foremen and other members of our management team which we feel has been created by the present agreement. In several months of negotiation, your negotiating committee has not agreed to a single major proposal. Your committee has also failed to produce any counterproposal which would lead to these goals.

The Ford Motor Co. has the present and long-term objective of building an exceptional organization of the ablest people. We cannot reach this objective unless we develop within the organization the finest and best-trained foremen in the country. The association is not helping us to advance toward this objective.

The essential characteristic of management is responsibility. It follows that the characteristic which distinguishes a foreman is a sense of responsibility. It is our observation that the activities of your association under our agreement has tended to lend our foremen away from management responsibility, and has in fact opposed efforts of the company in this direction.

We are giving you this notice of termination of our agreement for the practical reason that it has not worked under test.

If management is to be free to manage American industry as in the past and to produce the goods on which depends our strength in war and our standard of living always, then *Congress must exclude foremen from the operation of the Labor Act, not only when they organize into unions of the rank and file and into unions affiliated with those of the rank and file, but also when they organize into unions that claim to be independent of the unions of the rank and file.*

The committee received in evidence about 200 letters that the Foreman's Association had exchanged with unions of the rank and file. They showed a closer and more intimate relation between the association and the unions of men the foremen supervise than one ordinarily finds between unions affiliated together in the same federation, and a subservience of the association to unions of the rank and file that is rare among unions.

The evidence shows that foremen's unions are, and must be, wholly dependent upon rank-and-file unions and under constant obligation to

them. The foremen cannot strike without the support of the rank and file and its agreement not to do the work of striking foremen. The association admits that it has such an agreement with the CIO. The association has adopted a formal "policy" forbidding *its* members, when the rank-and-file unions strike, to enter the struck plants and protect and maintain them without the consent of the rank-and-file unions.

The evidence further shows that rank-and-file unions tell the foreman's union when the foremen may strike and when they may not, what duties the foremen may do and what ones they may not, what plants the foreman's union may organize and what ones it may not. It shows that rank-and-file unions have helped foremen's unions, not for the benefit of the foremen, but for the benefit of the rank and file, at the expense of the foreman's fidelity in doing his duties. The chairman of a rank-and-file pit committee summed the matter up when he said:

Well, we are trying to get them (the supervisors) to join the union, the bosses to join the union, and then we'll be their bosses. We'll be their bosses.

That most foremen themselves see the impropriety of their unionizing, and its danger for their own status, is clear from the fact that, although the Foreman's Association of America is the largest union of foremen, only about 1 percent of the foremen have joined it.

*Management, like labor, must have faithful agents.*—If we are to produce goods competitively and in such large quantities that many can buy them at low cost, then, just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, and to settle their complaints and grievances, but to determine how much work employees should do, what pay they should receive for it, and to carry on the whole of labor relations.

Labor relations people negotiate labor agreements and handle disputes not settled in the shops. Employment and personnel people hire workers, and sometimes assign them to their departments. Plant policemen and guards prevent disorders and report misconduct of employees and of unions and their members. Time-study men help to fix the pace at which employees work and to determine the number of men the work calls for. Doctors, nurses, safety engineers, and adjusters handle claims for disability benefits and investigate alleged hazards to safety and health.

Other employees handle intimate details of the business that frequently are highly confidential. Some affect the employer's relations with labor. Others affect its relations with its competitors. In neither case should the employee's loyalty be divided. That which affects the company's relations with its competitors certainly ought not to be open to members of a union that deals also with the firm's competitors.

Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the "collective security" of the rank and file voluntarily,



because they believed the opportunities thus opened to them to be more valuable to them than such "security." It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead, to the levelling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism. (*J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332 (1944).) It is wrong for the foremen, for it discourages the things in them that made them foremen in the first place. For the same reason, that it discourages those best qualified to get ahead, it is wrong for industry, and particularly for the future strength and productivity of our country.

So, by this bill, Congress makes clear once more what it tried to make clear when, in passing the act, it defined as an "employer," not an "employee," any person "acting in the interest of an employer"; what it again made clear in taking up H. R. 2239 in 1943 and in dropping it when the Board decided the Maryland Drydock case, and what, for a third time, it made clear last year in passing the Case bill by a majority of about 2 to 1 and in barely falling short of enough votes to override the President's veto of that bill.

The bill does not forbid anyone to organize. It does not forbid any employer to recognize a union of foremen. Employers who, in the past, have bargained collectively with supervisors may continue to do so. What the bill does is to say what the law always has said until the Labor Board, in the exercise of what it modestly calls its "expertness," changed the law: That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for *any* reason, he does not trust.

(C) "Agricultural laborers": The present act excludes from the definition of "employee" "any individual employed as an agricultural laborer," but it does not say who are agricultural laborers and who are not. Congress has defined this term in other legislation. The bill adopts the definition of agricultural laborer set forth in the Internal Revenue Code, section 1426 (h), namely:

The term "agricultural labor" includes all services performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner, or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 1141j (g) of title 12, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the



case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(D) An "employee", according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire. But in the case of *National Labor Relations Board v. Hearst Publications, Inc.* (322 U. S. 111 (1944)), the Board expanded the definition of the term "employee" beyond anything that it ever had included before, and the Supreme Court, relying upon the theoretic "expertness" of the Board, upheld the Board. In this case the Board held independent merchants who bought newspapers from the publisher and hired people to sell them to be "employees". The people the merchants hired to sell the papers were "employees" of the merchants, but holding the merchants to be "employees" of the publisher of the papers was most far reaching. It must be presumed that when Congress passed the Labor Act, it intended words it used to have the meanings that they had when Congress passed the act, not new meanings that, 9 years later, the Labor Board might think up. In the law, there always has been a difference, and a big difference, between "employees" and "independent contractors". "Employees" work for wages or salaries under direct supervision. "Independent contractors" undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for goods, materials, and labor and what they receive for the end result, that is, upon profits. It is inconceivable that Congress, when it passed the act, authorized the Board to give to every word in the act whatever meaning it wished. On the contrary, Congress intended then, and it intends now, that the Board give to words not far-fetched meanings but ordinary meanings. To correct what the Board has done, and what the Supreme Court, putting misplaced reliance upon the Board's expertness, has approved, the bill excludes "independent contractors" from the definition of "employee".

The definitions appearing in section 2 of the present act of the terms "representative" (4), "labor organization" (5), "commerce" (6), "affecting commerce" (7), and "unfair labor practice" (8) remain unchanged, although, in section 8, the "unfair labor practices" themselves are changed substantially.

Section 2 (9) of the present act, which defines "labor dispute", is omitted. The term does not appear anywhere in the present act except in the definitions. It does appear in the bill, but its meaning is clear from the context and from the bill as a whole and does not need defining. In any event, the old definition would be inappropriate in the amended act because, as the Labor Board has construed the act, a "labor dispute" exists whenever a union disagrees with an

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**Calendar No. 104**80TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 105**FEDERAL LABOR RELATIONS ACT OF 1947**

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APRIL 17 (legislative day, MARCH 24), 1947.—Ordered to be printed

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Mr. TAFT, from the Committee on Labor and Public Welfare,  
submitted the following

**REPORT**

[To accompany S. 1126]

together with the

**INDIVIDUAL VIEWS OF MR. THOMAS OF UTAH, AND THE  
SUPPLEMENTAL VIEWS OF MR. TAFT, MR. BALL, MR.  
DONNELL, AND MR. JENNER, AND THE CONCURRING  
VIEWS, WITH RESERVATIONS, OF MR. SMITH, THEREIN**

The Committee on Labor and Public Welfare report an original bill (S. 1126) to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes, and recommends that the bill do pass.

The problem of the inadequacy of existing laws on industrial relations is one of grave national concern. The basic Federal law on this subject is contained in two statutes—the Norris-LaGuardia Act of 1932 and the National Labor Relations Act of 1935. Enacted at the time when millions of persons were unemployed and labor organizations were relatively weak and ineffective, these statutes, despite their experimental character, have not been changed in any respect since their original enactment.

While the committee does not believe that social gains which industrial employees have received by reason of these statutes should be impaired in any degree, we do feel that to the extent that such statutes, together with the regulations issued under them, and decisions regarding them, have produced specific types of injustice, or clear inequities between employers and employees, Congress should remedy the situation by precise and carefully drawn legislation.

The need for congressional action has become particularly acute as a result of increased industrial strife. In 1945 this occasioned the loss of approximately 38,000,000 man-days of labor through strikes. This total was trebled in 1946 when there were 116,000,000 man-days lost and the number of strikes reached the unprecedented figure of 4,985.

This bill, formulated by the committee, in an attempt to solve some of the more pressing difficulties with which the Nation is confronted, represents the results of numerous hearings before the committee extending over a period of more than 5 weeks. The committee heard 83 witnesses representing not only management, labor organizations, and the Government but also the general public. The actual drafting of the bill was done in executive sessions of the committee during the last 4 weeks, in which almost daily meetings were held. As an indication of the interest in the subject matter, the entire membership of the committee was present at the meetings in which the draft was perfected. Virtually every Senator on the committee made an important contribution to its provisions.

The committee bill is predicated upon our belief that a fair and equitable labor policy can best be achieved by equalizing existing laws in a manner which will encourage free collective bargaining. Government decisions should not be substituted for free agreement but both sides—management and organized labor—must recognize that the rights of the general public are paramount.

The need for such legislation is urgent. Supreme Court interpretations of the Norris-LaGuardia Anti-injunction Act and the Clayton Act seem to have placed union activities, no matter how destructive to the rights of the individual workers and employers who are conforming to the National Labor Relations Act, beyond the pale of Federal law. Moreover, the administration of the National Labor Relations Act itself has tended to destroy the equality of bargaining power necessary to maintain industrial peace. This is due in part to the one-sided character of the act itself, which, while affording relief to employees and labor organizations for certain undesirable practices on the part of management, denies to management any redress for equally undesirable actions on the part of labor organizations. Moreover, as a result of certain administrative practices which developed in the early period of the act, the Board has acquired a reputation for partisanship, which the committee bill seeks to overcome, by insisting upon certain procedural reforms.

In the course of its deliberations, the committee considered many other proposals, such as restricting alleged monopolistic practices by unions, the formulation of a code of rights for individual members of trade unions, and a clarification of the problem of union-welfare funds. In excluding these matters from the purview of the bill, the majority of the committee should not be understood as regarding such proposals as unsound or unworkable, but rather that the problems involved should receive more extended study by a special joint congressional committee for which the committee bill specifically provides. In other words, the committee in this bill attempted to embody reforms which are long overdue and with respect to which the record of the hearings revealed widespread agreement on the part of informed and impartial persons.



The bill is divided into four titles: Title I amends the National Labor Relations Act to achieve the purposes to which reference has been made. Title II creates a new Federal Mediation Service, which transfers the functions of the Department of Labor in the field of conciliation, along with the property and personnel of the present Service. It also provides special procedures for the Attorney General and the President to utilize in national emergencies. Title III gives labor unions the right to sue and be sued as legal entities for breach of contract in the Federal courts. Title IV establishes a joint Committee of the Congress to make a long-range study of certain aspects of labor relations, concerning which further information was thought desirable by the committee. Title V contains definitions.

The major changes which the bill would make in the National Labor Relations Act may be summarized as follows:

1. It eliminates the genuine supervisor from the coverage of the act as an employee and makes it clear that he should be deemed a part of management.
2. It abolishes the closed shop but permits voluntary agreements for requiring such forms of compulsory membership as the union shop or maintenance of membership, provided that a majority of the employees authorize their representatives to make such contracts. It also protects employees against discharge, if unions deny or terminate their membership for capricious reasons.
3. It gives employers and individual employees rights to invoke the processes of the Board against unions which engaged in certain enumerated unfair labor practices, including secondary boycotts and jurisdictional strikes, which may result in the Board itself applying for restraining orders in certain cases.
4. It reorganizes the central structure of the National Labor Relations Board not only by providing for the addition of four new members to the present Board of three, but by placing upon the members individual responsibility in performing their judicial functions. This would be accomplished by eliminating the review section of the legal staff and the reviewing personnel of the Trial Examining Division.
5. In the interests of assuring complete freedom of choice to employees who do not wish to be represented collectively as well as those who do, it requires the Board to enlarge the rights of petition in representation cases and to give greater attention to the special problems of craftsmen and professional employees in the determination of bargaining units.
6. It prevents the Board from continuing to accord affiliated unions special advantages at the expense of independent labor organizations, by requiring that, under identical circumstances, the Board in complaint cases refrain from any disparity of treatment.

#### SUPERVISORY PERSONNEL

A recent development which probably more than any other single factor has upset any real balance of power in the collective-bargaining process has been the successful efforts of labor organizations to invoke the Wagner Act for covering supervisory personnel, traditionally regarded as part of management, into organizations composed of or subservient to the unions of the very men they were hired to supervise. It was not until 1945, after several changes in position, that the



National Labor Relations Board itself by divided vote finally decided that supervisory employees were covered by the National Labor Relations Act. This construction was recently upheld in the Supreme Court in the *Packard Motor Car case* (decided March 10, 1947). It should be noted that the majority of the Court in this case did not approve the policy of the Board's doctrine but, in the absence of any specific limitation upon the word "employee" in the Wagner Act, merely held that the Board had power to reach such a conclusion. This means, as Mr. Justice Douglas pointed out in his dissenting opinion—and as Board counsel conceded in argument—that unless Congress amends the act in this respect its processes can be used to unionize even vice presidents since they are not specifically exempted from the category of "employees."

The Board has placed the issue squarely up to the Congress by stating in one of its recent decisions:

So long as the Congress of the United States imposes no limitation on their choice, it is not for us to do so (*Jones & Laughlin Steel Corp.*, 71 N. L. R. B. 1261).

The folly of permitting a continuation of this policy is dramatically illustrated by what has happened in the captive mines of the Jones & Laughlin Steel Corp. since supervisory employees were organized by the United Mine Workers under the protection of the act. Disciplinary slips issued by the underground supervisors in these mines have fallen off by two-thirds and the accident rate in each mine has doubled. (See testimony of H. Parker Sharp, hearings on S. 55 and S. J. Res. 22, vol. 1, p. 339, *Re Jones and Laughlin Steel Corp.*, 71 N. L. R. B. 1261.)

In drawing an amendment to meet this situation, the committee has not been unmindful of the fact that certain employees with minor supervisory duties have problems which may justify their inclusion in that act. It has therefore distinguished between straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action. In other words the committee has adopted the test which the Board itself has made in numerous cases when it has permitted certain categories of supervisory employees to be included in the same bargaining unit with the rank and file. (*Bethlehem Steel Company, Sparrows Point Division*, 65 N. L. R. B. 284 (expeditors); *Pittsburgh Equitable Meter Company*, 61 N. L. R. B. 880 (group leaders with authority to give instructions and to lay out the work); *Richards Chemical Works*, 65 N. L. R. B. 14 (supervisors who are mere conduits for transmitting orders); *Endicott-Johnson*, 67 N. L. R. B. 1342, 1347 (persons having the title of foreman and assistant foreman but with no authority other than to keep production moving).)

Before formulating this definition, the committee considered a proposal, occasionally advanced, which would have limited the protection of foremen to joining or organizing unions whose membership was confined to supervisory personnel and not affiliated with either of the major labor federations. After considerable discussion, the committee decided that any such compromise would be completely unrealistic. There is nothing in the record developed before this committee to justify the conclusion that there is such a thing as a really independent foremen's organization.

It is true that the Foremen's Association of America is nominally independent, but its president admitted in testifying before us that it was the practice of his union to confer with representatives of various CIO and AFL unions to work out a common policy in the event of a strike. (See testimony of Robert H. Keys, id., vol. 3, pp. 232-233.) A number of Board cases are studded with evidence showing collaboration both in the organizing stage and in concerted activity between the Foremen's Association and affiliated unions. (See *Re Chrysler Corp.*, 69 N. L. R. B. 182; *Re B. F. Goodrich*, 65 N. L. R. B. 294; and *Re L. A. Young Spring Wire*, 65 N. L. R. B. 298.) It also appeared that the only major company in mass-production industry which has had a collective agreement with the Foremen's Association is the Ford Motor Co. Although this was cited by the Foremen's Association as refuting industry's fears that productivity would suffer if it entered into collective relations with supervisors, it is significant that within the past week this very company has served notice of its termination of its agreement with the association. The termination was accompanied with a statement of the company that—

After 3 years' experience \* \* \* the results have been the opposite of what we have hoped for. Rather than exerting its efforts to bring foremen into closer relationship with management, your association has worked in the opposite direction.

It is natural to expect that unless this Congress takes action, management will be deprived of the undivided loyalty of its foremen. There is an inherent tendency to subordinate their interests wherever they conflict with those of the rank and file. As one witness put it, "Two groups of people working on parallel lines eventually find a parallel interest." (See testimony of James D. Francis, id., vol. 1, p. 239.)

In recommending the adoption of this amendment, the committee is trying to make clear what Congress attempted to demonstrate last year when it adopted the Case bill. By drawing a more definite line between management and labor we believe the proposed language has fully met some of the technical criticisms to the corresponding section referred to in the President's veto of that bill. It should be noted that all that the bill does is to leave foremen in the same position in which they were until the Labor Board reversed the position it had originally taken in 1943 in the *Maryland Drydock case* (49 N. L. R. B. 733). In other words, the bill does not prevent anyone from organizing nor does it prohibit any employer from recognizing a union of foremen. It merely relieves employers who are subject to the national act free from any compulsion by this National Board or any local agency to accord to the front line of management the anomalous status of employees.

#### COMPULSORY UNION MEMBERSHIP

A controversial issue to which the committee has devoted the most mature deliberation has been the problem posed by compulsory union membership. It should be noted that when the railway workers were given the protection of the Railway Labor Act, Congress thought that the provisions which prevented discrimination against union membership and provided for the certification of bargaining representatives obviated the justification for closed-shop or union-shop arrangements. That statute specifically forbids any kind of compulsory unionism.