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Chapter 14: Labor Relations

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CHAPTER 14

Labor Relations

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A. FEDERAL DECISIONS

§14.1. Breach of no-strike agreement. A major development in labor law during the 1962 Survey year was a group of United States Supreme Court decisions involving various aspects of the problem of remedies for breach of a union's no-strike agreement. In Drake Bakeries, Inc. v. Local 50, American Bakery & Confectionery Workers International, AFL-CIO,\(^1\) it was held that when the collective bargaining agreement has a broad arbitration clause,\(^2\) the employer's action for damages against the union in the federal district court under Section 301 of the Taft-Hartley Act\(^3\) for violation of the no-strike clause of the agreement\(^4\) may be stayed, since the employer's damage claim was arbitrable.\(^5\) On the facts of this case, the Court thus ruled that arbitration, rather than a court, was "the forum it agreed to use for processing its strike damage claims." On the same day the Court held in Atkinson v. Sinclair Refining Co.\(^6\) that the union there was not en-

\(^1\) 370 U.S. 254, 82 Sup. Ct. 1346, 8 L. Ed. 2d 474 (1962).
\(^2\) The contract provided: "The parties agree that they will promptly attempt to adjust all complaints, disputes or grievances arising between them involving questions of interpretation or application of any clause or matter covered by this contract or any act or conduct or relation between the parties hereto, directly or indirectly."
\(^4\) The no-strike clause read: "There shall be no strike, boycott interruption of work, stoppage, temporary walk-out or lock-out for any reason during the terms of this contract except that if either party shall fail to abide by the decision of the Arbitrator, after receipt of such decision under Article 6 of this contract, then the other party shall not be bound by this provision."
\(^5\) By way of qualification the Court stated: "We do not decide in this case that in no circumstances would a strike in violation of the no-strike clause contained in this or other contracts entitle the employer to rescind or abandon the entire contract or to declare its promise to arbitrate forever discharged or to refuse to arbitrate its damage claims against the union." 370 U.S. 254, 265, 82 Sup. Ct. 1346, 1353, 8 L. Ed. 2d 474, 482 (1962). Furthermore the Court distinguished some of the contrary decisions of the Courts of Appeals of the various circuits on the grounds that they involved "far more narrowly drawn arbitration clauses than that which is involved here." 370 U.S. at 264, 82 Sup. Ct. at 1352, 8 L. Ed. 2d at 481.
\(^6\) 370 U.S. 238, 82 Sup. Ct. 1318, 8 L. Ed. 2d 462 (1962).
titled to a stay of a federal district court damage action brought by the employer under Section 301 for breach of a no-strike agreement, because the particular collective bargaining agreement involved did not require the employer to arbitrate its damage claim. The grievance and arbitration clause in the agreement specifically provided that local arbitration boards "shall consider only individual or local employee or local committee grievances arising under the application of the currently existing agreement." The Court noted, "There is not a word in the grievance and arbitration article providing for the submission of grievances by the company." The obvious result of these two decisions will be further litigation involving the issue whether particular agreements and factual situations bring specific cases within *Drake Bakeries* or *Atkinson*.

The third case decided January 18, 1962, was *Sinclair Refining Co. v. Atkinson*, which involved a separate aspect of the same litigation involving the parties above. The Supreme Court in a 5-to-3 decision resolved the controversial question whether a federal court in a Section 301 suit may grant to an employer injunctive relief against a union for violation of a no-strike agreement. The majority held that the Norris-LaGuardia Act bars federal courts from granting such relief. Mr. Justice Brennan, in a vigorous dissenting opinion, discussed the as-yet-unanswered question of the effect of the majority's holding on suits for injunctions in state courts for breach of no-strike agreements. He stated:

> We have held that uniform doctrines of federal labor law are to be fashioned judicially in suits brought under §301, *Textile Workers v. Lincoln Mills*, 353 U.S. 448; that actions based on collective agreements remain cognizable in state as well as federal courts, *Dowd Box Co. v. Courtney*, 368 U.S. 502; and that state

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7 The no-strike clause read: "There shall be no strikes ... (1) for any cause which is or may be the subject of a grievance ... or (2) for any cause except upon written notice by the Union to the Employer."


10 Footnote 8 of the Supreme Court's opinion in Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 514, 82 Sup. Ct. 519, 526, 7 L. Ed. 2d 483, 491 (1962), reads in part as follows: "In the course of argument at the Bar two questions were discussed which are not involved in this case, and upon which we expressly refrain from intimating any view — whether the Norris-LaGuardia Act might be applicable to a suit brought in a state court for violation of a contract made by a labor organization, and whether there might be impediments to the free removal to a federal court of such a suit. The relation of the Norris-LaGuardia Act to state courts applying federal labor law has never been decided by this Court. See McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 2d 45, 515 P.2d 322."

In the McCarroll case, the California court upheld the issuance of an injunction, holding that Norris-LaGuardia was not applicable to state court injunction suits. McCarroll has been cited by the Massachusetts Supreme Judicial Court in *Courtney v. Charles Dowd Box Co.*, 341 Mass. 357, 359, 169 N.E.2d 885, 887 (1960); *Karcz v. Luther Manufacturing Co.*, 338 Mass. 513, 517, 155 N.E.2d 441, 444 (1959).
courts must apply federal law in such actions, *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95.

The question arises whether today's prohibition of injunctive relief is to be carried over to state courts as a part of the federal law governing collective agreements. If so, §301, a provision plainly designed to *enhance* the responsibility of unions to their contracts, will have had opposite effect of depriving employers of a state remedy they enjoyed prior to its enactment.

On the other hand if, as today's literal reading suggests and as a leading state decision holds, States remain free to apply their injunctive remedies against concerted activities in breach of contract, the development of a uniform body of federal contract law is in for hard times. So long as state courts remain free to grant the injunctions unavailable in federal courts, suits seeking relief against concerted activities in breach of contract will be channeled to the States whenever possible. Ironically, state rather than federal courts will be the preferred instruments to protect the integrity of the arbitration process, which *Lincoln Mills* and the *Steelworkers* decisions forged into a kingpin of federal labor policy. Enunciation of uniform doctrines applicable in such cases will be severely impeded. Moreover, the type of relief available in a particular instance will turn on fortuities of locale and susceptibility to process—depending upon which States have anti-injunction statutes and how they construe them.

I have not overlooked the possibility that removal of the state suit to the federal court might provide the answer to these difficulties. But if §4 is to be read literally, removal will not be allowed. And if it is allowed, the result once again is that §301 will have had the strange consequence of taking away a contract remedy available before its enactment.11

Another important case involving no-strike agreements was *Local 174, Teamsters v. Lucas Flour Co.*12 Here the collective bargaining agreement did not contain a no-strike clause but included an arbitration clause, and the union struck over a grievance that was subject to arbitration. The Court held that the strike was a violation of the collective bargaining agreement. The Court stated the rule as "a strike to settle a dispute which a collective bargaining agreement provides shall be settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement."13 The Court specifically approved this doctrine of an implied no-strike clause as previously held by a number of the circuit courts including the decision of the First Circuit in the *Mead* case,14 as well as the NLRB's same

12 369 U.S. 95, 82 Sup. Ct. 571, 7 L. Ed. 2d 598 (1962).
13 The arbitration clause did provide that "during such arbitration, there shall be no suspension of work."
holding. The Lucas Flour case arose in a state court, and the Supreme Court also held that state courts must apply federal law in any action involving enforcement of collective bargaining agreements. This is because Section 301 of the Taft-Hartley Act as interpreted in the Lincoln Mills decision requires the federal courts to fashion "from the policy of our national labor laws a body of federal law for the enforcement of collective bargaining agreements," and "substantive principles of federal labor law must be paramount in the area covered by the statute." Uniform law is necessary to prevent "the possibility of conflicting substantive interpretation [of the collective bargaining agreement] under competing legal systems."

§14.2. Federal pre-emption. The doctrine of federal pre-emption where an activity is "arguably" protected by Section 7 or prohibited by Section 8 of the National Labor Relations Act was applied by the Supreme Court of the United States in two rather unusual cases. In one case the Supreme Court reversed the judgment of the Supreme Court of Ohio, which had affirmed the lower court of that state in denying relief (in a habeas corpus proceeding) to a union lawyer who had been held in contempt of court for advising union officials to continue picketing that had been enjoined by the state court. The employer being picketed was engaged in interstate commerce, an unfair labor practice charge involving the same dispute was pending before the NLRB, and the picketing was peaceful. The Supreme Court held that the Ohio court had erred constitutionally in refusing to grant the lawyer a hearing he had requested on the issue whether the state court lacked jurisdiction because of federal pre-emption.

In the second case the Minnesota state court had enjoined picketing by the Marine Engineers Union. If the union were subject to the jurisdiction of the NLRB, the picketing was arguably unlawful under Section 8(b) of the NLRA. The state court based its assumption of jurisdiction on a finding that the particular union involved did not come within the statutory definition of a labor organization as an "employee" representative because it was made up exclusively of personnel who were "supervisors" as defined in the NLRA and the act excludes supervisors from the definition of "employees." The United State Supreme Court held that the state court had no jurisdiction because the issue whether the union was subject to the NLRA was arguable and this issue of jurisdiction was for the NLRB and not the state court to determine.


2 In re Green, 369 U.S. 689, 82 Sup. Ct. 1114, 8 L. Ed. 2d 198 (1962).


5 Id. §152(5).

6 Id. §152(5).
§14.3. Federal actions to enforce arbitration. The First Circuit Court of Appeals decided two cases during the 1962 Survey year involving actions by unions to compel arbitration. In one, the issue sought to be arbitrated was whether the employer had violated its collective bargaining agreement by contracting out performance of office janitorial services. There was no provision in the agreement as to subcontracting. The arbitration clause covered interpretation, application or claimed violation of the agreement, and there was a specific provision in the agreement to the effect that

if either party shall advise the Association that the grievance desired to be arbitrated does not, in its opinion, raise an arbitrable issue . . . [the arbitrator shall be appointed] only after a final judgment of a Court has determined that the grievance upon which the arbitration has been requested raises an arbitrable issue or issues.

The decree of the district court compelling arbitration was affirmed. In a concurring opinion, Judge Aldrich pointed out that the parties may provide that arbitration will depend upon the court's finding of merit in the claim sought to be arbitrated, but the quoted clause did not do that. "The question for us is simply whether the matter here sought to be arbitrated was within the arbitration clause." In the second case, the First Circuit reversed the judgment of the district court ordering arbitration. Here, the Machinists Union sought arbitration of a dispute as to whether the employer violated the collective bargaining agreement by not giving IAM certain work being performed by IBEW employees who were under another agreement with the company. IAM claimed the work was within its bargaining unit. IBEW was permitted to intervene. The Circuit Court appeared

§14.3 1 Westinghouse Electric Corp. v. Local Lodge No. 1790 of District 38, International Assn. of Machinists, AFL-CIO, 304 F.2d 449 (1st Cir. 1962).
2 Chief Judge Woodbury and Judge Hartigan joined in a per curiam decision of one sentence: "We see no substantial distinction between the case at bar and United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960)."
3 304 F.2d 449, 450 (1st Cir. 1962). Judge Aldrich continued: "The issue of contracting out is normally arbitrable; it is not necessary that there be a provision specifically dealing with it. Cf. Town & Country Mfg. Co., Inc., 136 N.L.R.B. No. 111 (4/13/62). It is not necessary to decide here, and I do not understand that the court does decide, how far arbitrability would extend in case of conflicting claims between unions for the same employment." Ibid. In respect to this latter sentence, the Westinghouse case was decided May 3, 1962, the same day the Raytheon case was argued. As to the first sentence, one could fairly say that up until the last few years violent exception would be taken by management attorneys to the statement that the issue of contracting out "is normally arbitrable." And while the tendency is in that direction, particularly since the Warrior case, there might still be some who would question whether that issue is "normally" arbitrable.
4 Local No. 1505 International Brotherhood of Electrical Workers v. Local Lodge No. 1836 of District 38 of International Assn. of Machinists, 304 F.2d 365 (1st Cir. 1962).
to say that since the dispute involved a matter of representation, or a jurisdictional dispute between unions, the jurisdiction of the NLRB is exclusive in the sense of pre-emption although this was a Section 301 suit in federal court and not a state court proceeding. On rehearing, the Circuit Court recognized that pre-emption “as such” does not apply to federal actions under Section 301, but still stated that the NLRB has exclusive jurisdiction. The board itself has construed its “exclusive” jurisdiction to mean that private agreements and arbitration decisions are not binding upon the board. But there is considerable doubt whether parties are precluded from agreeing by contract to define the scope of the certification or to agree to arbitrate such an issue. The Supreme Court has granted certiorari.

§14.4. Miscellaneous federal decisions. Although the Court of Appeals for the First Circuit and the Federal District Court for Massachusetts had a number of labor cases before them during the 1962 Survey year in addition to those discussed above, most involved no major developments. Three cases do deserve special mention. In NLRB v. Thayer, Inc., the district court granted the board’s application for an administrative subpoena duces tecum for books and records of two Massachusetts corporations and an individual Massachusetts resident to determine whether the Massachusetts corporations and a Virginia corporation were a single enterprise. The NLRB had found the Virginia corporation guilty of unfair labor practices. The Virginia corporation claimed it had dissolved and could no longer obey a reinstatement order. It was the board’s purpose to make the Massachusetts corporation and individual resident of Massachusetts


6 The Circuit Court stated flatly: “A union by contract with an employer cannot define the scope of its certification; that is the Board’s function.” It may be noted that even if this “cannot” be done legally, it is in fact often done by employers and unions when they add classifications or groups to, or remove them from, an existing unit. Furthermore, there is nothing in the NLRA that requires that a bargaining agent be certified by the board. The views of the parties and past practice are among the factors the board may consider in its determination of the appropriateness of the unit. While the board is not bound by the agreement of the parties, it may give it weight, and query if the agreement is “unlawful” in any sense other than it is ineffective if the board decides the agreed-upon unit is not appropriate.


§14.4. 1 One interesting development in the First Circuit is that court’s refusal to sustain the board’s findings of “surveillance” as Section 8(a)(1) violations in two cases. In NLRB v. Davidson Rubber Co., 305 F.2d 166 (1st Cir. 1962), the board had found unlawful surveillance where a supervisor was sitting in a chair in his living room and looking next door while a union meeting was going on. In NLRB v. Whitelight Products Division of White Metal Rolling & Stamping Corp., 298 F.2d 12 (1st Cir. 1962), the court held that the manager’s casual driving by a union meeting being held on a street where it was natural for him to be was not surveillance and the board’s finding was something “blown up out of proportion.”

responsible for remedying the unfair labor practices of the Virginia corporation.\(^5\)

In *NLRB v. Trancoa Chemical Corp.*,\(^4\) the First Circuit denied the NLRB's petition for enforcement and set aside the board's order directing the employer to bargain collectively on the grounds that the union had circulated misleading literature in the election campaign prior to its certification. The court in a strongly worded decision sharply disagreed with the board's long-standing view that a union's election campaign statements are not a basis for overturning an election unless they involve "forgery or other campaign trickery." The First Circuit followed the Fifth Circuit in stating the rule that "it is sufficiently likely that it cannot be told whether they [the employees] were or were not" misled by the misrepresentation rather than that they were necessarily misled.

In *NLRB v. Benevento*\(^6\) the First Circuit remanded the case to the board for further proceedings on the grounds that there were no clear findings of fact based upon legally sufficient evidence to support the board's assertion of jurisdiction. The respondents were a father and son engaged in a local sand and gravel business. The court held that the board may not automatically apply its jurisdictional standards of dollar values of "outflow or inflow" but must determine "as a matter of fact in each case as it arises" the impact, if any, of a purely intrastate activity upon interstate commerce.

**B. MASSACHUSETTS DECISIONS**

§14.5. Injunction in MTA strike. Certainly the most widely publicized labor decision in Massachusetts during the 1962 *Survey* year was *Hansen v. Commonwealth*,\(^1\) in which the Supreme Judicial Court affirmed the Superior Court judgments for contempt involving eight employees of the Metropolitan Transit Authority who had been found to have willfully violated a temporary restraining order enjoining an MTA strike by refusing to perform services or assignments pursuant to the authority's 1962 spring schedule. The case also was noteworthy for the expeditiousness of the proceedings.\(^2\)

\(^3\) The court held that the decision in *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 80 Sup. Ct. 441, 4 L. Ed. 2d 400 (1960), was controlling.

\(^4\) 303 F.2d 456 (1st Cir. 1962).

\(^5\) 297 F.2d 873 (1st Cir. 1961). On remand, the NLRB affirmed its original decision that it had jurisdiction on the ground that the sand and gravel operations affected interstate commerce. The board disagreed with the First Circuit's views as to the criteria controlling the board's jurisdiction. M. Benevento Sand & Gravel Co., 138 N.L.R.B. No. 9, Aug. 13, 1962. Subsequently the United States Supreme Court, in a per curiam decision after the close of the 1962 *Survey* year, appears to adopt the views of the board. *NLRB v. Reliance Fuel Oil Corp.*, Jan. 7, 1963, reversing the Second Circuit, 83 Sup. Ct. 312, 9 L. Ed. 2d 279 (1963), *rev'd*, 297 F.2d 94 (2d Cir. 1961).


\(^2\) The bill of complaint was filed March 29 on the basis of the union's threat to strike March 31. A short order of notice issued returnable on March 30. At an ex
The temporary restraining order was issued by a single justice of the Superior Court without compliance with the procedural requirements of the Anti-Injunction Act. The trial judge held that neither that act nor the statute requiring the convening of a three-judge court in labor dispute cases applied. The Supreme Judicial Court agreed. The statute creating the MTA made it "a body politic and corporate and a political subdivision of the Commonwealth." The Court held that the MTA employees are public employees and that neither the Anti-Injunction Act nor the three-judge statute applies to threatened strikes by public employees. The Court also held that there was no merit to the contention of the petitioners (the eight employees held in contempt) that they were not parties to the proceeding at the time the temporary restraining order was issued and hence could not be affected by it. The allegations in the complaint as to the representative capacity of the eleven officers and members who were named as parties defendant were held to be sufficient to bring the members of the union before the court on the theory of a class suit.

§14.6. Enforcement of arbitration award. In Morceau v. Gould-National Batteries, Inc., the statement of the issues for arbitration was a complicated one. It appeared that the employees of Company A went on strike the day Company B purchased Company A. Four

parte hearing on March 30, the temporary restraining order was issued. On March 31 the MTA filed the petition for contempt which was heard on April 9 and 10. On April 11 the eight employees were adjudged to be in contempt and were sentenced to jail. On April 12 the petition for writ of error was brought seeking to have the judgments for contempt set aside. The single justice, after hearing, reported the case to the full bench. The case was argued April 17, and the decision was handed down April 20. The judge who had sentenced the eight to jail released them the day before Easter, April 21, after their apologies in open court. The MTA strike over the issues of the spring schedules began March 31, 1962. Service was disrupted for two days. The MTA provides public transit service in the metropolitan Boston area. On March 31, 1962, the legislature passed an act permitting seizure of the MTA for 45 days where there is a strike in violation of an injunction (Acts of 1962, c. 307), and the Governor seized the MTA pursuant to this act.

3 G.L., c. 214, §9A.
4 Id., c. 212, §30.
6 Since the Court held that the Superior Court had jurisdiction to issue the temporary restraining order, it did not reach the question whether the employees could have been held in contempt if the Superior Court had erred in its rulings on the non-application of the labor dispute statutes. The Court referred without comment to United States v. United Mine Workers of America, 330 U.S. 258, 289-295, 67 Sup. Ct. 677, 693-697, 91 L. Ed. 884, 910-914 (1947), which held that individuals who violated a void decree are still subject to contempt. In this connection, see In re Green, 369 U.S. 689, 82 Sup. Ct. 1114, 8 L. Ed. 2d 198 (1962), noted in §14.2 supra (decided after the Hansen case), in which the same doubt is cast on the Mine Workers decision.


months later the strike ended with a stipulation that Company B would offer employment to the employees of Company A, with certain provisions as to seniority, and the parties also entered into a separate collective bargaining agreement. Company B did hire a number of these employees but refused to hire two employees who had only probationary status with Company A. There was a basis for arguing that Company B was not required to offer employment to probationary employees. There was also a basis for arguing that a provision prohibiting discrimination because of union activities applied to all former employees. The arbitrator was asked in substance (1) if the union had the right to represent these two probationary employees under the collective bargaining agreement, (2) if so, did the company violate the stipulation as to hiring, and (3) what the remedy should be.

The arbitrator found in the affirmative on issues (1) and (2), ordered the company to offer employment to one of the individuals with back pay, less earnings elsewhere, and dismissed the grievance of the other individual. In his written decision the arbitrator stated that the right of the union to represent the individuals must originate in the stipulation for offering employment, and not the collective bargaining agreement, since the individuals had never been employees of Company B. With considerable logic, the Superior Court judge concluded that since issue (1) referred only to the collective bargaining agreement and not the stipulation, the arbitrator did not conform to his authority under the submission and the award was invalid. The Supreme Judicial Court reversed.

The Court held that the wording of issue (1) in referring to "the collective bargaining agreement" could be construed to include the stipulation, and it was inconsequential that the arbitrator did not base his opinion on such an implication. It appears the arbitrator relied largely on his finding that there was discrimination because of union activities.

The significance of this decision is that the Massachusetts Court has now followed the spirit of the United States Supreme Court's famous trilogy of 1960, which takes an extremely broad view of an arbitrator's authority in labor arbitration cases and a narrow view of a court's role.

2 The Court noted its concurrent jurisdiction with federal courts in Section 301 suits under Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 82 Sup. Ct. 519, 7 L. Ed. 2d 483 (1962), aff'd 341 Mass. 337, 169 N.E.2d 885 (1960), and stated that its function is to participate in the fashioning of a body of federal law for the enforcement of agreements within the ambit of Section 301.


4 "The function of the court in viewing decisions of arbitrators in this field is limited to determining whether the arbitrator has acted within the scope of the reference." 1962 Mass. Adv. Sh. 527, 530, 181 N.E.2d 664, 667.
When the question is one of the arbitrator's authority or jurisdiction, i.e., an issue of arbitrability, it may fairly be inferred from the language in this decision that the arbitrator's ruling as to his own jurisdiction will be upheld if any basis can be found for supporting it. Although this case was not governed by the 1959 Massachusetts statute on labor arbitration, there is no reason to believe the Court would adopt a different approach under that statute.

§14.7. Employment security. In 1958 the Employment Security Law was amended to change the disqualification for voluntary quitting of employment from leaving "voluntarily without good cause attributable to the employing unit or its agent" to leaving "voluntarily without good cause." In *Raytheon Co. v. Director of Division of Employment Security*, there were three claimants for benefits who were married women and who had left employment with Raytheon for the purpose of joining or living with their husbands who were located outside Massachusetts. The Director of the Division, the Board of Review and the district court all held the three women entitled to benefits. The question presented on appeal was whether leaving employment to join one's husband in another state constitutes leaving "voluntarily without good cause" within the meaning of the statute. The Court held that such moving may constitute good cause, depending upon the circumstances, but does not constitute good cause per se. The Court remanded the case because "the meager facts here, without more, do not justify the conclusion that the claimants left their employment with 'good cause.'" The presence of necessity, of legal duty, of family obligations or other overpowering circumstances was not shown.

§14.8. Miscellaneous decisions. In *Bosse v. Leonard & Barrow Shoe Co.*, it was held that the Superior Court judge did not err in denying leave to file a bill of review of an injunction against picketing

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5 An interesting point in the Court's opinion is that the company's argument to the effect that the form of issue No. 1 so strongly favored its position of non-arbitrability is turned around by the Court as an argument against it. The Court says that the company's construction of the issue "would render the arbitration substantially meaningless." The Court quotes the United States Supreme Court in the Warrior case, 363 U.S. 574, 578, 80 Sup. Ct. 1347, 1351, 4 L. Ed. 2d 1409, 1415 (1960), to the effect that "arbitration of labor disputes under collective agreements is part and parcel of the collective bargaining process itself," and then adds its own comment that "an intention of the parties to lose the substance of the dispute in the form of the reference would be inconsistent with the underlying purpose of that process." Query whether a party to an arbitration proceeding may not attempt to get the opposing party to agree to a wording of the issue favorable to its case.

6 G.L., c. 150C. Query as to the application of this statute to companies in interstate commerce in the light of the requirement that states apply federal law in Section 301 suits. Perhaps its procedural provisions would still be applicable in any event.

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which had been assented to by counsel for all parties. The review was sought on the grounds that the anti-injunction act had not been complied with. The lower court had found that no labor dispute existed.

In *Whitaker v. Boston and Maine Railroad*, an employee brought suit on February 5, 1958, for “wrongful reduction in work on an employment roster on April 9, 1949.” The defendant’s demurrer was sustained, and the Court affirmed since “the plaintiff’s laches are apparent on the face of the bill” and the demurrer was good on this ground without reaching other issues.

Two other cases involved both labor aspects and other issues. *Hall-Omar Baking Co. v. Commissioner of Labor and Industries* held the “hawkers and peddlers” statute unconstitutional as applied to a retailer of bakery products operating with route drivers in view of the provision in the statute for exemption of milk companies and the sale of dairy products. *Weinstein v. Chief of Police of Fall River* held that the denial of a Sunday license to an orthodox Jew who closed his business on Saturday raised no actionable issue or constitutional question since the chief of police has discretion in the granting of Sunday licenses.

§14.9. Discharge for jury duty. A Superior Court decision of interest to the labor law bar held that the discharge of an employee while serving on the jury was contempt of court in violation of Section 14A of Chapter 268 of the General Laws. The employee involved was discharged for failing to report for work from 7:30 A.M. to 9:15 A.M. while on jury duty. The Superior Court stressed the unreasonableness of the employer but also expressed the view that no non-jury assignment may be given to the employee by the employer under penalty of discharge regardless of the reasonableness of the assignment.


§14.9. 1 Commonwealth v. Allan W. Bath and John Bath & Co., Worcester Superior Court, Nos. 143793 and 143794. Opinion dated May 7, 1962. The company was fined $3000, and the individual defendant, who was vice-president of the company, was fined $500. 2 The employee’s job was of an unusually dirty nature, and the employer did not provide adequate washing and bathing facilities. The Court noted “the time elements involved, the distances, the lack of bathing facilities.” 3 The opinion stated: “This Court is compelled to say that jurors in their term of service must be entirely free of compulsory non-jury assignments, under threat of discharge, from their regular employer.

“It is my view that any such non-jury assignment from an employer under penalty of discharge, however reasonable it may appear, might interfere with the juror’s availability for service, or with his peace of mind, with a consequent deleterious effect upon the system of administration of justice.

“In short this Court adopts the view that a juror is a juror twenty-four hours
C. MASSACHUSETTS LEGISLATION

§14.10. Employees of certain public authorities. A significant statute was passed in the summer of 1962 governing the labor relations of four public authorities, the Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority.¹ The brief new law (1) authorizes these authorities to bargain collectively with unions representing their employees and to enter collective bargaining agreements with such unions; (2) requires the employees to submit all grievances and disputes to arbitration; (3) in effect, denies these employees the right to strike;² and (4) makes Sections 4 through 8 of the State Labor Relations Law³ “so far as apt” applicable to such authorities and their employees.

Among the unanswered questions which this statute raises are whether a closed shop or union shop requiring employees of the authorities to be or become union members is valid,⁴ and whether the enforcement procedures of a Superior Court decree requiring compliance with an order of the Labor Relations Commission against the authorities, under penalty of contempt, would be “apt.” Difficult legal problems arise when an instrumentality of government is given a hybrid character, being treated in some respect as a private organization and in other aspects as a public agency.

The new law was passed ⁵ after the Supreme Judicial Court’s decision in the MTA case ⁶ and did not make the four authorities subject to the anti-injunction law.

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each day during his term of service and any requirement by an employer under threat of discharge which derogates from this principle would (upon discharge for failure of compliance) be violative of this statute.”


² The act provides: “Nothing in this act shall be construed as conferring upon the employees of any of said authorities the right to strike.” Section 9 of the State Labor Relations Law (G.L., c. 150A), recognizing the right of employees to strike, and Section 3, recognizing the right to engage in concerted activities, are not made applicable to these authorities. The legislation also acted with knowledge of the Hansen case (see discussion in §14.5 supra), in which the Supreme Judicial Court stated that the mandatory arbitration provision in the statute creating the MTA “in effect prohibits strikes.”

³ These provisions include employer and union unfair labor practices, determination of representation questions and the holding of elections, and procedural matters. Although Section 3, which is the heart of the Labor Relations Act since it states the basic right of employees to organize and bargain collectively, is not made applicable to the authorities (presumably because it also contains the right to engage in concerted activities which would include a strike), Section 4(1) makes it an unfair labor practice “to interfere with, restrain or coerce employees in the exercise of rights guaranteed in section three.” (Emphasis supplied.)


⁵ July 26, 1962.

⁶ April 20, 1962. The Hansen case is discussed at §14.5 supra.
§14.11. Imported labor replacements. The 1960 statute regulating the importation of labor replacements or "strikebreakers" in labor disputes was amended to prohibit completely such importation by persons other than the employer directly involved. The registration, reporting and other provisions of the 1960 act continue as to employers directly involved in the dispute.

§14.12. Minimum wage and overtime. The Massachusetts minimum wage was increased from $1 per hour to $1.15 per hour effective May 24, 1962, and will become $1.25 per hour September 5, 1963. The overtime provisions were amended to exempt summer camps operated by a non-profit charitable corporation; the overtime exemption for seasonal businesses was reworded. As noted in the 1961 Annual Survey, when the overtime law was enacted in 1960 the penalty for violating the minimum wage provisions was not made applicable to violation of the overtime provisions. This was remedied by the 1962 legislature, which enacted a new penalty section specifically applicable to violation of the overtime provisions. There were also several minor administrative and clarifying amendments to Chapter 150.

§14.13. Miscellaneous legislation. A considerable number of changes in laws affecting some aspect of labor relations were made in the 1962 session of the legislature. Firefighters were prohibited from performing the duties of police officers, or any duties other than those regularly performed, in connection with any labor dispute. A penalty, in the form of a $200 fine, applicable to "whomever violates" any provision thereof, was added to the 1958 law recognizing the right of public employees to form and join unions and present proposals.

3 Some question may exist as to the applicability of Chapter 150D to employers in interstate commerce under the federal pre-emption doctrine on the grounds that federal law grants an employer the right to replace economic strikers, and the state act attempts to regulate that right. Those supporting applicability of the act in such circumstances would presumably argue that it is within the exception permitting state action to control violence in labor disputes and pointing to the declaration of policy in the state act that employment of nonresidents as strikebreakers tends to produce violence.

2 Id., c. 153.
3 Id., c. 155.
5 Acts of 1962, c. 371. Penalties are: fine of $50-$250; imprisonment, 10-90 days; each week and each employee constitutes separate offense; employees may recover unpaid overtime plus costs and reasonable attorney's fees in a civil action; and, upon request, the Commissioner of Labor and Industries may collect for the employee.

2 Id., c. 504. See the comment in 1958 Ann. Surv. Mass. Law §15.4 as to the question of enforcement of the 1958 statute.
Amendments were made to the various statutes regulating electricians, plumbers, gas fitters, firemen and engineers, architects and hawkers and peddlers. The statutory provision prohibiting completely certain types of industrial homework was amended to include within the prohibition, work on outergarments and undergarments. The definition of “buildings used for industrial purposes” or “industrial establishments” in Chapter 149 was expanded.

Those obtaining school bus contracts in cities or towns with a population of 16,000 or over will hereafter be required to pay wage rates as determined by the Commissioner of Labor and Industries which “shall not be less than those established by collective agreements or understandings between organized labor and employers” for bus operators in the city or town involved. In another change, the former provision in Chapter 149 for a fine of $100 for violation of “any reasonable rule, regulation or requirement” of the Department of Labor and Industries was amended by increasing the fine to $250 and striking out the word “reasonable.” There were several minor amendments to the laws relating to the employment of children, one to the anti-discrimination law and three to the Employment Security Law. The authorization to the Commissioner of Labor and Industries to suspend the operation of certain labor laws was again extended for another year.

8 Acts of 1962, c. 582.
9 Id., c. 488.
10 Id., c. 623.
11 Id., cc. 27, 574.
12 Id., c. 94.
13 Id., c. 541.
14 Id., c. 253.
15 Id., c. 102.
16 Id., c. 729.
17 Id., c. 712.
18 Id., cc. 60, 107.
19 Id., c. 627.
20 Id., cc. 414, 468, 476.
21 Id., c. 28.