Chapter 15: Labor Relations Law

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CHAPTER 15

Labor Relations Law

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§15.I. Introduction. The 1969 Survey year in the field of labor law produced eight decisions by the Supreme Court of the United States, five decisions by the United States Court of Appeals for the First Circuit, three decisions by the Federal District Court for the District of Massachusetts, and one decision by the Supreme Judicial Court, along with a number of minor legislative charges in the labor laws of the Commonwealth.

The United States Supreme Court affirmed four decisions of the National Labor Relations Board: the board’s bargaining order based on union authorization cards; the board’s order that union discipline for exceeding production rates established by the union did not violate the National Labor Relations Act; the board’s order to an employer to pay fringe benefits as a remedy for a refusal to bargain by the company; the board’s practice of requiring the employer to furnish a list of names and addresses of all its employees prior to elections. The other decisions include cases on the right of individuals under the Railway Labor Act to maintain court action without exhausting contractual or administrative remedies where the latter appear to be futile; state courts’ jurisdiction over peaceful secondary picketing; the requirement of notice and a hearing before a worker’s wages may be garnished; and the application of the due process clause of the Fourteenth Amendment to labor relations commissions established to investigate and report the violation of criminal statutes in the labor relations area.

In the lower federal courts, the First Circuit Court of Appeals’
decisions all involved the National Labor Relations Board. Although three orders of the board were enforced, a fourth was reversed, and a fifth was partially reversed. In the Federal District Court for Massachusetts, the court dealt with a variety of issues: right of individuals to bring Section 301(a) suits, validity of increases in union dues, and the arbitrability of disputes.

In the Commonwealth, the Supreme Judicial Court considered only one labor matter (union elections). The General Court enacted labor measures ranging from increased benefits in unemployment to a tightening of the regulation of professional strikebreakers and authorization of agency shops for the City of Boston employees.

A. United States Supreme Court Decisions

§15.2. Bargaining order based on authorization cards. In NLRB v. Gissel Packing Co., the United States Supreme Court, in a unanimous decision, affirmed the board’s right to issue a bargaining order based on valid authorization cards obtained from a majority of the employees when the employer commits unfair labor practices that tend to undermine the union’s majority status and make a fair election an unlikely possibility.

This decision actually encompassed four cases, three from the Fourth Circuit Court of Appeals, and one from the First Circuit Court of Appeals. The Fourth Circuit cases contained the following common facts: The union waged an organizational campaign, obtaining authorization cards from a majority of the employees in the appropriate bargaining unit and then, based on these cards, demanded recognition. In each instance, the employer refused to bargain, arguing that the authorization cards were inherently unreliable. In NLRB v. Gissel Packing Co., an election was never held because the union had filed three unfair labor charges alleging refusal to bargain, coercion, and intimidation of employees and discharge of a union sympathizer. The activities on the part of the employer com-

9 NLRB v. Consolidated Constructors and Builders, Inc., 406 F.2d 1081 (1st Cir. 1969); 405 F.2d 1022 (1st Cir. 1969); 401 F.2d 547 (1st Cir. 1968).
11 Corriveau v. Routhier Cement Block, Inc. v. NLRB, 410 F.2d 147 (1st Cir. 1969).

2 398 F.2d 336 (4th Cir. 1968).
menced early in the organizational campaign. In *NLRB v. Heck's Inc.*, similar activities by the employer following the demand for recognition led to unfair labor practice charges which precluded the holding of an election. In *General Steel Products, Inc. v. NLRB*, an election was held and won by the employer. However, this election was later set aside because of unfair labor practices committed by the employer throughout the union's campaign.

The board, in each case, found that the unions had obtained valid authorization cards from a majority of the employees in the appropriate bargaining units and that the employers' refusals to bargain were based not on a "good faith" doubt but on a desire to gain time in an attempt to dissipate the majority status of each union.

The Fourth Circuit, although finding Section 8(a)(1) of the National Labor Relations Act violations present in all three cases and a Section 8(a)(5) violation of the act in *Gissel*, refused to enforce the board's bargaining order in each case. The court concluded that because of the inherent unreliability of authorization cards, the employers had good faith doubts as to the majority status of the unions. In addition, the court noted that the Taft-Hartley amendments to the National Labor Relations Act provided that elections be the sole basis for certification.

In *NLRB v. Sinclair Co.*, the general fact pattern of the other three cases was also present. At the onset of the union's organizational efforts, the employer committed unfair labor practices which intimidated and coerced the employees. These activities continued up to the election. The First Circuit Court of Appeals affirmed the order of the board requiring the company to bargain upon request. Since the First Circuit rejected the company's position concerning the inherent unreliability of authorization cards, this raised a conflict with the Fourth Circuit. In addition, in *Sinclair*, the employer claimed that statements regarding the future financial posture of the company, if the union won, were not violative of Section 8(a)(1) of the act but, rather, were protected by Section 8(c) of the act and the First Amendment.

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8 995 U.S. at 580.
4 398 F.2d 337 (4th Cir. 1968).
5 995 U.S. at 580-581.
6 398 F.2d 339 (4th Cir. 1968).
7 995 U.S. at 582. The employer in this case also raised the question of the validity of the cards. The Court found that the card, on its face, was ambiguous (authorizing the union to represent the employee and not to seek an election) and the employees were not told that the cards would be used solely to seek an election. Based on this, the Court approvingly applied the board's rule in Cumberland Shoe Corp., 144 N.L.R.B. 1268 (1965), which was reaffirmed in Levi Strauss & Co., 172 N.L.R.B. No. 57, 68 L.R.R.M. 1538 (1968), and concluded the cards were valid. Id. at 584.
8 Id. at 582-583. The lack of good faith was based upon the substantial unfair labor practices committed by each employer.
9 398 F.2d 336 at 337; 598 F.2d at 338-339; 398 F.2d at 340.
10 397 F.2d 157 (1st Cir. 1968).
In determining whether authorization cards could in fact be the basis for a bargaining order, the Supreme Court found it necessary to analyze the board's approach to cards. Stemming from the rule enunciated by the board in *Joy Silk v. NLRB*, which held that an employer could refuse to bargain with a union claiming majority status solely through authorization cards, if it had a "good faith" doubt as to the union's majority status, the board issued bargaining orders based on two premises. First, the employer had the burden of coming forward with its reasons for refusing to bargain; and second, the unfair labor practices committed by the employer belied its "good faith" reasons and evidenced an intent to dissipate the union's majority status.

The burden of proving lack of good faith was shifted to the general counsel in *Aaron Brothers*. More significantly, *Aaron Brothers* also allowed the employer to refuse to recognize the union based solely on cards and to insist on an election. In addition, the board required that the unfair labor practices of the employer must have a tendency to dissipate the union's majority.

Thus, it was not surprising when the board at oral argument admitted that it had abandoned the *Joy Silk* doctrine and particularly its reliance on a "good faith" test of employers' motives in not recognizing unions whose right to recognition was based solely on cards. Following the decision in *Aaron Brothers*, the general counsel stated that the present practice of issuing a complaint does not depend significantly upon the employer's good faith doubt; of considerably more importance is the effect of any unfair labor practice committed by this employer. If the effect of the unfair labor practice is that the holding of a fair election is precluded, and if the union obtained valid authorization cards from a majority of the appropriate bargaining unit, a complaint will issue seeking a bargaining order as the appropriate remedy. "Thus, an employer can insist that a union go to an election, regardless of his subjective motivation, so long as he is not guilty of misconduct. . . ."14

It was within this framework that the Court faced the question as to whether a bargaining obligation can arise outside of the context of an election. The Court concluded that since Section 8(a)(5) makes it an unfair labor practice to refuse to bargain subject to Section 9(a), then an election need not be the only means of selection of authorized union representation.15 Concluding that the bargaining

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13 395 U.S. at 594. The rejection of the cards by the employer is not insignificant when the employer has independent knowledge of the union's majority status. For instance, where the employer is faced with a strike or picket line supported by a majority of his employees, it may not insist on an election. Ibid.
14 Ibid.
obligation can be created by other than an election, the Court then decided that authorization cards are not such an inherently unreliable indicator as to prevent their use in this regard.

In addition to the power to recognize authorization cards, the board has long held the power to issue a bargaining order, after the employer has committed substantial unfair labor practices, without requiring the union to evidence that it would have been able to maintain its majority status. In fact, the board's authority to issue a bargaining order is no less even when the union, once having represented a majority, represents only a minority after the employer has engaged in unfair labor practices. It is interesting to note that the Court answers the employers' complaint that bargaining order is “an unnecessary harsh remedy” by belittling the effect of a bargaining order. As the Court stated, “There is, after all, nothing permanent in a bargaining order, and if, after the effects of the employer's acts have worn off, the employees clearly desire to disavow the union, they can do so by filing a decertification petition.”

Having concluded that the bargaining order may be an appropriate remedy, the Court emphasized that the board's present practice calls for its use only after the union has attained a majority status and after a refusal by the employer to recognize the union, accompanied by unfair labor practices which either made unfair an election that was held or precluded the holding of a fair election. Since the three Fourth Circuit cases were decided by the board in reliance on the Joy Silk good faith test and not under its current practice of determining the unfair labor practices' effects on the election process, they were remanded to the board for proper findings. In the First Circuit case, however, the board had decided that the unfair labor practices were so grievous and substantial that a bargaining order was the only proper remedy. Thus, since the board did not utilize the good faith test, the Court concluded there was no need to remand.

As mentioned above, an additional issue was present in Sinclair, where the employer sought protection for his statements in the First Amendment. The First Circuit had agreed with the board that certain statements of the employer which, in part, predicted the economic ruin of the company if the employees voted for the union, were violative of the act. In deciding whether this was constitutionally protected speech, the Court considered the labor relations setting to be paramount, characterizing it as a “non-permanent, limited relationship between the employer, his economically dependent employee and his union agent. . . .” In this context, the employer

18 395 U.S. at 613.
20 395 U.S. at 617.
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is not free to say whatever he chooses. Because of the intrinsic dependence of employees upon the employer, the Court concluded that it is not unreasonable to expect and demand objective facts to be the basis of any employer-volunteered predictions of the effects of unionization. Failing to satisfy this test of objectivity, Sinclair was rightfully found to have violated Section 8(a)(1).21

Unquestionably, the decision in Gissel affords firm judicial protection to the organizing efforts of unions. Although it allows an employer to demand an election without inquiry as to motive, it has validated the general use of a bargaining order in reliance on cards after virtually any serious employer misconduct has been shown, thus establishing a bargaining obligation by means other than a board election. It is submitted that the present practice of the board, requiring that the union show the employer’s “independent and substantial unfair practices disruptive of election conditions”22 before a bargaining order may be validly entered, represents a more equitable and workable standard than the former practice of requiring a showing that the employer had no “good faith doubt” as to the union’s majority status before entering the order.

§15.3. Union discipline for exceeding production rates established by the union. In Scofield v. NLRB,1 the Court reaffirmed its reasoning in NLRB v. Allis-Chalmers Mfg. Co.,2 which had held that when employees violate a union rule establishing a ceiling on the production for which union members may accept immediate piecework pay, the union may levy reasonable fines, and that failure to pay these fines may lead to expulsion. In Scofield, such a rule had been established. If the employee exceeded the production ceiling, the employer retained the money due the employee and disbursed it when the production ceiling was not reached. Plaintiffs worked during bargained-for rest periods, and thereby exceeded the production ceiling set by the union. The union, having discovered that they exceeded the ceiling, fined them $50 to $100 and suspended them from the union for a year. After the union sought to collect these fines in state court, the plaintiffs filed unfair labor practice charges with the National Labor Relations Board. The board found that there was no violation of the National Labor Relations Act.3 Its decision was affirmed by the Seventh Circuit Court of Appeals.4

Aside from a question of the timeliness of petition for certiorari,5

21 Id. at 618.
22 Id. at 591.

§15.3. 1 394 U.S. 423 (1969).
2 388 U.S. 175 (1967).
4 393 F.2d 49 (7th Cir. 1968).
5 The board argued that the petition must be filed within 90 days after the entry of the judgment or decree of the circuit court. Although an opinion of the circuit court was delivered on March 5, 1968, the charge was not entered until

http://lawdigitalcommons.bc.edu/asml/vol1969/iss1/18
the Court was faced with the question of whether the union rule was valid as falling within the provisions of Section 8(b)(1) of the National Labor Relations Act. Relying on its interpretation of Section 8(b)(1) as expressed in Allis-Chalmers, the Court distinguished between internal and external enforcement of union rules. The Court concluded that as long as the rule is duly adopted and not "the arbitrary fiat"\(^6\) of a union official, and as long as it does not affect a member's employment status, it does not conflict with 8(b)(1).\(^7\) Applying Section 8(b)(1) to the instant situation, the Court found that the Section

\[\ldots\] leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.\(^8\)

Finding that the fines were reasonable, that they were not imposed at the whim of a union official, that membership in the union was voluntary and that enforcement of the rule was through acceptable means, the question then faced by the Court was the "legitimacy of the union interest vindicated by the rule and the extent to which any policy of the Act may be violated by the union-imposed production ceiling."\(^9\)

After acknowledging that unions have historically opposed unlimited piecework pay systems because of fears that "such systems will drive up employee productivity and in turn create pressures to lower the piecework rate so that \ldots\, employees are earning little more than they did before \ldots,\)\(^10\) the Court concluded that unions therefore have a legitimate interest in establishing production ceilings for piecework-pay workers. Having established a union's right to maintain such a rule in general, the Court examined the particular rule before it to determine if it contravened the labor policy of the act. The fact that the union had never refused to bargain over this rule, combined with the fact that the company cooperated in banking the employees' money, was ample evidence that the rule did not adversely affect the collective bargaining relationship. The Court further found that the rule did not violate the collective-bargaining agreement, since the contract allowed each employee to produce as much as he wished, and it found

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\(^6\) 594 U.S. at 428.

\(^7\) Of course, the Court stressed that even if the rule fulfills these requirements, it will still violate Section 8(b)(1) if it does not effectuate the policy of the act. See, Industrial Union of Marine and Shipbuilding Workers of America, 159 N.L.R.B. 1065 (1968); Local 138, International Union of Operating Engineers, 148 N.L.R.B. 679 (1964).

\(^8\) 594 U.S. at 490.

\(^9\) Id. at 491.

\(^10\) Ibid.
no evidence that the rule distinguished between members and non-members of the union. As Allis-Chalmers had pointed out, it is not per se violative of the act if the union rule prevents members from accepting work from his employer.

In concluding its opinion, the Court stated that because "[T]he union rule . . . left the collective bargaining process unimpaired, breached no collective contract, required no pay for unperformed service, induced no discrimination by the employer against any class of employees . . ." it would hold the rule to be valid and therefore not proscribed by Section 8(b)(1)(A). Thus, the Court once more reaffirmed the essential right of a union to promulgate a rule under the act concerning a matter over which it has a legitimate interest, and to enforce the rule in a reasonable manner against noncomplying members.

§15.4. Remedial power of the National Labor Relations Board: Award of fringe benefits. In NLRB v. Strong, the respondent withdrew from a multiple employer bargaining association following the negotiation of a contract between the association and the union. After repeated efforts on the part of the union to secure the signature of respondent on the contract, the union filed charges under Section 8(a)(1) and 8(5) of the National Labor Relations Act. The board found that the respondent had violated the act and ordered it to sign the contract and "[p]ay . . . any fringe benefits provided for in the . . . contract." The Ninth Circuit Court of Appeals refused to enforce that part of the order requiring the paying of fringe benefits that were due and owing had the contract been signed.

The Court found that the broad remedial powers granted to the board in Section 10(c) of the act, including the power to award back pay, authorized the ordering of payments of fringe benefits retroactive to the effective date of the contract. If further found that the board, having established that the respondent's refusal to sign a contract negotiated by the employer's association was an unfair labor practice, was not administering or enforcing the collective bargaining contract between the parties when it required the employer to abide by its fringe benefit provisions from its effective date.

Thus, the Court, by enforcing the retroactive payment of these contract benefits, seems to have underscored the latitude afforded the board in its remedial powers incident to its adjudication of an unfair labor practice.

§15.5. Validity of the Excelsior rule. In one of the more complex and curious decisions of the 1969 Survey year, the Supreme Court, in

11 Id. at 436.
NLRB v. Wyman-Gordon Co.,\(^1\) upheld the practice by the board of requiring employers to furnish the names and addresses of its employees to unions prior to elections. This type of practice, commonly known as the Excelsior rule, stems from the board’s decision in Excelsior Underwear Inc.\(^2\)

Faced with a refusal by Excelsior to furnish the requested list of names and addresses, the board, prior to its hearing of the case, invited “certain interested parties” to file briefs and present oral argument on the issue of whether such a list should be provided to the opposing union.\(^8\) Following the hearing, the board found that such a procedure was desirable but could not be equitably imposed on Excelsior. It therefore announced that the rule would take effect only with respect to those elections directed, or consented to, 30 days from the date of its decision.\(^4\)

The First Circuit Court of Appeals refused to enforce a subpoena requiring the Wyman-Gordon Co., pursuant to the Excelsior rule, to furnish such a list.\(^8\) The First Circuit felt that the Excelsior rule had not been promulgated pursuant to the dictates for rule-making prescribed by the Administrative Procedures Act (APA).\(^8\)

The Supreme Court could not reach a majority opinion on the issues in the case. Rather, four Justices joined in the judgment of the Court. In the main, this segment of the plurality opinion agreed with the First Circuit that the Excelsior rule did not comply with the requirements of the APA, particularly since it was not published in the Federal Register and only selected parties were given notice of the hearing.\(^7\) The judgment of the Court stressed to a large degree that the rule had been applied prospectively and therefore did not fall within the “adjudication” authority granted by the National Labor Relations Act.\(^8\) However, notwithstanding the fact that the rule, when promulgated, had not complied with the APA and was not a strict adjudication since applied only prospectively, the Court reversed the First Circuit. It reasoned that, because the respondent had been directed to submit the list, and that this order was part of a larger order of the board directing an election, it was valid and should have been enforced.

The concurring opinion, in which three Justices joined, reversed the First Circuit for far different reasons. They felt that administrative agencies, including the board, have the power both to make rules and adjudicate controversies. In the instant case, they found that the adjudication in the board decision in Excelsior Underwear set a prece-
dent to guide future conduct and had the same power and effect — and should have been accorded such — as if it had been a rule which followed the APA requirements.\(^9\) This portion of the plurality opinion found no dispute as to the propriety of the procedural safeguards utilized by the board in its *Excelsior* decision. The fact that *Excelsior* was applied prospectively, relied upon so heavily by the judgment of the Court, is not critical to the concurring opinion. The key factor influencing the concurring Justices was that the decision in *Excelsior* had been reached only after a proper hearing. The "*Excelsior rule*" then evolved out of a valid order following this decision. The concurring opinion concluded that to invalidate any rule applied prospectively would require the board to predict in which cases prospective application would be equitable, and then

... be faced with the unpleasant choice of either starting all over again to evaluate the merits of the question, this time in a "rule-making" proceeding, or overriding the considerations of fairness and applying its order retroactively anyway, in order to preserve the validity of the new practice and avoid duplication of effort.\(^{10}\)

Such a procedure, the concurring opinion found, would be impractical, inflexible and undesirable.

The two dissenting opinions, written separately by Justices Douglas and Harlan, culled various arguments from both the judgment of the Court and the concurring opinion to reach their opposite results. They agreed with the judgment of the Court that, in applying the rule prospectively, the board had promulgated a rule and therefore erred in not complying with the APA. The dissenting opinions also agreed with the concurring opinion that if the board did indeed err it could not transpose this incorrectly promulgated rule into a valid order by incorporating the language of the *Excelsior* decision into each subsequent decision it made concerning the same issue. In sum, the dissenting opinions found the *Excelsior rule* to be improperly promulgated, and thus invalid. For this reason they found that the First Circuit was correct in refusing to enforce the board’s order requiring *Wyman-Gordon* to furnish the list.

\(^9\) 594 U.S. at 770-771.

\(^{10}\) Id. at 774-775.

\section*{§15.6 Railway Labor Act: Right to maintain court action without exhausting contractual or administrative remedies.} In *Glover v. St. Louis–San Francisco Ry.*,\(^1\) the 13 petitioners, eight Negroes and five white men, all repair and maintenance employees of the defendant railroad, had brought an action in United States District Court against the railroad and the Brotherhood of Railway Carmen of America, their duly selected bargaining agent. The complaint alleged that the plaintiffs were not promoted to positions for which they were experi-
enced. This was alleged to be due to "a tacit understanding between defendants and a subrosa agreement ..." entered into to avoid promoting Negro applicants.

The defendants sought to dismiss the complaints because, in part, the petitioners had not exhausted the administrative remedies provided for them in the collective bargaining agreement, in the constitution of the union, and before the National Railroad Adjustment Board. The motion to dismiss was sustained by the district court in an unreported decision. In an attempt to avoid the dismissal, the plaintiffs amended their complaint and detailed the instances wherein both the company and the brotherhood allegedly had rebuffed, ridiculed and denied every attempt of the plaintiffs to file grievances. In addition, the amended complaint explained that any action before the National Railroad Adjustment Board, composed of representatives from union and management, would take five years. The district court again dismissed the complaint and its decision was affirmed by the Fifth Circuit Court of Appeals. The Supreme Court reversed and remanded the case for trial.

The Court reasoned that although Section 3 of the Railway Labor Act confers exclusive jurisdiction on the Railroad Adjustment Board to interpret the meaning of collective bargaining agreements, the act was meant to apply only to "disputes between an employee ... and a carrier. ..." In any event, the Court, in refusing to draw a distinction between "discriminatory action in negotiating the terms of an agreement and discriminatory enforcement of terms that are fair on their face," found that the dispute was essentially between employees on the one hand and management and the union on the other. Collaterally, the Court concluded that the Railroad Adjustment Board did not possess the type of power necessary to remedy the abuses alleged in the complaint.

The Court could not accept an argument that the plaintiffs had failed to exhaust their administrative remedies. Where, as here, the remedies are controlled to a major extent by both the company and union, the Court held that it would be "absolutely futile" for plaintiffs to pursue the possibility of administrative relief. Based on the allegations of the complaint in Glover, the Court concluded that any efforts by the plaintiffs to pursue contractual or administrative remedies would be wasted; and consequently the district court should have exerted jurisdiction over the matter.

§15.7. Railway Labor Act: Peaceful secondary picketing protected against state proscription. The Court placed stringent restrictions on
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state courts' jurisdiction over peaceful secondary picketing in Railroad Trainmen v. Jacksonville Terminal Co.\(^1\) This case appears to represent the culmination of litigation in the longest railroad labor dispute in the history of this country.\(^2\)

Briefly stated, the facts involved petitioners who, after exhausting all procedures under the Railway Labor Act\(^8\) to settle a dispute as to a change in working conditions, struck and picketed various locations of the Florida East Coast Railway Company (FEC), including the respondent Terminal Company. A United States District Court issued a temporary restraining order enjoining petitioners from picketing any place other than the "reserved gate" set up for FEC employees. The order was discharged by the Fifth Circuit Court of Appeals, holding that the district court was precluded by the Norris-LaGuardia Act\(^4\) from issuing an injunction.\(^5\) The Supreme Court by an equally divided Court, affirmed.\(^6\) While that litigation was pending in the federal courts, respondents sought a similar remedy in the state courts. The state court issued the temporary injunction; and after failing on appeals within the state courts, the petitioners sought, and were granted, certiorari by the Supreme Court.\(^7\)

The Court found that the respondent's activities were, in fact, an integral part of FEC's normal operation.\(^8\) The Court, however, avoided the question of whether petitioner's activity constituted a secondary activity as defined by the Labor Management Relations Act.\(^9\) The Court reasoned that the Railway Labor Act permitted employees to engage in some forms of self-help, inclusive in which would be primary strikes and picketing in support of such strikes; that not all picketing carrying secondary implications is prohibited; that the picketing involved in the instant case is not necessarily secondary in nature; and, finally, that the Labor-Management Relations Act, and the body of law concerning secondary picketing which has evolved from it, should not be applied to parties subject to the Railway Labor Act without a clear mandate from Congress.

Based upon these conclusions, the Court reversed the state court judgments holding that it should not undertake, under the present legislative design, to delineate which picketing is federally protected and which is subject to state courts. Further, the Court stated that

\(^{2}\) Id. at 371.
\(^{5}\) Brotherhood of Railroad Trainmen v. Atlantic Coast Line R.R., 362 F.2d 649 (5th Cir. 1966).
\(^{8}\) 394 U.S. at 373.
parties, after exhausting all Railway Labor Act procedures, are allowed to employ peaceful economic pressures so long as they do not conflict with other aspects of federal law.

§15.8. Garnishment of wages: Requirement of notice and a hearing. In Sniadach v. Family Finance Corp., the respondent attached $31.59 of the petitioner's $65 per week salary. This Wisconsin statute on garnishments provided no right to notice or hearing to contest the legality of the garnishment. In a 7 to 1 opinion, the Court held that due process of law required a hearing before the wages might be garnished.

Although this opinion concerned 18 states, Massachusetts was not directly affected, for the Massachusetts statute on trustee process now requires notice and hearing. Given the general tone of the decision, however, and the fact that the Court had few kind words for garnishments since they impose great difficulties on the average wage earner who has a family to support, Massachusetts soon may be forced to review its garnishment law, which presently insulates only $80 of the weekly salary and $40 from pension payments from garnishment.

§15.9. Legislative investigations. In Jenkins v. McKeithen the Court considered the constitutionality of a Louisiana statute which established a Labor-Management Commission of Inquiry. The only purpose of this commission is to investigate violations, or possible violations, of state or federal criminal laws "arising out of or in connection with matters in the field of labor-management relations. . . ." In order to perform its mission, the commission has the power to employ investigators, compel testimony, and to require production of books, records and other evidence. Its findings are a matter of public record. If it finds probable cause to believe a crime has been committed, it is required to report it to the proper authority. However, although under the statute any witness required to attend is given notice and allowed counsel, no witness had the right to call individuals to testify, and his counsel did not have an absolute right to cross-examine any other witness. Petitioners sought both declaratory and injunctive relief before a three-judge court, alleging the unconstitutionality of the act and of certain actions taken by state officials in the administration of the act. The court granted the motion to dismiss.

The Supreme Court found that the due process clause of the Four-
October Amendment requires that the Commission of Inquiry allow witnesses the right of confrontation and cross-examination, and the right to call witnesses in their own behalf. The Court reasoned that, since the commission exercised a function similar to that of adjudicating criminal culpability and was limited to exploring only criminal matters, witnesses called before it should be accorded the full protection of the Fourteenth Amendment.

B. FIRST CIRCUIT COURT OF APPEALS DECISIONS

§15.10. Employee misconduct while engaged in protected activity. In Corriveau v. Routhier Cement Block, Inc. v. NLRB,1 the First Circuit Court of Appeals affirmed a portion of the board's order, which found that a statement of an employer to one of his employees ("You must know who went union")2 constituted, under the circumstances in which it was uttered, an implied interrogation of a coercive nature concerning union organizational activities, which was in violation of Section 8(a)(1) of the National Labor Relations Act. The court, however, refused to enforce another part of the board's order which would have required the employer to reinstate with back pay two discharged employees who were stipulated to have stated, at a union meeting off company premises and two days before the election, that they would discover any employee who did not vote for the union and "see him down the road."3 In spite of the fact that this pronouncement was not heard by all of the employees4 and that the president of the company learned of it only from his yard manager, who had heard it from two other employees, the company president fired the two employees the day before the election because of these alleged threats of violence against fellow employees.

The court rejected the board's argument that misconduct during a union meeting is analogous to misconduct on a picket line.5 Instead, the court stressed the violent nature of the threat "to see the person down the road" and concluded that no violation existed in the discharge of these employees since "[t]hreats of violence . . . are the very antithesis of protected activity."6

In support of its argument the court relied upon NLRB v. Ogle Protection Service, Inc.,7 wherein the Sixth Circuit Court of Appeals held that, where it did not appear that the primary motivation for discharge of an employee was related to the employee's participation in union activity, the employer's right to discharge is not restricted by the National Labor Relations Act. However, the Ogle court concluded

§15.10. 1 410 F.2d 347 (1st Cir. 1969).
2 Id. at 349.
3 Ibid.
4 Id. at 350.
6 410 F.2d at 351.
that, in fact, there was no union activity involved on the part of the dischargees, and therefore the board could not judge the criteria used by the employer in deciding to discharge its employees. This, of course, is not the case in *Corriveau*; there is no dispute as to the fact that the statements made by the dischargees were made in the course of a union organizational meeting. The right to organize is the very touchstone of the act and is deserving of the utmost protection the act can provide.  

In support of its argument that being engaged in protected activity is not a shield against employer retaliation for misconduct by employees, the court cited *Montgomery Ward & Co. v. NLRB.* There are, however, critical differences between the facts of *Montgomery Ward* and those of *Corriveau.* In *Montgomery Ward,* the misconduct involved was an employee’s use of invective against a customer who had crossed the picket line. This particular customer then complained to the employer. In *Corriveau,* however, the misconduct consisted of statements made to fellow employees at a union meeting off company property, thus pointing up the crucial distinction between the two cases. Furthermore, in *Montgomery Ward,* a stranger to both the protected activity and the employer relayed certain information to the employer based upon which it took certain action. In *Corriveau,* the employer discharged two employees based upon information that could only have come from other employees at the union meeting. Thus, whether inadvertently or purposefully, the employer in *Corriveau* created, at the very least, the impression of surveillance of union meetings, which, as the board stated, is well settled as being a violation of Section 8(a)(1) of the act.

The concept of protected activity is of such importance under the act that a balancing test must be utilized to determine if misconduct on the part of employees engaged in such activity justifies retaliatory measures on the part of the employer. As the board stated, “employees who participate in union meetings would be unduly jeopardized if any and all ‘misconduct’ were automatically to constitute grounds for employee discharge. . . .” The critical question is the gravity of the misconduct of the employees. It should be pointed out that in *Corriveau* this very same misconduct was reported to the yard manager approximately two weeks before the election. Although not reported to the company president, no evidence was presented of the incident’s having any disruptive effect on the company’s working force; nor did there appear evidence of any other misconduct other than that for which the employees were discharged. It is also significant that the statement

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\[8 \text{NLRB v. Burnup and Sims, Inc., 379 U.S. 21 (1964).} \]
\[9 \text{374 F.2d 606 (10th Cir. 1967).} \]
\[10 \text{68 L.R.R.M. at 1185.} \]
\[11 \text{See Stewart Hog Ring Co., 131 N.L.R.B. 810 (1961); Schott Metal Products Co., 128 N.L.R.B. 415 (1960).} \]
\[12 \text{68 L.R.R.M. at 1185.} \]
was made in general terms and addressed to all the employees collectively. It is submitted that the statement “to see someone down the road” is vague, and, when addressed to a group, need not necessarily mean that bodily harm would be the inevitable consequence of voting against the union in a secret ballot. The court states that the threat is clear because with only nine men voting “in such a small group . . . many people make their views commonly known. . . .” There is, however, no evidence that any of the employees expressed sentiments against the union. Further, it does not seem likely that if the discharged employees knew who was planning to vote against the union, they would have addressed their statement to the whole group.

If such “misconduct” is put in balance with the action taken by the employer one day before the election, in firing these two men (out of a total of nine employees), both of whom were obvious union sympathizers, the board’s order of reinstatement with back pay does not seem improper. As the District of Columbia Circuit Court of Appeals stated in approving a “balancing test” promulgated by the First Circuit Court of Appeals:

[T]o hold that employee “misconduct” automatically precludes compulsory reinstatement ignores two considerations which we think important. First the employer’s antecedent unfair labor practices may have been so blatant that they provoked employees to resort to unprotected action. Second, reinstatement is the only sanction which prevents an employer from benefiting from his unfair labor practices through discharges which may weaken or destroy a union.

It appears, therefore, that the “misconduct” of the discharged employees occurring, as it did, while they were engaged in protected activity, was not of sufficient gravity to warrant disciplinary discharge. As a consequence, these discharges were violative of Section 8(a)(1) and (3) of the act and the decision of the board to reinstate the employees with back pay was not without strong evidentiary support and should not have been disturbed.

§15.11. Wage increase prior to a representation election. In NLRB v. Gotham Industries, Inc., the court refused to enforce an order of the board which would have required the employer to cease and desist from implementing and/or promising certain wage increases while, at the same time, accusing the union of trying to prevent these wage increases by filing complaints of unfair labor practices. On November

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18 410 F.2d at 350.
14 Id. at 350 n.4.

§15.11. 1 406 F.2d 1306 (1st Cir. 1969).
21, 1963, the union lost a board-conducted election which, after objections were filed, was put aside to be rerun at a later-determined date. In January, 1964, the union filed unfair labor practice charges based upon activities on the part of the employer unrelated to the instant case. After both the trial examiner and the board had found these activities to be violative of the act, the First Circuit Court of Appeals enforced the board's order in May 1966.

Sometime during the posting period, which was to terminate on or about August 30, 1966, the plant superintendent met with some of the employees, at their request, to discuss the possibility of wage increases. The demands of the employees were relayed to the general manager, who, after investigation, told certain employees that a wage increase would be given in December. On September 14, 1966, at a meeting, and on September 22, 1966, through a notice, the rest of the employees were notified of this wage increase. On September 23, 1966, the regional director informed the employer that the rerun election would take place shortly. Based upon the promised wage increase, the union filed unfair labor practice charges which ultimately led to this decision by the court. The second election was never held.

In reaching its decision that the promise of the wage increase was not primarily motivated by an anti-union purpose, the court reasoned that "the situation [had not] sufficiently crystallized" when the employer promised wage increases in order to establish that the employer knew or should have known that the union was organizing or that an election was impending. In addition, the court concluded that there was no direct evidence that the employer knew the election was forthcoming at the termination of the posting period. The court based this conclusion on three premises: first, no one informed the employer that an election was still possible; second, employer's counsel informed him that another election was "remote"; and third, the employees, in seeking a wage increase, did not endeavor to have the union intercede on their behalf.

It should first be noted that the case before the court arose out of unfair labor practice charges rather than objections to conduct affecting the results of an election. This seems to be the most critical factor of the case. For, in order to establish improper motivation in an unfair labor charge there must be a showing "that an employer knows or has knowledge of facts reasonably indicating that a union

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3 Ibid. The charges alleged that during the campaign the employer enforced an illegal no-distribution rule.
4 406 F.2d at 1308.
5 Ibid.
6 The union later amended its charge to include allegations that certain statements made by agents of the employer violated §8(a)(1) of the act. Although the board found that these statements did indeed violate the act, the court refused to enforce this portion of the board's order. 406 F.2d at 1308-1309. For the purposes of this discussion, however, this aspect of the case will not be considered.
7 406 F.2d at 1310.
8 Ibid.
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is actively seeking to organize, or else that an election is . . . impend­
ing. 9 The requirement of "improper motivation" to substantiate an unfair labor practice is not a new one for this court, which has frequently stated that the burden is on the board to establish the improper motivation of the employer (outside of inherently destructive conduct) 10 and not simply allude to it. 11 This is particularly true in determining if a Section 8(a)(1) violation has been committed when the company alleges a proper business reason. 12 This approach is to be contrasted with the somewhat lesser standard applied to objections to conduct affecting the results of an election. In the latter situation, the board usually applies the test of whether the activity in question destroyed the "laboratory conditions" of the election. 13 If so, the election is set aside. Thus, in Gotham, since unfair labor practice charges were filed, the stricter standard was applied by the court, and correlatively the court continued to insist on substantial proof by the board as to the employer's improper motivation.

§15.12. Other litigation. In NLRB v. Simplex Time Recorder Co., 1 the court enforced a board order which, in part, required the employer to cease and desist from "creating an impression of surveillance." The trial examiner found the employer guilty of interfering with union organizing in violation of Section 8(a)(1) of the National Labor Relations Act. Concluding that the board was warranted in overruling all of the employer's exceptions, the court found only the breadth of the order deserving of consideration. The problem arose out of the court's previous decision in NLRB v. United Wire & Supply Corp., 2 which had refused to enforce a similar order, claiming that it was too broad in its application in that it proscribed the employer from creating the "impression" of surveillance. 8 In Simplex, however, the court found that the order was not as "nebulous" as it had appeared in United Wire. The court in United Wire had felt that the employer could not predetermine which activities would create an impression of surveillance and therefore the board's order could not have been enforced. 4 However, having satisfied itself that infractions of Section 8(a)(1) violations have been delineated with more particularity since United Wire, the court in Simplex concluded that creating an impression of surveillance "means willful conduct and a justifiable impression." 5 Based upon this definition, the court enforced the board's order in its entirety.

9 Ibid.
12 NLRB v. United Wire & Supply Corp., 512 F.2d 11 (1st Cir. 1962).

§15.12. 1 401 F.2d 547 (1st Cir. 1968).
2 512 F.2d 11 (1st Cir. 1962).
8 Id. at 13.
4 Ibid.
5 401 F.2d at 549.
In *T. O. Metcalf Co. v. NLRB*, the board had found that the company (Metcalf) had violated Sections 8(a)(1) and (5) of the act by refusing to bargain with Amalgamated Lithographers and Photoengravers' International Union, Local 3-L, AFL-CIO (Lithographers), and Section 8(a)(3) for discharging an employee for his failure to pay dues to International Printing Pressmen and Assistants' Union of North America, Locals 18 and 67, AFL-CIO (Pressmen). Both Metcalf and Pressmen sought review.

Williamson Offset Company (Williamson), located on the seventh floor of the same building in which Metcalf was located, had eight lithographic employees represented by Lithographers. Metcalf's three lithographic employees along with its other pressroom employees were represented by Pressmen, which had a union shop agreement. These two companies merged in 1962. Following the merger, Lithographers petitioned for an election at Metcalf, seeking to represent "[a]ll lithographic production employees formerly employed by Williamson. . . ." Although Metcalf and Pressman argued that all of Metcalf's lithographic employees should be an appropriate unit, the board refused to disturb the bargaining history established at Metcalf and found that a unit of those lithographic employees formerly employed by Williamson would be appropriate.

Following the election, in which the Williamson employees voted 8 to 0 to be represented by Lithographers, interchange between the former Williamson employees and Metcalf employees took place to the point where certain employees were permanently transferred from the eighth floor, where Metcalf was located, to the seventh floor. One of these employees refused to pay dues to Pressmen, claiming that he was now represented by Lithographers. Metcalf refused to bargain with Lithographers concerning any of the transferees and, at the insistence of Pressmen, discharged the employee who refused to pay his dues to Pressmen.

Upon review to the court, Metcalf and Pressmen argued that the board's determination of the appropriate unit should be defined to have included only those individuals employed by Williamson prior to merger. The court, while not unwilling to interpret the board's decision in such a manner, found that since all the parties seemed content to accept the board's decision in the representation case, as ambiguous as it might have been, they must now be satisfied with the board's later clarification, if reasonable, as found in the unfair labor practice decision. The court concluded that it was indeed reasonable and enforced the order.

The court's decision is somewhat baffling because it is well estab-
lished that a board's determination of appropriate unit may only be tested in the arena of unfair labor practice litigation. The court appears to be overly stringent in refusing Metcalf and Pressman this opportunity because they "neglected to ask [certain questions]" at the original representation hearing or in failing to consider the acknowledged ambiguity of the board's description of the unit because that issue was not previously raised.

Another order of the board was enforced in its entirety in NLRB v. Consolidated Constructors and Builders, Inc. The board had found that Clark and Sprague, two employees of Consolidated Constructors and Builders, Inc. (Consolidated), were past members of Local 621, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Carpenters). On June 27, 1966, they obtained clearance from the Carpenters to become charter members of Local 1219, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Millwrights), a new millwright local. Both employees were hired by Consolidated by August 8, 1966.

On August 15, 1966, Consolidated and Carpenters reached an agreement on a new contract. The board concluded that not only were both parties aware of the newly chartered local for millwrights but also that Carpenters was under instructions not to bargain for millwrights. Unlike the earlier contract, the newly negotiated contract contained no "millwright" wage rate and asserted no claim on behalf of Carpenters to trade autonomy over "millwright" work. Thus, the board concluded the contract with its union security clause excluded millwrights. Since Clark and Sprague were members of the millwright local and were performing only millwright work, Consolidated violated Sections 8(a)(1) and (3) of the act by discharging them because of their refusal to join the Carpenters' local. In addition, the board found Carpenters in violation of Sections 8(b)(1)(A) and (2) since Carpenters had insisted that the two employees become members of its union.

The court agreed that the new contract was in effect at the time of the discharge; that it was clear in not covering millwrights; and since the carpenters brought pressure on Consolidated to discharge the two millwrights, the board had not abused its discretion in ordering joint and several liability for the back pay due these men.

C. DISTRICT COURT FOR MASSACHUSETTS DECISIONS

§15.13. Individual's Right to bring Section 301(a) suit. In O'Sullivan v. Getty Oil Co., the court applied the reasoning of the Supreme

12 406 F.2d 1081 (1st Cir. 1969).
15 Ibid.
16 406 F.2d at 1084.

Court in *Vaca v. Sipes* and found that, where an employee unsuccessfully carried his grievance to the final step, and where the union, in an admittedly good-faith decision, refused to pursue the grievance to arbitration, the employee has no recourse to the courts in a Section 301(a) suit against the employer. Plaintiff was hospitalized from October 10, 1966, until January 3, 1967. During this period the defendant terminated its operations at the plant at which plaintiff was employed. Defendant set a deadline of October 31, 1966, for its employees to notify it whether they desired severance pay or to be transferred to another plant. On January 3, 1967, plaintiff notified defendant that he elected to terminate his employment with full severance pay. Defendant interpreted this action in two ways: First, that the plaintiff had terminated his employment as of October 31, 1966, in which case he would not have been entitled to all of the sick pay he received but rather to a lesser amount of severance pay, the result being that defendant owed him nothing; and, secondly, that plaintiff, as of January 3, 1967, had voluntarily relinquished his job at the new plant, where work was available, and, therefore, was not entitled to any severance pay.

The plaintiff filed a timely grievance and was unsuccessful to the point where the next step would have been a request for arbitration. At this point, the membership voted not to proceed to arbitration. The parties stipulated that "refusal [for the union] . . . was not a breach of its duty of fair representation nor was [it] . . . arbitrary, capricious or based upon ill will toward the plaintiff." The issue presented to the court was clear: Does a good-faith refusal by the union to go to binding arbitration deny an individual the opportunity to litigate his claim of contract violation against his employer in a Section 301(a) suit? After a thorough analysis of various decisions, the court decided that the individual was indeed precluded from suing under Section 301(a). The basis for the court's decision stemmed, in the main, from the decision in *Vaca* wherein the Supreme Court stated, "we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration. . . ." If the employee were given this right, the Court went on to say,

> . . . the settlement machinery provided by the contract would be substantially undermined, thus destroying the employer's confidence in the union's authority and returning the individual grievant to the vagaries of independent and unsystematic negotiation.

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2 386 U.S. 171 (1967).
3 296 F. Supp. at 274.
4 Ibid.
5 386 U.S. at 191.
6 Ibid.
However, the Court did recognize instances where individuals are allowed recourse to the courts to litigate contract infractions by the employer. For the most part, these fall within two categories: (1) where an attempt to utilize the grievance procedure would be futile;7 and (2) where the union arbitrarily discriminates or processes the employee’s grievance in bad faith.8 However, since neither of these instances was present, there is no doubt but that the plaintiff had to attempt to utilize the grievance procedure.

It is at this point where the reasoning in Vaca becomes meaningful. Once having utilized the grievance procedure, the union having treated the grievance in a good faith manner, it would destroy the very nature and intent of collective bargaining to allow this grievant to go outside the collective bargaining relationship. If he were allowed to seek redress in the courts, the contract agreed upon by his representative and his employer would be weakened considerably. In effect, the employer would be bargaining with an agent who could not promise that his principal would abide by the contract terms. The result would be the anomalous one that the union would be no agent at all, and, as the United States Supreme Court said, “... the contract would be substantially undermined....”9 It seems clear that the court in O’Sullivan reached the only proper conclusion.

§15.14. Other litigation. In Local 2, International Brotherhood of Telephone Workers v. International Brotherhood of Telephone Workers,1 the court was faced with the legality of an “assessment” levied by the defendant against the plaintiff. Originally, in 1964, defendant had imposed a general dues increase in the per capita tax paid by members of the plaintiff. The district court, in a case arising out of the levy, held that the dues increase was properly enacted.2 Its decision, however, was reversed by the First Circuit Court of Appeals which held that per capita taxes are “rates of dues” as defined by the applicable section of the Labor-Management Reporting and Disclosure Act of 1959,8 that the ballot conducted by the defendant did not conform to the referendum requirements of the statute,4 and that the per capita taxes could not be applied retroactively.5 On remand, the court ordered defendant to repay the per capita tax which was collected pursuant to the illegal retroactive clause of the general dues increase.


http://lawdigitalcommons.bc.edu/asml/vol1969/iss1/18
In June 1967, the defendant, at its convention, passed a "resolution and assessment" which required each local to pay a certain amount per member for the period September 1, 1964, through June 30, 1965. This was the same period of time of the illegal retroactive dues increase. The total amount due from the plaintiff equalled exactly the amount defendant was forced to pay back by order of the court.

On plaintiff's motion for summary judgment, the court held that the "assessment" was imposed as a patently transparent attempt by defendant to circumvent and frustrate the orders of the court of appeals and of this court and concluded that the assessment was only another attempt to obtain the per capita tax denied previously. Accordingly, it allowed the plaintiff's motion for summary judgment.

In Republican Co. v. Springfield Newspaper Employees Assn., the court denied an injunction seeking to restrain the defendant from conducting an arbitration under a collective bargaining contract. There was no dispute as to the fact that the plaintiff had paid two employees the maximum sick leave under the contract. In addition, it was also clear under the contract that any sick leave beyond the maximum "will be solely at the discretion of the Company." However, the contract provided that the company could not discriminate against an employee because of his membership in the union. Since the defendant contended that the denial of extended sick leave was based upon the employee's union membership, and since the contract defined a grievance as involving "either an interpretation or application of the terms of this Agreement or any matter relating to the violation of the terms of this Agreement," the court concluded that the denial of extended sick leave based upon union membership was an arbitrable issue. The opinion reaffirms the principle that doubts as to arbitrability of disputes should be resolved in favor of coverage by the arbitration clause.

D. MASSACHUSETTS SUPREME JUDICIAL COURT DECISION

§15.15. State jurisdiction after union election. In MacDonald v. Carr, the Court refused to exert jurisdiction in a case concerning challenges to a union election. Although the plaintiffs had unsuccessfully sought a preliminary injunction prior to the holding of the election and subsequent to the election had converted their petition to a bill for declaratory relief, the Court concluded that in light of the clear language of Title IV, Labor-Management Reporting and

6295 F. Supp. at 1180.
8Ibid.
9Id. at 400.

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Disclosure Act of 1959, Sections 402 and 403, there is exclusive jurisdiction of challenges to elections in the Secretary of Labor. The Court found to be particularly convincing the final sentence of Section 403, "The remedy provided by this title for challenging an election already held shall be exclusive." (Emphasis added.) The Court did point out that state courts do appear to have jurisdiction over election matters prior to the holding of elections but, in accordance with the language of Title IV and the interpretation afforded this language by the Supreme Court, only the secretary of labor may seek relief for irregularities pertaining to the election of union officers after that election has been held. The Court therefore concluded that, as the preliminary injunction had been denied, and as the plaintiffs had stipulated in their bill for declaratory relief that the election had been held, the superior court was without jurisdiction to deal with the subject matter of the suit.

E. MASSACHUSETTS LEGISLATION

§15.16. Employment security. As of October 5, 1969, the maximum weekly benefits for unemployment compensation were increased to $62 a week while, at the same time, benefits were limited to 50 percent of the claimant's average weekly wage in the base period. As of October 4, 1970, the maximum weekly benefits will be equal to 52½ percent of the average weekly wage of all eligible employees. In addition, a limit of 50 percent of the individual's weekly benefit rate was established for dependency benefits. Eligibility requirements were somewhat narrowed, however, in that the "good cause" for an employee leaving his employment must now be "attributable to the employing unit or its agent." It would appear that this enactment effectively nullifies the decision in Raytheon Co. v. Director of Division of Employment Security, wherein the Supreme Judicial Court ruled that the "good cause" for the termination of the employment relationship need not be attributable to either the employer or employee.

§15.17. Minimum wage. In the minimum wage area, the law was amended so that the minimum wage ($1.60 per hour) now applies to retail, merchandising and laundry establishments for learners and apprentices after their first eighty hours of employment. In addition,
the law also provides that service persons who regularly and customarily receive more than $20 per month in gratuities must receive a minimum wage of 96 cents per hour; an employee may appeal if proof is shown that the amount of tips received is less than $20 per month.\(^2\) Employees in charitable homes for the aged were exempted from the minimum overtime pay requirements.\(^3\)

§15.18. General labor laws. Buildings under construction and under supervision of the department of public health are exempted from the requirements of being properly lighted, ventilated, sanitary and heated from October 15 to May 15.\(^1\) Any lockout, or threat of a lockout, by any health care facility or any charitable home for the aged and, concomitantly, any inducement, encouragement, or actual strike, work stoppage, slowdown, or withholding of goods or services by any nurse or nonprofessional employee at these facilities was decreed to be an unfair labor practice.\(^2\) The applicability of the grievance and disputes sections of the Massachusetts Labor Relations Law was extended to health care facilities and charitable homes for the aged.\(^3\)

The General Court authorized the City of Boston and the County of Suffolk to make payroll deductions for those employees represented by recognized or designated exclusive bargaining agents as an agency service fee commensurate with the cost of bargaining, after the contract has been ratified by a majority of the employees.\(^4\) The City of Boston subsequently adopted this provision. The General Court also extended a provision for payroll deductions for union dues to any association or union of state, county or municipal employees when certified or recognized voluntarily.\(^5\)

The "professional strikebreaker" law was amended by establishing a fine of $500 against any person employing a person

... who regularly and habitually earns a major portion of his livelihood by entering into employment where a lockout or strike exists to take the place of an employee whose work has ceased as a direct consequence of such lockout or strike.\(^6\)

In addition, any person who engages in activities obstructing or interfering with peaceful picketing or any right granted by state or federal labor relations law is subject to the same fine.

Several minor miscellaneous measures were also enacted. Among these were statutes: authorizing the employment of certain females

\(^3\) Acts of 1969, c. 108, amending G.L., c. 151, §1A.

\(^6\) Acts of 1969, c. 448, §1, amending G.L., c. 149.
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at five o'clock in the morning in bakeries;\(^7\) providing that municipal collective bargaining agreements shall supersede regulations made by a chief of police;\(^8\) allowing police officers, outside of state police, to form or join labor organizations;\(^9\) allowing children under 16 years of age to work as golf caddies during daylight hours;\(^10\) authorizing the commissioner of labor and industries again to suspend for two years the operation of the state labor laws for women and minors;\(^11\) prohibiting the unlawful discrimination in employment by refusing to hire or retain those persons who refuse to furnish information regarding arrests or convictions for a misdemeanor occurring more than ten years prior to such refusal.\(^12\)

§15.19. Bills not passed. Among the major labor-related bills defeated by the General Court were measures allowing unemployment compensation benefits to persons out of work as a result of a lockout; cash sickness compensation; elimination of many of the exemptions from the state overtime law; cost of living adjustments for workmen's compensation; coverage of nonprofit institutions under unemployment compensation; priority hearing and penalties for late payments of workmen's compensation benefits; increased benefits for aggravated injuries under workmen's compensation; elimination of workmen's compensation from the base period in unemployment compensation; and a measure establishing a state fund for workmen's compensation.

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\(^8\) Acts of 1969, c. 341, amending G.L., c. 149, §178I.
\(^9\) Acts of 1969, c. 171, amending G.L., c. 149, §178D.