Chapter 19: Labor Relations Law

Lawrence M. Kearns
§19.1. Introduction. During the 1970 Survey year, there were but few important developments in the field of labor law within the scope of this chapter as delineated in the past.\(^1\) Discussion herein is directed to three decisions of the United States Supreme Court,\(^2\) seven decisions of the United States Court of Appeals for the First Circuit,\(^3\) two decisions of the United States District Court for the District of Massachusetts,\(^4\) ten decisions of the Supreme Judicial Court of Massachusetts,\(^5\)

\(^1\) In past Surveys, this chapter has considered developments in labor law as embodied in legislative enactments of the Massachusetts General Court, decisions of the Supreme Judicial Court of Massachusetts, the Supreme Court of the United States, the United States Court of Appeals for the First Circuit, and the Federal District Court of Massachusetts. See 1969 Ann. Surv. Mass. Law §15.1; 1968 Ann. Surv. Mass. Law §13.1.


and various legislative developments in the Commonwealth arising during the 1970 Survey year.6

A. UNITED STATES SUPREME COURT DECISIONS

§19.2. Enjoining strikes in breach of contract. By far the most significant and most discussed development in labor law in the 1970 Survey year was the case of Boys Markets, Inc. v. Retail Clerks Local 770,1 in which it was held that despite the anti-injunction provisions of the Norris-LaGuardia Act,2 a federal district court may enjoin a strike which is in violation of the no-strike clause of a collective bargaining agreement where the dispute involved is subject to arbitration under the agreement. The dispute arose when a supervisor and other non-bargaining unit personnel began to rearrange food in the frozen food cases at one of the company's markets. A union representative insisted that the food cases be stripped of all merchandise and be restocked by bargaining unit personnel. When the company did not accede to the union's demand, a strike was called and the union began to picket the store. The collective bargaining agreement covering the unit involved contained both a no-strike clause and a provision for arbitration of all controversies concerning the interpretation or application of the agreement.

The Court, in an opinion by Justice Brennan,3 expressly overruled Sinclair Refining Co. v. Atkinson,4 decided in 1962. The Court reviewed the collision between two federal labor law practices, namely, (1) the anti-injunction provisions of the Norris LaGuardia Act and (2) the promotion of arbitration as a means of settling labor disputes. The Court decided that to accommodate and harmonize the two policies it was necessary that the former yield to the latter where the strike and picketing in issue, although peaceful, violated the no-strike provisions of a contract and the basic dispute itself was arbitrable under the contract. To obtain injunctive relief, the employer is not first required to go to arbitration, although entitled to do so under the collective bargaining agreement; an employer is so required when seeking damages under Section 301 of the Labor-Management Relations Act.5 Though a number of unanswered questions remain in the

6 The author wishes to call attention to an error in the Labor Relations Law chapter in the 1968 Annual Survey, so that a correction may be made. In the last sentence of §13.9 at 379, the word not was intended to be now. As thus corrected, the sentence would read: "The statutory amendment will now bring nonprofessional employees of both types of institutions, educational and charitable, within the ambit of the labor relations laws of the Commonwealth."

wake of Boys Markets, the decision is of particular importance in
Massachusetts since it is so difficult to obtain injunctive relief in any
labor dispute in the state courts.

§19.3. **NLRB without power to impose contract terms.** In *H. K.
Porter Co. v. NLRB*,¹ the employer was found by the board to have
failed to bargain collectively in good faith with respect to a union
proposal for the checkoff of union dues. The board's finding was
that the company's refusal of the clause was motivated solely by a
desire to frustrate any agreement. The board ordered the employer
to include in the collective bargaining agreement the union dues
checkoff clause which the union had requested and which the em-
ployer had refused to grant. This was the first time since the board
came into existence in 1935 that it had attempted to impose a particu-
lar contract provision upon any party. The Supreme Court held that
the board's order was invalid since it had no power to compel a
company or a union to agree to any particular contract term. Justice
Black wrote the majority opinion; Justices Douglas and Stewart dis-
sented.

Section 8(d) of the National Labor Relations Act,² which defines
the obligation to bargain collectively, includes the language that such
obligation "does not compel either party to agree to a proposal or re-
quire the making of a concession."³ The Court held that the board's
remedial powers were limited by the same considerations and that "[I]t
is implicit in the entire structure of the Act that the Board acts to
oversee and referee the process of collective bargaining, leaving the
results of the contest to the bargaining strengths of the parties."⁴

§19.4. **Federal pre-emption doctrine: Possible re-examination.**
After a decade of strengthening and expanding the doctrine of federal
pre-emption in labor cases, first enunciated in the 1949 case of *San
Diego Building Trades Council v. Garmon*,¹ there comes the first in-

---

² Prof. Theodore J. St. Antoine of Michigan Law School raised a number of
such questions in his paper presented to the Labor Relations Law Section of the
ABA at St. Louis on Aug. 10, 1970.

What result if the no-strike clause is broader than the arbitration clause and
the union strikes over a nonarbitrable issue? What result if the court enjoins a
strike on the grounds the underlying dispute is arbitrable, and an arbitrator
subsequently rules the strike is not arbitrable; may the union then have the
injunction dissolved? What result if a wildcat strike (one not authorized by a
union) is involved, and the strikers as individuals have no right to invoke the
contractual grievance and arbitration procedure?

⁷ The convening of a three-judge court is required (G.L., c. 212, §30), and the
procedural burden of the state anti-injunction act is considerable (G.L., c. 149,
§20C; c. 214, §§1, 9, 9A; c. 220, §§13A, 13B).

---

³ Ibid.

---

dication that this doctrine may be re-examined. The federal pre-emption doctrine is to the effect that if the particular labor activity is "arguably protected" or "arguably prohibited" by the National Labor Relations Act, neither state nor federal courts may act in respect to it; the NLRB thus has exclusive jurisdiction if any remedy exists. In a dictum in a concurring opinion in a 1970 decision, Justice White suggested that, in some circumstances, only labor activity determined to be actually protected under federal law should be immune from state judicial control.

B. FIRST CIRCUIT COURT OF APPEALS DECISIONS

§19.5. NLRB procedural rulings. The United States Court of Appeals for the First Circuit had occasion to pass upon a number of important procedural points in respect to the NLRB's administration of the National Labor Relations Act. In NLRB v. Magnesium Casting Co.,¹ the court held that the board was not required to make its own findings of fact as to matters covered in a regional director's decision in a representation proceeding where such proceeding becomes part of a Section 8(a)(5) unfair labor practice (refusal-to-bargain complaint) case. The court thus declined to follow the Second Circuit² and the Fourth Circuit on this point.³

In another case, NLRB v. C. H. Sprague & Son Co.,⁴ the First Circuit Court of Appeals upheld the action of a trial examiner in refusing to permit the employer's counsel to cross-examine witnesses with reference to any matter which could have been produced by complying with the subpoena previously served upon the employer. This subpoena had been issued at the request of the general counsel and called for the production of a number of company documents and records. The employer's motion to revoke was denied, and the company still failed to produce the material. The court agreed with the board that the provisions of Section 11(2) of the act for enforcement of a subpoena in the federal district court were not exclusive; and where the employer was not contending that the information sought by the subpoena was irrelevant and it offered no justification for failure to

---

³ Justice White, in his concurring opinion, joined by Chief Justice Burger and Justice Stewart, stated: "So long as employers are effectively denied determinations by the NLRB as to whether 'arguably protected' picketing is actually protected except when an employer is willing to threaten or use force to deal with picketing, I would hold that only labor activity determined to be actually, rather than arguably, protected under federal law should be immune from state judicial control." Id. at 202.

---

http://lawdigitalcommons.bc.edu/asml/vol1970/iss1/22
comply with that part of the subpoena with which it had no objection, the employer's intransigence justified the ruling of the trial examiner denying cross-examination in the interest of maintaining the integrity of the hearing process. The court did indicate that its view might be different if the company were taking a position that all the information sought by the subpoena was irrelevant.

In *NLRB v. Maine Sugar Industries, Inc.*, the First Circuit Court of Appeals held that the trial examiner, in a Section 8(a)(5) proceeding involving questions as to the underlying representation proceeding, committed error in refusing to admit evidence which came into existence after the election in the representation case but prior to the hearing in the Section 8(a)(5) case. This evidence concerned the high proportion (80 percent) of seasonal employees working in one year who were recalled and worked the following year. The court held such evidence relevant to the issue of the employees' inclusion in the bargaining unit. In *NLRB v. Agawam Food Mart, Inc.*, the case involved the claim of discriminatory discharge of a known union adherent during a period of organizational activities because of his deliberate falsification of his time card. The trial examiner had ruled in the company's favor but the board, in a 2 to 1 panel discussion, reversed. The court reversed the board, disagreeing with the board's view that the infraction was minor and stating that "when an employee is guilty of demonstrated misconduct the Board's burden of proof to show that discipline was meted out for an improper reason, ... if sought to be satisfied by inference only, must be by a highly convincing one." *NLRB v. Athbro Precision Engineering Corp.* involved a number of unusual and complex procedural points, but the most important aspect in the case was the court of appeals' adoption of a rule that the court's order of enforcement of a board's order will become effective in 21 days, even if the party affected seeks certiorari, where the issues are "sufficiently insubstantial to indicate no reasonable likelihood" that certiorari would be granted, unless within that time the Circuit Justice grants a stay.

5 425 F.2d 942 (1st Cir. 1970).
6 The court indicated doubt as to the board's ruling excluding seasonals, noted the board's decisions going both ways on the issue which appeared to follow the requests of the union involved, and found an incomplete articulation of the board's reasoning. The court also held that the board erred in not finding a union letter, which attempted to pass off another union's negotiated benefits as its own, to constitute a valid objection to the election.
7 424 F.2d 1045 (1st Cir. 1970).
8 Id. at 1047.
9 423 F.2d 573 (1st Cir. 1970).
10 Id. at 576. The First Circuit added $500 for expenses in addition to regular costs in *NLRB v. Smith & Wesson*, 424 F.2d 1072, 1073 (1st Cir. 1970), where the employer's contention that a finding of discriminatory discharge was not supported.
§19.6. Union's duty of fair representation. A case of particular interest, Figueroa de Arroyo v. Sindicato de Trabajadores Packinghouse, AFL-CIO, gave rise to an application of the principle that a union has a duty of fair representation. In Figueroa de Arroyo, the court of appeals held that the union's arbitrary and perfunctory handling of a grievance (claiming the right to be retained on the basis of seniority where there was a reduction of forces) was a breach of the union's duty of fair representation, preventing an exhaustion of contractual remedies and enabling the six employees to maintain their suit against the company and the union. Although there was no "subjective bad faith, hostility, discrimination, or dishonesty" on the union's part, the union had not investigated or made a judgment concerning the grievances. It also appeared that the union erroneously thought that a pending NLRB proceeding on another issue would protect their rights. However, because the court concluded, in an extensive and well-reasoned opinion by Judge Coffin, that the plaintiff's action against the union was properly characterized as a tort action, it was barred by the one-year statute of limitations for tort actions arising in Puerto Rico. The case also involved a number of issues in respect to the amount of damages against the employer in the LMRA Section 301 action for breach of the collective bargaining agreement.

§19.7. Maintenance of union membership clause: Employee's resignation from union. In an interesting and somewhat unusual case, the court of appeals upheld the NLRB's finding that a union had committed an unfair labor practice in seeking to have an employee discharged under a maintenance of membership clause of a

by the evidence was frivolous and "some penalty should attach to taking up our time with such a meritless contention."

Another case in which a procedural ruling was involved was NLRB v. Dennison Mfg. Co., 419 F.2d 1080 (1st Cir. 1969). The court held that the board erred in holding that the allegation of a Section 8(a)(2) complaint was sufficiently broad to include a claim of domination although not specifically stated; however, since the board had directed a second hearing on the issue of domination, the court construed the board's action as amounting to an amendment to the complaint sua sponte.

§19.6. 1 425 F.2d 281 (1st Cir. 1970).


3 The court commented that "Congress would be well advised to enact a federal statute of limitations to deal with both kinds of claims asserted here" (viz., the union's breach of is duty of fair representation, and the company's breach of the collective bargaining agreement). 425 F.2d 281, 287 (1st Cir. 1970). The court also suggested some possible remedies if an employee and the union should seek to circumvent arbitration in order to have a jury trial of a Section 301 suit.

4 The court held that damages here properly included lost earnings but not prejudgment interest, attorneys' fees, or mental damages under the circumstances presented in the case. 425 F.2d 281, 289-293 (1st Cir. 1970).

§19.7. 1 NLRB v. Mechanical & Allied Production Workers Local 444, 427 F.2d 883 (1st Cir. 1970).
collective bargaining agreement where the employee resigned from the union during the period between the expiration of the old agreement and the reaching of a settlement for a new agreement. The court did not have to resolve the question of whether a resignation prior to a contractual escape period might be sufficient or whether the resignation would have to be within the precise limits of the escape period. The court indicated the likelihood that it would adopt the former approach.2

C. DISTRICT COURT FOR MASSACHUSETTS DECISIONS

§19.8. Suit to recover penalty for pension plan: Administrative failure to furnish information. In a case1 arising under the Welfare and Pension Plan Disclosure Act,2 an employee covered by a pension plan unsuccessfully sought to recover the $50-a-day penalty (assessable in the court's discretion) for failure of the pension plan administrator to furnish her, upon written request, with a description of the plan and an adequate summary of the annual report. The district court ruled that the employee's letter, allegedly constituting the "written request," was not a proper demand under the statute since it sought "considerable information above and beyond" that required to be furnished by the statute.3

§19.9. Remand of arbitration case for new findings. In New England Telephone & Telegraph Co. v. International Bhd. of Telephone Workers,4 involving judicial review of a labor arbitration award, the court remanded the case to the arbitration board for more definite findings. The court held that it is "the duty of the Board of Arbitration to make findings that support its decision and that are intelligible and complete." Here, the arbitration opinion was found to be "so vague and indefinite as to make it impossible for the Court to carry out its task of reviewing the award. It is in many instances impossible to distinguish between findings of fact and recitals and discussion of the evidence."

Unless the submission agreement, or the collective bargaining agreement under which the arbitration case arises, so requires, the arbi-

2 In a note to the decision, the court observed: "Had there been such a provision [contractual obligation imposing limitations on resignation] the union might well be required to show that it was injured by the prematurity of the resignation. Where the resignation was unmistakably adequate apart from this, it seems perilously close to impermissible technicality to say that a premature resignation does not become effective when the proper time comes." Id. at 885 n.5.


trator is not required to make any findings of fact or to write an opinion in support of his award; his obligation is only to answer the question submitted to him. However, it is general practice for arbitrators to write an opinion in support of the award, and this is widely regarded as desirable. The court’s action in *New England Telephone* is understandable. If the arbitrator does write an opinion, it should be sufficiently intelligible to support the award. There could be a problem by reason of the rule that once an arbitrator has rendered his award, he has no further jurisdiction to act, unless the situation is regarded as being analogous to correcting obvious errors such as numerical calculations. The court’s action could well reflect a growing concern that the judicial decree enforcing an arbitration award should not be merely a rubber stamp that permits avoidance of a review on the merits.

**D. MASSACHUSETTS SUPREME JUDICIAL COURT DECISIONS**

§19.10. Surveillance of employees: Monitoring devices. By order adopted June 1, 1970, the Massachusetts House of Representatives requested the opinion of the Justices of the Supreme Judicial Court on the following question:

> Is it constitutionally competent for the General Court to prohibit, through the enactment of House No. 5719, an employer from operating a closed circuit television system or any other monitoring device in a manufacturing establishment or factory for the purpose of conducting any time and/or motion study of any employee or employees without the express written consent of the employee or employees, and unless the employee or employees have first been notified that such system or device is in operation therein?

The Justices answered no. In the Justices’ view, “it would be difficult, if not impossible, to say just what forms of observation of employees would be prohibited by the proposed bill” and, therefore, it was too vague to meet the requirements of due process. The Court remarked that the current bill was not sufficiently different from one which had been considered a year earlier, and that it failed to meet constitutional standards because it “sweeps too broadly.”

Justice Spiegel, in a separate opinion, expressed a contrary view:

> ... In my view the proposed legislation adequately describes the types of activities which are prohibited.

2 Id. at 1155, 260 N.E.2d at 742.
It is rare for a bill to be enacted by either Congress or a State Legislature that could not be drafted with greater precision. . . .

. . . I think the language describing the types of instruments and activities prohibited by the proposed bill "conveys to any interested person a sufficiently accurate concept of what is forbidden." [Citation omitted.] I would "adopt that reasonable interpretation of . . . [the] statute which removes it farthest from possible constitutional infirmity."5

It should be noted that the opinion of the other six Justices included the following significant sentence:

Although we have rested our opinion on the ground that the proposed bill is void for vagueness, we are not to be understood as suggesting that the bill is one which the Legislature could lawfully enact under the due process clause because it is open to the objections that it unduly restricts the right of a manufacturer to observe the work performed by his employees and improperly makes the right to such observation contingent upon the prior consent of the employees.6

§19.11. Discharge of public employee: Mitigation rule applies to back pay. As pointed out in Police Commissioner of Boston v. Ciccolo,1 there are now three procedures whereby a public employee who claims to have been wrongfully discharged may seek to be reinstated and recover back salary.2 Ciccolo clarifies the point that, under all three procedures, despite some differences in language, the rule of mitigation of damages applies; thus, the amount earned by the employee between the date of discharge and the date of reinstatement is deductible from the amount of wages lost.

§19.12. Labor Relations Commission: Procedure to determine jurisdiction. In deciding that under the various statutes as they then stood,1 the legislature had not placed the Massachusetts Bay Transit Authority under the jurisdiction of the State Labor Relations Commission, the Supreme Judicial Court reaffirmed the procedural point that a writ of prohibition is an appropriate method of preventing a quasi-judicial body from exercising a jurisdiction which it does not possess, and of determining whether jurisdiction exists.2

5 Id. at 1157, 260 N.E.2d at 743, citing and quoting from Kovacs v. [Judge] Cooper, 336 U.S. 77, 79 (1949).
6 Id. at 1156, 260 N.E.2d at 743.

2 The three procedures are: (1) administrative and judicial review of the initial decision to discharge; (2) writ of mandamus; (3) order of the Civil Service Commission. Id. at —, 254 N.E.2d at 432. See G.L., c. 31, §§43, 45, 46A; c. 249, §5.

§19.12. 1 G.L., c. 16A, §§2, 19; c. 150A, §2(2); c. 149, §§178F, 178G.
§19.13. **Employment security law: Payment in lieu of dismissal notice.** Under the employment security law, an employee receiving money from his employer on termination of employment “as payment in lieu of dismissal notice” is disqualified from receiving unemployment benefits for the period covered; if the money was “severance pay,” he is not so disqualified. The board of review in the Division of Employment Security held that three months’ pay received by a particular employee was “severance pay,” although the employer’s confidential personnel manual called it “remuneration in lieu of notice.” The board’s decision was upheld. The Court noted, among other things, that the amounts paid to terminated employees were directly related to their years of service and that the company’s same personnel manual stated that two weeks’ notice was expected from employees voluntarily resigning.

§19.14. **Employment contract: Agreement not to compete.** In two cases, provisions in employment contracts not to compete were not enforced. In the case of a radio “talk show” announcer (Jerry Williams), a five-year commitment not to engage in any employment in radio, television, or advertising was held excessive and unenforceable. The individual had been in Chicago for three years before returning to Boston, where he began working for local radio station WBZ, and the restrictive covenant beyond that time was held to be no longer reasonably necessary for the protection of the plaintiff’s (WMEX) business.

In the second case, the employee was an insurance agent who had agreed not to engage “directly or indirectly” for two years after termination of employment “in the writing of life insurance.” Within that period he took a position for another insurance company, training new agents to write life insurance. The Supreme Judicial Court held that this did not constitute the indirect writing of life insurance, being more akin to teaching than to selling. The Court remarked that “doubts concerning meaning are to be resolved against” the employer.

§19.15. **Arbitration: Use of discovery procedures.** In a case of first impression in Massachusetts, the Supreme Judicial Court held

---

§19.13. 1 G.L., c. 151A.

3 Id. at 864, 259 N.E.2d at 189. For another case in which an employment contract was involved, but in which the principal issue was whether a termination of employment was for substantial and material cause under the contract, see Chelsea Industries, Inc. v. Florence, 1970 Mass. Adv. Sh. 1159, 260 N.E.2d 792.

that discovery ostensibly in aid of a New York arbitration proceeding may not properly be ordered. Although the case was not a labor arbitration case, there is no reason to believe the Court would rule otherwise in such a case. Furthermore, the Court’s language was sufficiently broad to indicate the result would be the same if the arbitration proceeding itself were in Massachusetts.

§19.16. Massachusetts Commission Against Discrimination: Employer not required to answer questions in commission’s “Investigative Guide — Employment.” After an individual filed charges that his employer had discriminated against him in allocating vacation credits because of his color, the MCAD ordered the employer to answer all questions enumerated in its “Investigative Guide — Employment,” a memorandum attached to the subpoena. Included were questions as to the numbers of “Negroes, Jews, Italians, Greeks, Liths and Poles” employed, and the specific categories in which they were employed. Upon a proceeding in Superior Court to enforce the commission’s subpoena, the judge found that the information sought did not in any way relate to the case before him and dismissed the commission’s bill. In a rescript opinion, the Supreme Judicial Court affirmed with a pungent comment.

§19.17. Massachusetts Commission Against Discrimination: Damages may include an amount for mental suffering. In a proceeding involving an alleged refusal to rent an apartment because of race or color, the commission included as part of the damages $250 for mental suffering resulting from “considerable frustration, anger, and humiliation.” The award was upheld by the Supreme Judicial Court; and from the cases cited, the dictum is plain that appropriate causes for

2 See G.L., c. 251 (Uniform Arbitration Act for Commercial Disputes) and G.L., c. 150C (Collective Bargaining Agreements to Arbitrate). The Cavanaugh case involved an arbitration by a security salesman against a member of the New York Stock Exchange under the rules of the exchange.

3 Chief Justice Wilkins, speaking for the Court, stated: “Our conclusion is that discovery purportedly in aid of arbitration proceedings would not in reality aid, but would tend to handicap, those proceedings. We also feel that arbitration, once undertaken, should continue freely without being subjected to a judicial restraint which would tend to render the proceedings neither one thing nor the other, but transform them into a hybrid, part judicial and part arbitral. We also might add that it seems somewhat incongruous to resort to judicial help for pre-hearing discovery after a voluntary understanding had left the entire matter to the determination of arbitrators.” 1970 Mass. Adv. Sh. 717, 721, 258 N.E.2d 561, 564.


2 “The judge was right. A reading of the ‘reasoning’ in the commission’s brief demonstrates how right he was.” Id. at 1103, 260 N.E.2d at 160.


2 Significantly, the Court cited, inter alia, Lombard v. Lennox, 155 Mass. 70, 71, 28 N.E. 1125 (1891), which involved a discharge from employment.
such damages could include discharge and other forms of discrimination in employment.

§19.18. Public sector bargaining: Review of unit determination by Labor Relations Commission. During the 1970 survey year, the Supreme Judicial Court had occasion to apply to a municipal employer the rule long-established as to private employers under the National Labor Relations Act and the Massachusetts Labor and Industries Act. The rule is that the administrative agency's determination of a unit issue in a representation proceeding is not directly reviewable in the courts; it is only collaterally reviewable in a subsequent unfair labor practice proceeding where the unit determination is also in issue.

E. Massachusetts Legislation

§19.19. Opinion of the Attorney General on women's protective labor laws. The most significant development in Massachusetts statutory labor law during the 1970 survey year was not a legislative enactment at all; rather, it was a far-reaching Opinion of the Attorney General to the effect that many of the Massachusetts protective labor statutes relating to employment of women were nullified by the federal laws prohibiting discrimination on account of sex. Some of these laws protecting women in employment dated from a century ago. Although Massachusetts has added discrimination on account of sex to the state discrimination law, the Attorney General does not

2 G.L., c. 149.

§19.19. 1 Op. Atty. Gen. (Sept. 30, 1970). Those statutes declared invalid as to employers covered by Title VII of the Civil Rights Act of 1964 are: G.L., c. 149, §53A (prohibiting females from lifting or carrying objects weighing over 40 pounds); G.L., c. 149, §§56-58 (maximum hours of 9 per day and 48 per week for women, as well as restrictions on maximum hours on split shifts); G.L., c. 149, §59 (restricting women's employment after midnight and prior to 6 A.M.). Those statutes held to be still valid are: G.L., c. 149, §§99-102 (30-minute meal period for women); G.L., c. 149, §55 (work exclusion for four weeks before and after childbirth); G.L., c. 149, §53 (pulleys or casters required if women move receptacles weighing, with contents, 75 pounds or more); G.L., c. 149, §103 (seats for women); G.L., c. 149, §54 (authorizing departmental regulations under which lifting core without mechanical aid is regulated).
2 For example, the 1874 statute provided that women could not work in a factory for more than 60 hours a week. See Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383 (1876).
3 The Massachusetts antidiscrimination statute was amended in 1965 to preclude discrimination on account of sex. G.L., c. 151B, §4. In making this amendment, the legislature specifically provided that "nothing contained in this Chapter shall be deemed to repeal" any provision of Chapter 149 which "establishes standards,
rule that the protective statutes are nullified as to employers who do not come under the federal discrimination act. This includes only those employers who employ less than 25 employees.

§19.20. Other legislation. The legislature increased the number of Monday holidays; increased the penalties for violating certain labor statutes; removed, with certain conditions, the longtime exclusion of domestic service from various state labor laws; passed several acts relating to farm laborers; made special provisions as to office clerical employees working on certain holidays; and passed a number of statutes in the area of collective bargaining by municipalities.

terms or conditions of employment which are applicable to females. . . ." G.L., c. 151, §9. The federal statute included no such saving clause.

6 Acts of 1970, c. 463, §2, amending G.L., c. 180, (municipalities permitted to deduct "service fees" from employees who are nonmembers; the so-called agency shop); Acts of 1970, c. 445, amending G.L., c. 149, §178K (if municipal employers and unions use private arbitration tribunals, the cost will be equally divided); Acts of 1970, c. 340, amending G.L., c. 149, §178I (fire chief added to police chief in statute which states that collective bargaining agreement provisions will prevail if in conflict with any regulation made by either chief).