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LABOR LAW

PROF. DE JARMON

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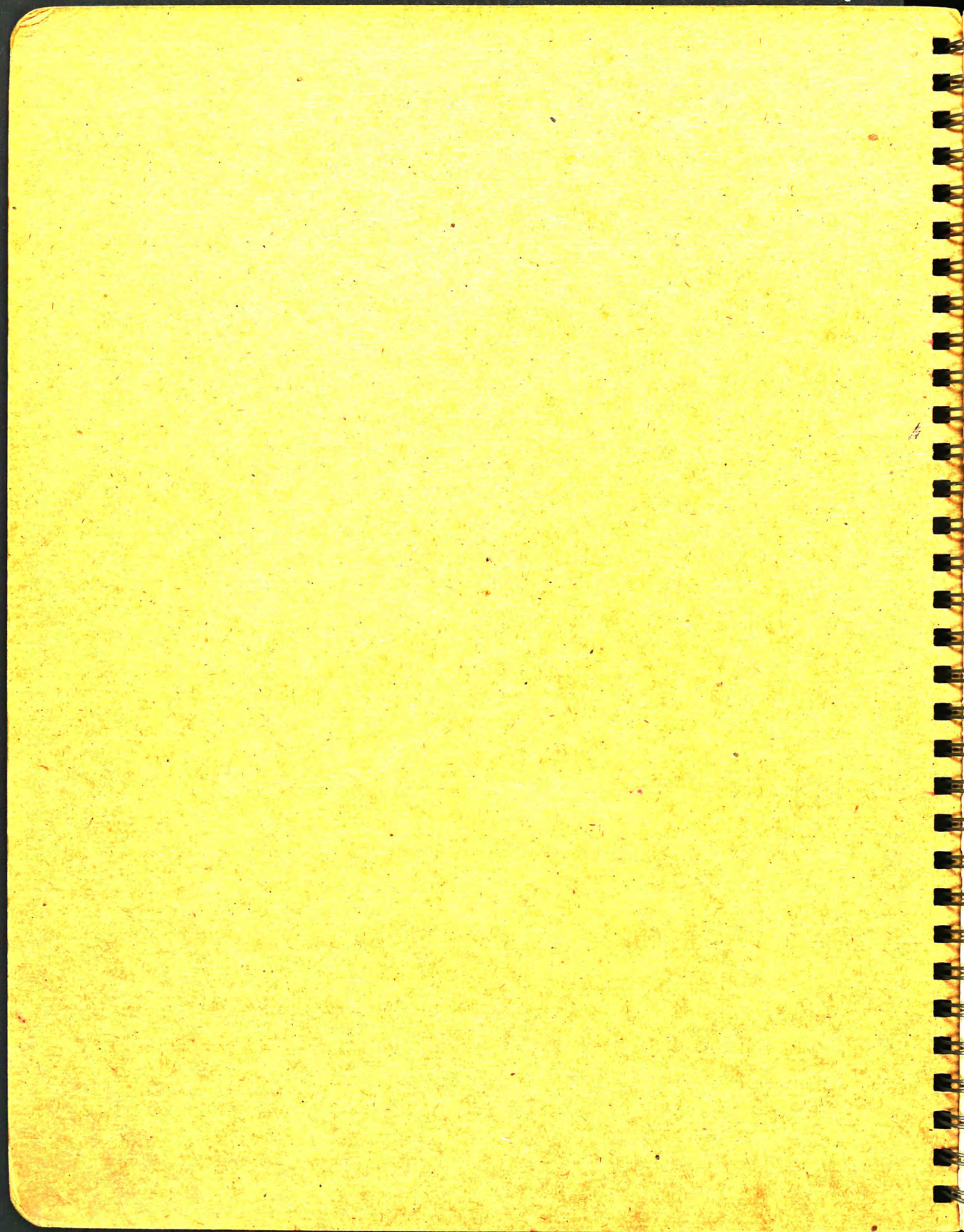
No. 4375-SW
College Ruled and Margin Line

75 Sheets

Name MAYNARD HOLBROOK JACKSON, JR.

Course

The Canteen
NORTH CAROLINA COLLEGE
DURHAM, NORTH CAROLINA



5 Feb. 63

MR. DEJARMON

COX & BOK, CASES ON LABOR LAW

L.L. has mushroomed since 1935 when the idea of collective bargaining was accepted. ¶ The Black Death of England gave rise to the Statute of Laborers in 1399 in England. This statute made it ~~[illegible]~~ illegal for a laborer to refuse work, leave one job for another, or to act in combination to seek an increase in wages (called "a gratuity beyond the going rate"). Since wage increases were thought to be something for nothing and were associated w/ extortion, enforcement was sought thru the Criminal Law. Two English C.L. labor concepts affected American law:

(1.) Idea of Extortion.

(2.) Doctrine of Criminal Conspiracy — the most recent expression of this in American law is the Lea Bill (1937) (called the Anti-Petrillo Act). Julius Caesar Petrillo, Pres. of the International Musicians Union, foresaw the rise of the jukebox as the end of work for his musicians. So, Petrillo included in all union Ks that any jukebox music used would require that the users hire just as many musicians as are on the jukebox. The Lea Act said this was extortion and had no "lawful purpose." The lawful purpose concept was introduced by Holmes, J., as an exception to the criminal conspiracy doctrine; and the Lea Act treated "lawful purpose" as an exception, but the Act said that "feeding musicians was not a lawful purpose."

Lawful Purpose Doctrine

Rise of Labor Organizations

Noble Order of the Knights of Labor - organized native Americans.
The Molly Maguires - organized the immigrants.

These two main factions were sought to be solidified by the International Workers of the World (I.W.W.). The only way I.W.W. knew how to fight was by striking, and Amer. Cts. still talked in terms of crim. conspiracy w/ imprisonment as punishment for strikers. So, the cts. were used as strike-breakers. The I.W.W. then made another mistake by thinking it had to fight management and politicians; so the I.W.W. jumped into the political arena by electing persons sympathetic to labor. Then I.W.W. got a bad name and died. So, by 1886, the Knights of Labor and I.W.W. had declined. Therefore, in 1886 in Columbus, Ohio, the A.F. of L. was born w/ Samuel Gompers as the first President.

Gompers wanted to avoid the "mistake" of political alliances, and wanted to rely on economic power and pressures as the means of advancing. The A.F. of L. had much success. They stuck to wages and hours. So, by the time the ~~Gompers~~ Gunther case hit the Mass. court, "lawful purpose" was read into the criminal

conspiracy doctrine as an exception (1896)."

(1898) - Sherman Anti-Trust Act and Teddy Roosevelt's trust-busting activities. Then, a big push was made to apply the Sherman A-T Act to labor unions. The Clayton Anti-Trust Act (1914) exempted labor from anti-trust legislation.

Finally, the Norris-La Guardia Act (ca. 1930) relieved labor from the Hobbes Act (came between Clayton and Norris-La Guardia) which made labor activities extortion. The Norris-La Guardia Act withdrew from federal courts juris. to issue injunctions in labor disputes. ⊛ National Negro Alliance v. Sanitary Grocery Stores (Dist. Ct. of D.C.) involved Negroes picketing to influence the hiring of Negroes by white stores. Charles Houston was the atty. for the N.N.A. The

Holding: Supreme Court said the Norris-La Guardia Act against injunctions re labor disputes applied even though the disputants did not stand in the relationship of employer-employee.

Then came a dispute between skilled and unskilled labor. The little steel strike of 1937 brought this to a head. The four steel companies then banded together and sent trains all through the South, got many hillbillies and Negroes and put them in the plants. This broke the strike but started the fight between craftsmen and unskilled labor. Thus, Thirteen (13) unions pulled out of A.F. of L. and formed the C.I.O. w/ John L. Lewis as President.

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Landis & Manhoff, (the intro. to the book)
Swayzee, Contempt of Ct. in Labor Injunc. Cases

The N.I.R.A. was the first official recognition of collective bargaining. But, the Schechter Case struck down the N.I.R.A. as devoid of standards and an unlawful delegation. So, sec. 7 of the N.I.R.A., the collective barg. section, was carried over into the Wagner Act, and a national labor rels. board was set up. The Board had juris to handle all labor disputes that arose in industry that "affected commerce." Sec. 27 of Wagner Act defines "affecting commerce."

N.L.R.B.

Start

Then came the Fair Labor Standards Act, and the courts gave the broadest construction to "affecting commerce" and the F.L.S.A. "closely associated activities and occupation" so that almost any commerce activities re labor could come under these Acts.

Sec. 8 of N.I.R.A. set up unfair labor practices code of a one-sided nature in that it talked only of unfair labor practices by the Eee v. the Eer. There then arose a rash of picketing by non-disputants. So, Eers went to the Labor Board, and the Board, carrying out natl. policy, went as far as it could and applied sec. 7 in behalf of Eees as a balance v. sec. 8.

The Prudential Ins. Co. case (hot-shot girl secretary) and the Saturday

I K^or IS NOT AN E^ee.

Evening Post case showed the extreme to wh the Board went in protecting the E^ees. The S.E. Post case interpreted "Employees" to include independent K^ors. The Taft-Hartley Act defined "Independent K^ors" later to negative the S.E. Post Case.

The N.L.R.B. had two powers:

(1.) To issue a cease and desist order under sec. 8 against the E^er. If E^er failed to comply, application could be made to the Circuit Ct. of Appeals for enforcement (since the Dist. Ct. was by-passed, no jury trial for the E^er). Appeal could be had to Sup. Ct.

(2.) To determine whether the labor dispute was extended or furthered by unfair labor practices. If that was so found, N.L.R.B. could order reinstatement and back-pay. This was tantamount to giving money dams. w/o trial by jury.

Where the law was unclear under the Wagner Act, the Board created its own rules. A big problem was freedom of speech of E^or to talk to E^ees about and against unions. Now, there is a presumption that Congress will pass no law abridging freedom of speech and that on the Wagner Act said that E^ers could not interfere w/ right of free organization of labor, it did not mean that the E^eer

CAP. AND. DOCTRINE
TOTALITY OF Conduct

could not express his views. So, on E^er called E^ees during working hours and talked v. unions, that was said to be like a threat because of the "Captive Audience Doctrine." And on the E^er's views are put in pay envelopes in mimeographed form, that would not be allowed because of the "Totality of Conduct Doctrine."

The Taft-Hartley Act had three basic effects:

(1.) It defined "Indep. K^ors" and negatived S. E. Post case (Sec. 2-3 T-H Act)

(2.) Split sec. 8 of the Wagner Act, and sec. 8(c) of the T-H Act said that the E^er could express his views freely unless they = threats by reprisals and/or by beneficial inducements. Called the "free speech amendment." Sec. 8(a) remained intact as repitition of sec. 8 of Wagner Act. Sec. 8(b) of T-H Act was unfair labor practices provision favoring the E^ers.

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T-H Act was designed to balance the rels. between labor and mgmt. wh had been overbalanced in favor of mgmt. (See p. 142 cbk.) Under sec. 7 of T-H, the unions pushed too hard, and began to insist on closed shops and maintenance of membership formula. See p. 43 of supp. The insistence on closed shop (no one hired except union members) had the effect of taking mgmt. out of the market place of employment. This was different from a UNION SHOP: anyone could be hired, but after (originally) 15 days, the Eee just hired would have to join the union. If Eee then refused to join, Eer would have to fire him upon pain of violation of sec. 8 of the T-H Act as an unfair labor practice for failing to abide by the collective bargaining agreement.

When the war (II) came, unions then came up w/ MAINT. OF MEMBERSHIP FORMULA: when a non-union man was hired to replace a drafted union man, the new Eee would "represent" the union. Otherwise, by the end of the war y would be open shops.

So, in 33 states, it can be a union shop.
All Southern States and Kansas and Iowa have "right to work" laws.

The T-H Act felt this formula was unfair and said that the closed shop was outlawed. But, sec. 8(a)(3) preserved the union shop by saying that the new Ee could ~~not~~ be required to join w/in 30 days. i.e., Union membership was no longer permitted to be a cond. precedent to hiring. Thus, it was no longer a closed shop but it was a union shop allowed. 14(b) (p. 59 supp.) was stuck in, however, and had the effect of enticing 18 states to pass "right to work" laws (including N.C.) wh outlawed closed and union shops and maintenance and membership formulae. So, it can be union shops except in those 18 states. But, 14(b) did not amend the Ry. Labor Act, so even in those 18 states, railway workers ~~and interstate~~ could have union shops under 8(a)(3) of the T-H Act. — Unions have fought sec. 14(b) constantly.

Sec. 8(b) set up code of unfair labor practices for unions and labor. 8(b)(2): seems to give any hired Ee the right to join the

The white locals would argue that 8(b)(2) has not been violated because the Negroes thru their own locals have "membership" in the union, and that's all that is required by 8(b)(2). Quaere meaning of "membership."

union. e.g., Negroes. This 8(b)(2) has been circumvented in the South by setting up locals w/in the same union. These locals are probably illegal. Only now is this section getting any attention from the govt. (fed.).

Sec. 8(b)(4) – (T.I. know this sec. well.) Seems to go overboard in an attempt to neutralize the Wagner Act. So, E^er can seek ~~seek~~ cease and desist order under 8(b)(4) from the Board, or damages in civil suit under sec. 303 of the L-M Rels. Act (p. 70 supp.) or crim. action under sec. 302 of the L-M Rels. Act. The union, however, could only go before the Board. So, a union could not ask E^er to seek dams. or crim. injunction.

Taft (Wm. Howard T.), J., in the Coronado Coal Co. Case, recog. the quasi-entity nature of unions so that they could sue and be sued in the union name. It is not an entity but will be treated as if it is. Later, Robt. Taft had sec. 301(a) put in the L-M Rels. Act (p. 66 of supp.) wh has been said to create a new c/a in K in fed. law; that the elements of this c/a must be

worked out "by judicial inventiveness." (Frankfurter, J.) So, sec. 301(a) has mushroomed into a great source of litigation. Black says this violates Erie v. Tompkins and "makes the ghost of Swift v. Tyson still walk the land."

*Griffin-Landrum Bill (1959) marks the first time in history that Congress has delved into the internal affairs of the unions. Known as the Labor-Mgmt. Reporting and Disclosure Act of 1959. Requires reports of certain activities that also appear under sec. 302 of the L-M R.A. (criminal), and that seems to run afoul of the const. provision against self-incrimination.

9 L. Ed. 2d 959 – re Frankfurter's view of § 301 of the L-M R.A. (See DeJ's advance sheet.)

LABOR REFORM LAW – NAT'L. AFFAIRS BUREAU (see G-L Bill)

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The G-L Bill (cont'd.) – Title III sought to bar the practice of the national office of a labor union taking over locals under the theory of "trusteeship." A big-wig would deem himself trustee of the local and have the local's vote and vote himself into office.

DeJ. – G-L Bill is a bad bill be–

G-L = an amendment to the existing code.

cause it was hastily drawn, creates more problems than it solves, and Title II may be unconst. as a violation of the self-incrimination clause of the 5th Amendment.

Jencks Rule (ad. law)?

Sec. 601 – "probably won't stand up: congressional abdication w/o suff. standards.

NLRA 14(c)(1) Sec. 701 – amended sec. 14 of the Wagner Act as amended by the T-H Act. (See p. 59 supp.:

DOCTRINE OF PRE-EMPTION

14(c)(1)) This is the so-called "no-man's land." In Const. law, ∃ is a doctrine of pre-emption: on an area is w/in juris. of fed. govt. and state and fed. govt. steps in, the fed. govt. is deemed to have pre-empted that area to the exclusion of the State. But, one case said that unless a biz was a $1 million-a-year biz, the Board could not act due to statute. So, if a biz only had $850,000 per year, the Board could not hear it; and, Frankfurter said that if the action was a sec. 7 or sec. 8 action, the fed. nor state cts. can hear it. So, this would be the no-man's land.

14(c)(2) – (See Boston College L.R. p. 175).

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Fair Labor Standards Act (1935) - a part of Roosevelt's depression-busting program. Justified under commerce clause.
Had two purposes:
(1.) To spread employment - if an added burden (ceiling on hours and floor under wages) on the E^er, he would hire more people. Today, it sets up a 40-hour week and an 8-hour day; and all work in excess must be paid at 1½ times the "regular rate." Thus, the E^er would be motivated to hire others for the extra time and thereby save himself money. * The big problem: the act did not define "reg. rate." e.g., the textile industry paid by piece work. So, too, was the trucking industry because pay was per week and the hours varied but the pay remained the same. Time-and-a-half of what? The statutory minimum wage was below the usual K wage.
Big fight in 1949: an amend. to the F.L.S.A. defining "reg. rate", sec. 7(d) of F.L.S.A. (p. 115 of Supp.). This brought over a

formula to the Labor K. ¶ One big argument was that there should be portal-to-portal pay (miners and RR track gangs), and that ∃ should be overtime on a rate that already includes overtime pay.

The F.L.S.A. had 2 types of enforcement:

(1.) Admin. cease & desist orders.

(2.) Remedial enforcement - e.g., wage earner's suit by union or wage earner or the administrator of Wage & Hour Division. Most often brought by admin. so as to avoid reprisals against the E^ee, but (for some reason) the suit has been left to the wage earner in Southern industries. ¶ This suit is to get back-pay which was not but should have been paid, and will include amts. suff to cover atty. fees, costs, etc.

(The Act affects "industries engaged in commerce or in the production of goods for commerce...!")

* Portal-to-Portal = Mt. Clement Pottery Works case held that preliminary and postliminary activities would be included if exceeding 10 minutes.

This was followed by the Portal-to-Portal Act: (1947) this amend. to the F.L.S.A. said that portal-to-portal pay would not be included in "reg. rate" unless estab. by custom or by the arbitration labor K. Found in sec. 7 of F.L.S.A.

The 1961 amend. includes "an establishment or enterprise engaged in commerce."

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(White, J.) Curry Case 83 S.Ct. 531 (Feb. 15, 1963) - came up out of Ga. and its right-to-work law under 14(b). Neither state nor fed. cts. can interfere on the activity's violation of the act is "arguable". It would be upon the exclusive control of the Board.

"De Minimus" Rule - There is a requirement that any bis coming before the Board must be at least worth $1 million.

An injunction may lie v. a striking union on it fails to extricate itself from violence surrounding it even though the violent group may be an

outside union e.g., Meadowbrook milk case (Chicago), and the B.V.D. textile worker in Pascagoula, Miss. or the Teamsters acted unilaterally in violent ways.

Since secs. 7 and 8 of the F.L.S.A. give juris. to the Board, the Court has interpreted this to mean exclusive juris. — EXCEPT, however, in matters concerning wages and hours (White Plains newspaper case). The Board was given the power to make its own rules, so the Board set up the "$1,000,000 rule."

(The foregoing on this date refers back to a previous discussion: an aside.)

F.L.S.A. (cont'd.)

Sec. 7(a) - overtime = 1½ times "reg. rate." The problem was ascertaining "reg. rate."

HYPO: X get $1.00 hr. X worked 46 hrs. - was paid $49.00 and had production bonus of $9.20 = $58.20. Is this $58.20 now w/in the act, sec. 7(d) (p.115 supp.)? Under 7(d),

$$\frac{\$58.20}{46} = \$1.20 \text{ reg. rate. So,}$$

18

Fuller Products 682-4485

Enforcement of the requirements of the F.L.S. Act by injunction is authorized by sec. 17 of the F.L.S.A.

$1.20 × 40 = $48.00 + $1.80 × 6 = $58.80. Thus, $1.20 would be the reg. rate, and $58.80 would be the correct weekly remuneration. 7(d) defines "reg. rate" as "all remuneration for Emt paid to, or on behalf of, the Eee ...."

Required → See Walling v. The Belo Corp., 316 U.S. 624; Overnight Motor Trans Co. v. ~~Missel~~, 316 U.S. 572, re-hearing denied 317 U.S. 706. The 1960 act adopted the "Belo formula." The "Missel formula" died.

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Walling v. The Belo Corp., 316 U.S. 624, 62 S.Ct. 1223 (1942)

The F.L.S.A. contains nothing which bars an Eer from K-ing w/ his Eees to pay them the same wages that they rec'd. before enactment of the Act so long as the new rate equals or exceeds the minimum required by the Act. [F.L.S.A. of 1938, Secs. 6 + 7(a)]

Under Emt K specifying basic hourly rate of pay and not less than one and one-half times that rate for every hr. of O/T worked beyond the max. hrs. fixed by the F.L.S.A. and stipulating guaranteed weekly salary, hourly rate is the REGULAR RATE w/in provision of Act requiring O/T compensation

of not less that 1 and ½ times the "reg. rate at wh he is employed", and K es w/in the letter and intention of the act. [§§6 + 7(a)(1-3)]

On E^{er} and E^{ee} have agreed on a wage arrangement wh has proven mutually satisfactory, the Sup. Ct. should not upset it and approve an inflexible + artificial interpretation of the F.L.S.A. wh finds no support in its text and as a practical matter eliminates the possibility of steady income to E^{ees} w/ irregular hours.

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1961 Amend. to F.L.S.A. – designed to cover commission Ees in retail and service establishments. The pay must meet two standards:

(1.) The reg. rate of pay must be in excess of 1½ times the stat. minimum hourly rate applicable to him

(2.) More than half of the Ees compensation for a representative period (not less than a month) must represent commissions on goods or services.

There are several problems w/ this amendment:

(1.) "Excess" is not defined.

(2.) "reg. period" is not defined; there's no way of telling how start → often these periods must be computed.

The Eer must keep his basic records for three years and his incidental records for two years.

Re 1961 amend – see pamphlet in De J.'s office. Wecht also on F.L.S.A.

Some Eers will work an Ee 4 hrs. overtime and then give him 4 hrs. off the next

(29 U.S.C.A. 201-219)

Assignment: p. 151 (Wagner Act & Collective Bargaining).

day. But, this is not = to 1½ times the regular rate and, ∴, violates the Act.

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PART II – Collective Bargaining

(1) Scope of Natl. Labor Legislation

The N.L.R.A. excluded many workers from the act by putting them w/o the definition of "Employees."

(p. 157) N.L.R.B. v. Hearst Publications, Inc.

Newsboys were held to be "employees" w/in the meaning of the N.L.R.A. even though they would have been ordinarily found to be independent K^ors. The N.L.R.A. was not ltd. to the C.L. definitions of "Employee" and "Indep. K^ors" because the overriding policy of the Act makes this appropriate for coverage by the act.

"EMPLOYEE"

"The avowed and interrelated purposes of the act are to encourage collective bargaining & to remedy the individual worker's inequality of bargaining power by 'protecting the exercise of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conds. of their E^mt or other mutual aid or protection.'"

This case (1944) raised some big problems:

(1) If these people, usually considered I.K^ors, are held E^ees w/in the meaning of the Act, then would they be entitled to collective bargaining

and other usual benefits reserved for "actual" E^{ees}?

The T-H Act followed this case and eliminated IK^ors, supervisors, and others. This amended the Wagner Act (N.L.R.A.). Did the T-H amendment change the Theory of the Hearst Case? Is the Wagner act now ltd. to the C.L. definitions of "E^{ee}"? (Sec. 2 (3) of the N.L.R.A. = T-H Act.)

Walling v. Amer. Neddlecrafts, Inc. (p. 165)

"EMPLOY" — Held, for P, the Admr. The Act defines "employ" to include "to suffer or permit to work". Hence if one suffers or permits another to work under circums. in wh an oblig. to pay him will be implied, they are E^{er} and E^{ee} under the Act. It is immaterial that because there was no continuous supervision of the work there may have been no master-servant rel. under the otherwise applicable rules of the C.L.

Lehigh Valley Coal Co. v. Yensavage (p. 165)

Seems to follow the Hearst case too, because the court talks of the purposes of the Act.

So, it is uncertain on

we stand on "I K^{os}" today.—De J. All T-H Act has done is to restrict Hearst Case to its facts. -De J.

But, people ord. considered IK^{ors} can be "E^{ees}" w/in the Act ou they agree w/ the E^{er} that they will be so considered. The K would be binding.

The broad question is whether a given group of workers is w/in the "unit appropriate" (the proper unit of workers to deal and bargain w/ the E^{er} on the plant or industry level).

(Aside: sympathy strikes are illegal under Debs Case.)

Rule of Construction — [This is social legislation and will be given broadest interpretation.

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*(II.) Protection of the Right of Self-Organization *

[Under sec. 8(a)(1) of the N.L.R.A., it is an unfair labor practice for an E^{er} to interfere w/, restrain or coerce E^{ees} in the exercise of the Right to self-organization, etc.

Mgmt. sought to circumvent this by the use of two devices:

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115 A...

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Held illegal by NLRB v. Pa. Greyhound Lines Inc. 303 U.S. 261, 58 S.Ct. 571, 82 L.Ed. 831, 115 A.L.R. 307 (1938) (Co. union).

1. The company union.
2. The company-dominated union - here the Co. would not take the initiative, but would step in and control.

Mgmt. had hidden behind sec. 7 when outside union organizers would seek to organize. Then, the Co. would say the union should be restrained because the outside union would allegedly be forcing the co. to break its K w/ the Eees.

8(a)(1) make the co. union and co-dominated union illegal as an interference w/ the right to self-organization.

Next, mgmt. tried to bar union organizers by a gen. "no solicitation" rule against bums, charities, raffles, etc. This gave rise to Republic Aviation Case.

Republic Aviation Corp. v. N.L.R.B. (p. 184)

Newman, The Law of Labor Relations, p. 30 - "Where the efforts of mgmt. interfere w/ effective solicitation, they constitute one of the miscellaneous unfair labor practices proscribed by [8(a)(1) of N.L.R.A. of 1947]. The Board has drawn a distinction between solicitation on company time and otherwise, & has protected solicitation even on company premises on off-duty time, such as the lunch hour. The conduct of mgmt. in forbidding solicitation

Distribution of handbills in parking lot of Republic by outside organizers and some Eees. The Eees were fired and P sought to restrain the organizers.

Ct. said that the gen. rule against solicitation, enforced in this way, would violate rule v. interference.

Mgmt. said this was an interference w/ the prerogative of mgmt.

26 on off-duty time is therefore an unfair labor practice falling upon the gen. prohibition of interference, restraint & coercion in connection w/ organizational activities of E^ees. — This presumption of unfair interference will be overcome by proof of adequate opportunity to organize the E^ees elsewhere than in the plant.

There is an exception in the case of retail dept. stores where solicitation during non-working hours w/in the selling areas might disrupt business.

"INTERFERENCE"
(Sec. 8(a)(1)

Re effect of words by E^er due to surroundings, see Hand, J. in NLRB v. Federbush Co., 121 F.2d 954, 957 (CA2, 1941): "Words are not pebbles in alien juxtaposition; they have only a communal existence... all in their aggregate take their purport from the setting in wh they are used, of which the relation between the speaker and the hearer is perhaps the most important part." ...

This gave rise to the Bonwit Teller Case. There, mgmt. called in all E^ees and denounced unions. Then, unions demanded equal time. Ct. said no to equal time, but that mgmt. was interfering w/ labor by the use of ⊛captive audiences. The captive ~~union~~ audience doctrine and ⊛totality of conduct doctrine (all factors considered: E^ees on the job, don't want to lose their jobs, etc.) became bases for finding "interference."

When an E^ee struck, he had the right under sec. 2 of N.L.R.A. to maintain his status as E^ee and be taken back at the end of the strike and be given back pay.

Well, many people thought that this was going too far. So, Congress split up sec. 8: 8 (a) for E^ers, 8 (b) for E^ees and 8 (c) covering free speech rights of the E^er.

Congress said that 8(c) was aimed at the courts' doctrines of captive audience and totality of conduct.

The two big cases here are Stowe Spinning & Gen. Shoe Corp.

N.L.R.B. v. Stowe Spinning Co. (p. 189)

Co.-owned town. All big public buildings were owned by the Co.

The textile union organizers were at a loss to find a meeting place except the hall above the Post office leased to the Order of the Patriotic Sons of America. The union arranged to rent the hall from the Order of P.S.A. Then, D.P. Stowe and some fellow Eers rescinded the permission of O.P.S.A. to lease the hall. ¶ [The union claimed this was interference w/ the right to organize because this was the only place available in town. The N.L.R.B. agreed w/ the union, "in order to safeguard the right of collective bargaining." ¶ The ct. here upheld the Board.]

Jackson dissented in part saying that the co. should not be required to permit the use of a hall "disconnected in space and use from the biz of the Eer and Eees...."

The majority actually are saying that the co. need not supply a place for meeting, but must not prevent the union from securing a place on its own.

Republic Aviation was before

8(c) + Stowe was after, and it seems that the trend is to shifting TOTALITY OF CONDUCT DOCTRINE TO THE AREA OF a gen. climate unfavorable to organization.

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Foremen (supervisory personnel) are excluded along w/ E^{ss}, from the act.

In Re General Shoe Corp. (p. 208)

This new concept, though this would not = unfair labor practice under the free speech provision [8(c)], it created an unfavorable climate near to election time, and constituted a restraint upon the free will of the employees.

Board held (by divided vote) that E^{er} expression of opinion might preclude the possibility of a free election even tho' it did not = an unfair labor practice because it did not in itself carry the implication of threat, of reprisal or force or promise of reward w/in the meaning of sec. 8(c).

Newman, Law of Labor Rels., says that "totality of the situation" test is not used by the Board, but that the lower Fed. Cts. still use it.

So, this is really a new stmt. of "totality of conduct" doctrine in association w/ the upcoming union election.

"Orangeburg C. of C." - (p. 220) - Was this action of E^{er} or of an agent of E^{er}? That's the big question. See sec. 2(2) of NLRA.

In the absence of anti-union history of the E^{ers}, questioning E^{ees} re their union membership + activity has been held not to be an unfair labor practice in NLRB v. England Bros. Inc., 201 F.2d 395 (1953, CA1). But, generally such interrogation of E^{ees} is held to be a violation of sec. 8 (a)(1).

N.C. does not have its own labor act. Only about 13 states do. N.C., therefore, "abides" by the C.L.

"Totality of Conduct"

General issue:

Does a "totality of conduct" as related to labor elections "interfere w/, restrain, or coerce E^{ees} in the exercise of the rights guaranteed in Sec. 7" w/in meaning of sec. 8(a)(1)?

T-H added "as an agent of," and added sec. 2 (13).

"In the interest of" (sec. 2(2)) is still used by courts, but usually only in relation to cases against E^{ees} + unions, not against E^{ers}. Hastie + Frankfurter threw out "in the interest of" concept, but by way of dissent.

It may be that act. today talking of "in the interest of" intends this as a part of the expanded concept of "as an agent of" of sec. 2 (13).

Q. Are rowdies favoring integration (generally), who fight + threaten, acting "in the interest of" the Negro pickets? Probably not, but cts. do compare labor + integration picketing.

So, if the "free speech" amendment is ltd. in its scope + will be restrained only as it relates in point of time to impending elections; and near elections, courts then apply the "totality of conduct" concept to restrain E^{er}.

Mgmt. + labor are inherently unequal w/ mgmt. having

the favored position.

Assign. - Start w/ WBTV case, p. 296.

14 MARCH 63

✱ (E.) CONCERTED ACTIVITIES ✱ ("concerted activities" - sec. 7)

N.L.R.B. v. Local 1229 IBEW (p. 296)

"conscrip. of neutrals"

The handbills made no mention of the labor dispute and attacked the quality of the T.V. programs so that the public would turn against ~~the~~ WBTV. This is called ✱ "CONSCRIPTION OF NEUTRALS" and it's not sanctioned because it is said to go beyond the bounds of fair union activity. This concept seems to have been brought over into the Act (sec. 10(c)).

"CONSCRIPTION OF NEUTRALS" (Comes from the Ritter Café Case) →

The technicians were "striking" against WBTV.

Q. But, was the court off here? = Q. Could not this come under sec. 7 as ~~mutual aid and~~ concerted activities for mutual aid and protection? = Depends on WHAT concerted activities are sanctioned. Q. What is the scope of sec. 7 (protected activity)?

The court talked of

NOTE: 8(a)(3) proscribes only DISCRIMINATORY treatment. An E^er may hire and discharge at will, arbitrarily or capriciously, so long as the action is not based on opposition to union activities. Economic strikers, if replacements have been hired, may be discharged, although a discharge prior to replacement is an unfair labor practice. Discharge for unlawful concerted activity, such as a sit-down strike, was not an unfair labor practice under the Wagner Act (NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240) nor is it an u. l. p. under N.L.R.A. of 1947. Thus, E^er may discharge wildcatters who struck in violation of a collective agreement.

DOCTRINE OF "FALSE BANTERING"

"disloyalty" as being the basis of discharge, but the real reason was the unfair labor practice of "conscription of neutrals."

Note: if the handbills were taken per se as the basis of unfair union activity, okay. But, if taken in context of the overall labor dispute, then the handbills may be protected w/in sec. 7 of the Act. — This is a close question, and this case has been criticized as unrealistic on the ground that the handbills were really a part of the concerted activities of the Technicians for the purpose of mutual aid and protection.

There was no talk of ⊗ "FALSE BANTERING": allegations of purely false matters by labor. This would = good cause for discharge, and could have been well used here.

⊗ Installment Strike — Arose out of refusal to work overtime. e.g., E^er had extra work + would pay premium OT pay per the

F.L.S.A., but the Ɛees refused. There was not enuf work to bring in an extra crew, and there was no real economic conflict — no dispute re work hours and wages. So, the Ɛees were essentially just interfering w/ the Ɛer's property w/o justification.

Q. What activities will take it out of sec. 7? =

American News Co. (p. 305)

Ɛer could not grant requested raise until it was approved by the N.W.L.B. But, the Ɛees struck anyway.

Assignment: Thayer case (p. 317) et seq.

NWLB
LWLRA

19 MARCH 63

N.L.R.B. v. Thayer Co. (p. 317)

On the strike was provoked by unfair labor practices by Ɛer, under ord. circumstances if such strikers apply for their jobs at the termination of the strike, they must be returned to their old positions irrespective of the effect that such rein-

statement may have upon the tenure of the new E^ees hired as replacements.

On a strike is not caused by an unfair labor practice, is economic in nature, the employer need not discharge replacements in order to rehire strikers.

JURISDICTION

The activity enjoined by Mass. must be w/o sec. 7 and not protected thereby, and not prohibited by sec. 8(b), in order for the Board not to have exclusive jurisdiction.

If an act is not protected by sec. 7 nor prohibited by sec. 8(b), then the state may assert its police power. If this "middle ground" can be found — if any illegal breach of the peace can be found — then the Board no longer has exclusive juris. and the State can enjoin. — The only real difficulty is finding activity that is truly "middle ground."

Start

FRANKFURTER TEST

Frankfurter said if the activity in question is "arguably" protected by sec. 7 or "arguably" prohibited by sec. 8(b), then state cts. are w/o power to act.

[The Norris-LaGuardia Act has taken labor disputes out of the juris of federal courts.]

(b)(1)

21 March 63

Effect of Relief pymts., etc., During Strike — (E^er still liable for back pay)

Quaere: If a strike has been caused or prolonged by unfair labor practice (8(a)), then should E^er be able to take advantage of moneys earned or received from welfare, etc., during the term of the strike by setting-off that amt. against its liability? = "a touchy prob." (Dy). Orig., the Board said the E^er could not do this. The question arose out of the "little steel strike" of the 1930s. — Certainly, the E^er should not be able to shift his burden off on the public by refusing back-pay to strikers who rec'd. relief. ⊛But, on strikers get temp. jobs, the Remington Rand case has relieved the E^er from his liability in proportion to the amt. temp. earned by the strikers — The Board seems to follow this (no cases re welfare have come up before the Board).

Temp. Employment During Strikes (E^er proportionately relieved)

¶ ⊛There is a real question whether the temp. job will put the striker outside of the Act's def. of "E^ee" (see ⊛sec. 2 (3) — "... and who has not obtained ....")

"War Chest" Pymts. (liable for back pay)

¶ Quaere this prob. on strikers get money from the

union's "war chest"? The Board said the Mines (in the J.L. Lewis mine strikes) were liable in this case for back pay. Reason: Striking union members paid into the war chest themselves, and they are merely getting back what they put in, or at least a part of it is attributable to the Eee's contributions to the war chest.

⊗ Steel has come up w/ the Supplemental Unemploy. Benefits Plan ("SUB" Plan): after striking, Eee draws "SUB" until that runs out; then he claims (Ill., Mich., Ind. and Ohio) unemploy. comp.

Sec. 8 (b) N.L.R.A.

T-H Act put in sec. 8(b): unfair labor practices for unions. 8(b)(1) esp. has created much furor. The last phrase in sec. 7 refers to 8(a)(3) wh is not operative if state law prohibits union shops (by virtue of sec. 14(b). Sec. 9(a) comes into this problem, too: the exclusive bargaining agent reps., e.g., 1200 of a 2000 man shop. But, due to 9(a), the other 800 must be represented by that same agent. Thus, the bargaining agent tries to get an agency fee from the 800 because they are allegedly

"Free Ride"

getting "a free ride." The 800 object: the agent would be violating 8(b)(1)

J.I.K. Case - upheld the constitutionality of the Wagner Act.

by "coercing" the 800 in violation of sec. 7 ("right to refrain from ... such activities ..."). — Under the J.I.K. Case, the co. can have indiv. agreements w/ the 800, but they must not be less than the collective bar. agreement of the union agent & the 1100. Thus, it was analogized to a tarriff reg. - The individual agreements cannot be below the coll. bar. agreement, but could be as much over that amt. as desired. Thus, if the c.b.a. calls for union dues of $2.00, the 800 must pay at least $2.00, not less, but may pay more if the co. and the 800 agree on more. — The 800 allege this violates sec. 8(b)(1) by interfering w/ their right not to be a union member by exacting dues and not allowing them to have a voice in union policy unless they join (coercion, therefore). [This is called an "agency shop."] — The circuits are split here, and a case is now pending before the U.S. Sup. Court.

"AGENCY SHOP"

26 March 63

(III.) SELECTION OF COLLECTIVE BARGAINING REPRESENTATIVE.
(p. 531)

Sec. 9(a) - reps. selected "for the purposes of collective bargaining" by the majority of the Eees in a unit appropriate for such purposes "shall be the exclusive reps. of all the Eees in such unit."

Q. What = "unit appropriate"? =

Petition for de-certification of union - 9(c).

The Frank Rule is incorp. into 9(c)(3) - one year waiting period before another election can be made. ¶ Now,

Quaere → what happens when a de-certification occurs before lapse of a year? Must ~~of~~ be a non-union period or no union at all is present at the plant? This question is not decided yet. It almost seems like a union-busting device (Reuther says).

De-certification is a product of T-H Act. Not found under the Wagner Act.

Assignment: Read 9(c)(3) carefully.

38

28 March 63

F.L.S.A. 9(c)(3) – eligibility to vote: the Griffin – Landrum Act (~~[illegible]~~) made basic changes and allowed economic strikers to vote even on they are not entitled to reinstatement. Further, y must be a run-off election if none of the choices on the ballot receives a majority of those voting.

Assignment: start on p. 401, Part 3.

2 APRIL 63

1) 3 P.M. ELECTION
2) Full-time student for Pres?

Sec. 8(a)(5) was carried over from the old act.

* (PART 3) ~~start~~ COLLECTIVE BARGAINING (C/B) *

(I.) NEGOTIATION OF THE COLLECTIVE UNIT

J. I. Case Co. v. N.L.R.B. (p. 401)

"Individual Ks, no matter what the circumstances that justify their execution or what their terms, may not be availed of to defeat or delay the procedures prescribed by the N.L.R.A. looking to C/B, nor to exclude the K^ing E^ee from a duly ascertained bargaining unit; nor may they be used to forestall bargaining or to limit or condition the terms of the collective agreement."

"The individual hiring K is

subsidiary to the terms of the trade agreement and may not waive any of its benefits, any more than a shipper can K away the benefit of filed tariffs...."

"The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of Eees w/ terms wh reflect the strength and bargaining power and serve the welfare of the group."

(See Kats Case)

4 APRIL 63

(B.) Effect of an Impasse or a Strike (p. 417)

* What happens when Eer and union bargain, but reach an impasse?

Wildcat Strikes: (If a strike is v. the union Constitution, it is a "wildcat" strike and the strikers are subject to losing their status as Eees.)

Once an impasse has been reached, the Eer can make unilateral changes so long as they don't work to the prejudice of the Union. But, when is a party prejudiced by unilateral acts? A close question. One Eer seeks replacements and offers them

more money than that being sought by the union, that may be prejudicial and constitute an undue influence on the strikers.

*(D.) Duty to Bargain in Good Faith *(p.468)

Matter of Truitt Mfg. Co. (p.481)

Union alleged co. could afford $.10 per hour wage raise. Co. said it couldn't. Union requested the Co. to allow union auditors to check the books to decide whether a dime per hour would be w/in the co.'s reach. Co. refused.

*Black, J., said, "Good-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. This is true about an asserted inability to pay an increase in wages. If such an argument is important enough to present in the give & take of bargaining, it is important enough to require some sort of proof of its accuracy. And it would certainly not be far-fetched for a trier of fact to reach the conclusion

that bargaining lacks good faith when an Er mechanically repeats a claim of inability to pay w/o making the slightest effort to substantiate the claim."

Frankfurter says that he agrees that the union is entitled to the information, but the refusal of the co. should not be per se evid. of bad faith. But, the refusal to substantiate claim of inability to pay, coupled w/ other surrounding circumstances can raise a presumption of bad faith.

9 APRIL 63

317 F.2d. 260, N.L.R.B. v.
FITZGERALD MILLS, INC. — charges of violation of 8(a)(1) and (5). This went a step further that Thayer: if you are asking for higher wages, you must have access to enough records to at least see what the existing wage is. Then, Thayer would come in. — Held, the corp. violated sec. 8(a)(5), and (1) by refusing reinstatement along w/ retained seniority rights, and by refusing to open up the books and give the N.L.R.B. wage information, sec. 8(a)(5) was violated by that refusal. See this case.

Whether a co. must open up its books depends on the facts and the circumstances in each

case as to whether there has been a refusal to bargain collectively w/ the union.

Arbitration is usually bitterly opposed by labor and mgmt. But, now, more & more labor Ks provide for voluntary arbitration.

Unions are unincorporated associations.

Assignment: ins. workers union case.

11 April 63

"Good Faith"

what about the requirement that labor bargain in good faith? Sec. 8(b) = code of unfair labor practices for unions. 8(b)(3) is the counterpart of 8(a)(5) (unfair labor practice of E'er to refuse to bargain collectively). Sec. 8(b) was one of the contributions of the T-H Act (wh supposed ~~that~~ labor and mgmt. were on equal bargaining terms).

After the union realized ~~that~~ an all-out economic strike was economically hard on the E'er and on the E'ee, they developed

the tactic of having successive coffee breaks, long lunch hours, several union meetings during the day, i.e., an "installment strike." This makes production slow to a crawl, but the Eees don't feel any econ. squeeze because they remain on the job. — The companies objected to this as unfair because they could not hire replacements.

The second tactic was the SWEETHEART AGREEMENT: the union would bargain for something, and during that time would say, "Give us 3¢ an hour raise during the interim, and if you don't, we can't guarantee that y won't be a strike wh will disrupt your plant." Coupled w/ this will often be found the "vest-pocket union", and these two were really out-and-out extortion. (See "sweetheart Ks").

The Hobbs Act deals w/ extortion, e.g., the musicians union required travelling musicians to hire as many local musicians as y were in the travelling group. Mark Hopkins Hotel (San Francisco)

said no when the local asked ~~that~~ it pay 14 local musicians because T. Dorsey Band (14) was playing it. The local would play a few patriotic songs during breaks! — The 9th Circuit said this was not extortion because "a service was rendered" by the locals. See 8(b)(6).

N.L.R.B. v. Ins. Agents' Int. Union (p. 487)

Union announced ~~that~~ "if we cannot get a K by X-day we will go on a "work w/o K" program" wh was really a program of harassment (no new sales, long lunch hours, long coffee breaks). — The N.L.R.B. said this way of doing this violated 8(b)(3) as an unfair labor practice and was not "bargaining in good faith." The circuit court rvsd., and the Supreme Ct. granted certiorari and affirmed. (See p. 492 & 493). It seems that the court said that these modes of economic pressure are a part of the process of collective bargaining.

18 APRIL 63

23 April 63

Once an agreement calls for a grievance procedure, the parties are bound to follow it. But, a big problem arises on the Eer alleges that the union w/ wh he agreed was not the "fair representative" of the Eees.

From the union's standpoint, once a union accepts certification, it must bargain for all employees. This is so even though the non-union members are getting a "free ride."

(p. 676) Elgin, Joliet and Eastern Ry. v. Burley

See 69 Harv. L.R. 601, Cox; 50 Col. L.R. 731

See problem, p. 683.

25 APRIL 63

(See Notre Dame Symposium in Dr J's. office.)

DOCTRINE OF EXHAUSTION OF GRIEVANCE PROCEDURES

There has developed the doctrine that if you have procedures for settlement of grievances and gen. arbitration, you must first exhaust those procedures before going to court. [Like doctrine of exhaustion of administrative remedies.]

start

In order to maintain industrial peace, the parties should exhaust the grievance procedures and admin. remedies

An E^{ee} does not ever have to join a union in a "right to work" state.

first.

An E^{ee} for first 30 days does not have to join the union. But, since he does not have to join the union, and since he must exhaust the available remedies first when he has a grievance, maybe he should not be allowed the "free ride" and should have some of the burdens along w/ some of the benefits. — The U.S. Sup. Ct. is now deciding this, and it may place some burdens on the E^{ee} by using the agency theory. [Dr. J. feels that 14(b) (added by T-H Act) should be repealed.]

— Unions contend that, since E^{ees} don't have to join (sec. 7) but must use the union facilities (sec. 8(a)(3)), the E^{ee} should be required to pay some fee.

An E^{ee} can refuse to join the union for 30 days after hiring (8(a)(3)) except, per 14(b) or the STATE says otherwise via a "right to work" law.

Ga. has "right to work" law. But, Railway Act does not have a "14(b)".

Quaere an E^{ee} forced to join the union who objects to

union programs for wh union funds — including his — are spent. *The Atlantic Coast Line R.R. Case (1962, Sup. Ct.) said that that "forced member" had the right to not have his pro rata share used for programs w/ wh he disagrees. — That case really creates many problems, esp. from an accounting standpoint. — But, that EE's right of dissent does not exist re "normal union activities."

8(b)(2) seems to be for the protection of Negroes.

* NATIONAL EMERGENCIES *

L-M Rels. Act, sec. 206 et seq. (p. 64 supp.)

On is is a strike in an industry wh affects the gen. welfare, health or safety of the nation, there are special proceedings providing for a report by a President's Committee, and they may then get an 80 day injunction v. the strike from the courts. At the end of 80 days, the strikers or intended strikers

50

can go ahead. — That's the famous "80 day T-H Injunction."

If the strikers go on w/ the strike after 80 days, and the natl. health, safety or welfare remains imperiled, you cannot again get an injunction for 80 days because, it is argued, that would be unconst. and = involun. servitude. The govt. could use other methods, however, like seizure.

This 80-day injunction is an exception to the Norris-La Guardia Act against fed. courts granting labor injunctions.

Assign. — p. 707 et seq.

30 April 63

Sec. 206 is a real "bone of contention" now. What happens when the last offer is not accepted? (p.64 supp.) Today, at end of 80 days, the union is free to go back on strike and that would leave to the Pres. only the inherent powers of the presidency to promote the gen. welfare, e.g., seizure (like Truman case,

Sawyer v. Youngstown Steel Co.). Q. In a seizure matter, what happens to the collective bar. agreement + the rights of the parties thereunder? = Sup. Ct. has said that the continuity of negotiations extends the K (the one about to expire, causing the negotiations). Q. Who is the ee? — Q. Who provides the fringe benefits, and who is entitled to the profits? = So far, there are no answers.

It has been proposed that the Pres. be given several choices of action:

(1.) Injunction
(2.) Seizure
(3.) Compulsory arbitration
(4.) Compulsory mediation
(5.) Military intervention.

It is said that if the act is amended to give these choices, the onus to settle won't be mainly on labor, and mgmt. would also have to stop sitting back and just waiting. It would make this less of a one-way street in favor of mgmt. If mgmt. did not know which choice the Pres. would make, mgmt. would be more eager to settle the matter. Mgmt. does

not want some stranger to come in w/ the power to decide, because the power to decide includes the right to be smart as well as stupid.

Start → Sec. 209 = 80 days.

* (PART IV) STRIKES, BOYCOTTS AND PICKETING *

* (I.) CONSTITUTIONAL LIMITATIONS * (p. 707)

See Teller's book on Labor-Mgmt. Problems: has a good glossary of terms.

2 May 63

* (A.) THIRTEENTH AMENDMENT *

A strike may be suppressed by the cts. if it has an illegal purpose: "Illegal Purpose Doctrine."

The early argument was that since a man could not be forced to work (y can be no involuntary servitude under the 13th Amend.), a man could quit; since he could quit, he could strike; since one man could strike, several men could strike.

Today, an economic striker can be replaced, but an unfair labor practice striker cannot be replaced.

Ala. Stat vs Picketing Violated 1st Amend →

It was only after Thornhill v. Alabama (p. 713) that picketing w/o a strike came to be recog.

T-H added "except as spec. provided for herein".

When the Wagner Act was passed, sec. 13 contained provision

Gregory - Labor & the Law,
When is a strike unlawful? Two tests:

1. If a strike is called to secure an objective that is, in itself, unlawful under some common-law or stat. category of tort or crime, then it seems fairly apparent that a ct. should declare the strike illegal. The stat. must be constitutional.
2. Barring an unlawful objective, a strike should be declared lawful & justifiable in spite of any infliction of harm on the Eer, if it is intended to promote the welfare of the strikers, as they see it.

Thus, a sympathetic strike is an unlawful infliction of damage, aimless & unjustifiable because of the absence of any direct econ. advantage to the group of workers participating in it. (Note: whether any direct econ. advantage stands to be gained is seemingly a question of fact.)

that nothing of the Act should be construed to impede, halt, etc., the right to strike.

A sort of "labor common law" developed that labor had the right to strike arising out of the right to quit under the 13th Amend.

Mgmt. developed retaliatory methods:
(1.) The "lock-out"
(2.) The yellow dog K

Then, mgmt. began using the "lock-out" in anticipation of a strike. This put pressure on labor to capitulate. Lock-out = closing of plant.

Yellow dog K - agreement not to join a labor union. Agreed upon as a part of his Emt K. If Eee did join, he would be automatically fired. — Did the yellow dog agreement violate fundamental constitutional rights? The "unenumerated rights" clause of the 9th Amend. was used to support the contention that the right to protect your job is an "unenumerated right" thereby protected. — The yellow dog K was finally recog. as violating "some fundamental right" of the laborer. But, did this mean that the

Strikes v. Technological Change — altho' usually futile, not unlawful.

only right was to ~~[illegible]~~ strike, or could the laborer use the strike, the picket et al.? Thornhill v. Ala. said that picketing was allowed as an exercise of the freedom of speech. But, Thornhill still recog. that there are certain areas of free speech that can be regulated by the state (see bottom of p. 718).

312 U.S. 321

⊗ A.F. of L. v. Swain, 312 U.S. 321 — Swain ran a chain of beauty shops. A.F. of L wanted to organize the E'ees, and Swain allowed the union to talk to the E'ees. They turned down the union plot. The union then began picketing; Swain sought an injunction and got it to stop the picketing. The union said that even though y was no labor dispute, the union had the right to voice its views. The union prevailed, and this was the first instance of picketing w/o a labor dispute ~~[illegible]~~ and by parties not employed there.

313 U.S.

* New Negro Alliance v. Sanitary Grocery Stores — 313 U.S.

Holding (sec. 2 (9) N.L.R.A.) — Sup. Ct. found a labor dispute: ∴ can be a labor dispute even tho' the disputants don't stand in the proximate rel. of E^{er} & E^{ee}! — This same language has shown up in the Griffin-Landrum Bill (sec. 2-14).

Bakery, Pastry ~~Workers~~ Drivers v. Wohl, 315 U.S. 759 — the drivers had dispute w/ bakery. So, the bakery began using independent truck operators, sell them the goods and they would in turn sell to the retailers. Wohl = an indep. driver. So, the union drivers began following Wohl around town and would picket each place of delivery.

Holding — * Court said that if the picketing was directed against the product and its manufacturer, okay. But, to direct the picketing against the indep. driver or the retailer was not allowable and could be regulated. — As a practical

matter, however, when we see pickets outside of a store, regardless of the intended object of the picketing, it will be assumed the retailer is the object and people will be hesitant to cross the picket line. ¶ This case shows we are backing away from Thornhill and Swain.

7 May 63

Man O' War Dairy Case? → [~~If a strike~~ picketing is so "enmeshed in violence", then the state may restrain the activity w/o violating freedom of speech.]

Could state step in and stop picketing on it violates state law and is contra to estab. P.P. of the state. ⊛ See Hughes v. Super. Ct., 339 U.S. 460 — Q Can State enjoin picketing when its purpose is contra to the State's p.p. as expressed in its court opinions? = This court said yes. This = big step back from Thornhill. See this case.

Hughes v. Superior Court - 339 U.S. 460 -

Held - The injun did not viol petitioner's rt of freedom of speech.

Petitioner demanded Ex hire negros at its store until negro clk = aprx negro customers. Pet. found guilty of contempt for viol striking injunction of Calif.

So, now the Sup. Ct. says there are some areas on the state can act re picketing.

Suppose y is peaceful picketing against something not contra to the State's pp., but outsiders are worked up over the matter? = This arose out of labor problems, e.g., sympathy strikes. Now, should the peaceful picketers be forced to extricate themselves from the arena of the outsiders' violence or must it run the risk of having its peaceful picketing enjoined? = This matter is now being brought over into the civil rights area.

CONDITIONAL DUTY

So, y does seem to be a duty on the union to extricate itself from surrounding violence. But, it could be that the only way to extricate is to abstain, and that would = an unconst. denial of free speech.

Rule of Law

<u>Picketing against "right to work" law is an unlawful purpose and can be enjoined.</u>

⊛ <u>Curtiss Bros. Case</u> — The Cur. Bros. said they would let their Ees decide if they wanted a union, so a certification election was held. The Ees chose union X, and union Y, the losing union, kept picketing. So, Curtis Bros. sought to enjoin union Y, saying ~~that~~ the X union had been lawfully chosen and there could not be another election for at least one year. Union Y said it was picketing to maintain its bargaining position so that it would have some pull at the next election; that it "represented" a small minority of the Ees. The Board said it disagreed w/ the Y union, and the ~~Dist~~ Circuit Court overturned the Board; <u>Union Y could picket to maintain its bargaining</u>

position, but that it could not picket to gain recognition or lure away E'ees from Union X. — Another Circuit went the opposite way, so the U.S. Sup. Ct. heard the case.

Rule of Law — The G-L Act prohibited this type of picketing once there has been a union already recognized. So, this is a curtail on recognition and organizational picketing.

Sec. 8(b)(7)(c) (p.47 Supp.) — After the expiration of one year, there can be picketing "for a reas. time (not to exceed 30 days)" before a petition for an election is filed. But, informational picketing can continue so long as there is not interference w/ deliveries, etc., and gen. conduct of biz.

See cases on pp. 739 + 753.

Assign. — Secondary Boycotts, Secondary Picketing, etc.

9 May 63

(B.) SECONDARY PRESSURE

Secondary boycotts are unlawful. But, if the Ees who implement the secondary boycott by their refusal to work can show an econ. interest of their own at stake, then our cts. SHOULD hold such boycotts justifiable + lawful as, indeed, some of our courts have already done. Gregory, Labor + the Law, p. 125.

Governed by 8(b)(4) wh is made criminal by sec. 303.

If picketing is conducted for the purpose of bringing pressure on the primary Eer thru picketing or striking a secondary party, that would be unlawful. However, you may have to show rather clearly that the activity was "for the purpose of"...

Many people say that the sec. 8(b)(4) provisions weigh more heavily in favor of mgmt., and that if is a question of the Constitutionality of the T-H Act additions.

So secondary activity is gen. deemed bad, and is not permitted. In a way, it is also a conscription of neutrals (Ritter Cafe case) which is not allowed.

Quaere secondary activity v. sympathetic activity by another union (which is often purely voluntarily)? See p. 53, supra.

The ε^{er} could replace the sympathetic strikers w/ other workers.

Arose out of Marshall-Field dispute in Kan. City ε^{ees} of M-F refused to handle goods and orders from the struck Chicago branch.

Due to decision this term, ε^{ees} of a non-struck ε^{er} cannot refuse to handle "HOT GOODS" (goods that come from a struck ε^{er}).

Teamsters tried to put pressure on ε^{ers} to not hire independent truckers more than five days a week so that a union man could run that truck the other two days of the week. This was done to spread ε^{mt} + force independent truckers to stop working 7 days a wk. and conform to union standards. — Is this secondary pressure? Maybe govt. should not intervene because this would support the policy of the N.L.R.A. (5 day week), says Prof. Matthews of Ohio State. The purpose of the act: to promote industrial peace and spread ε^{mt}. — Def. says this puts ε^{er} in a tight corner, and govt. neglect of this matter may be solely on a policy ground.

PURPOSE OF N.L.R.A.

8(b)(6) — orig. called "anti-Petrillo Amendment" (against musicians' "sit in" activities and juke box "royalties").

"featherbedding"

8(b) (6) has now come to be thought of as having application to "featherbedding." The Sup. Ct. has now ruled that feather bedding is an unfair labor practice. — But, how would we interpret "in the nature of an exaction" so as to include featherbedding? That's a good question.

14 May 63

(p. 905) (I.) Fair Representation —

This doctrine of Fair Rep. probably originated under the Ry. Labor Act. The R.L.A. has no "14(b)" like the T-H Act.

Steele v. Louisville + Nashville R. Co. (p. 905) gave rise to the doctrine of F/R.

Re Negro firemen on the RR.

Union Expenditures

Re apportionment of dues, to what union expenditures can a member validly object + to what expenditures can a member object but where necessary expenditures?

Political Expenses — Ga. case said political expenses are not necessary

and the union can be enjoined from using the dues of the objecting member(s) for same. Cox has done a detailed study in this area.

A woman accused of being Communist was a union member in good standing. She was discharged, and the union refused to represent her in her reinstatement hearing. Court ruled that she had a right to fair representation by the union because the union exists only by consent of Congress and is, therefore, like an extension of Congressional power and must treat its members w/ all the fairness and objectivity that Congress would extend to American citizens. The same general basis was found in The Steele Case re Negro union members.

See: 62 Col. L.R. 563 (1962), "The N.L.R.A. and Racial Discrimination"

16 May 63

New Sup. Ct. decisions handed down 13 May 63:—

(1) N.L.R.B. v. The Erie Resistor Corp., 31 Law WK. 4407 —
Under current labor disputes, mgmt. can hire replacements and not give back pay (i.e., economic strike). Mgmt. promised replacements superior seniority status of 20 years, thereby putting almost all union Eees out due to inferior seniority. N.L.R.B. upheld the corp., but Sup. Ct. reversed the Board, saying that the biz purpose in granting the 20 year seniority to replacements would have to outweigh the rights of Eees under Sec. 7. Douglas, J. said that this balancing was ridiculous and irrespective of Eers motives that would violate 8(a)(3).
Under current labor disputes (McKay Radio Case), mgmt. has the right to hire replacements and assure them permanent employment.

Replacements

HELD
IRRESPECTIVE OF EMPLOYER'S MOTIVE SEC 8(a)(3) OF TAFT ACT BARS GRANT OF 20 YR SENIORITY CREDIT TO STRIKER REPLACEMENTS & STRIKERS WHO RETURN TO WORK.

(2.) The Brotherhood of Ry. & S.S. Clerks v. Allen
31 Law WK. 4416
— Re using dues of members for political

Allen Case
non union RR Ees in order to recover amts used by union for political purposes – need not specify union's distinct political expenditures to which they object

purposes. Ct. said further that the union member (objecting) has the right to be refunded that portion used for pol. purposes to wh he objected and the right to have that same portion deducted from future dues. So, Cox's "apportionment" theory was used in part by the court.

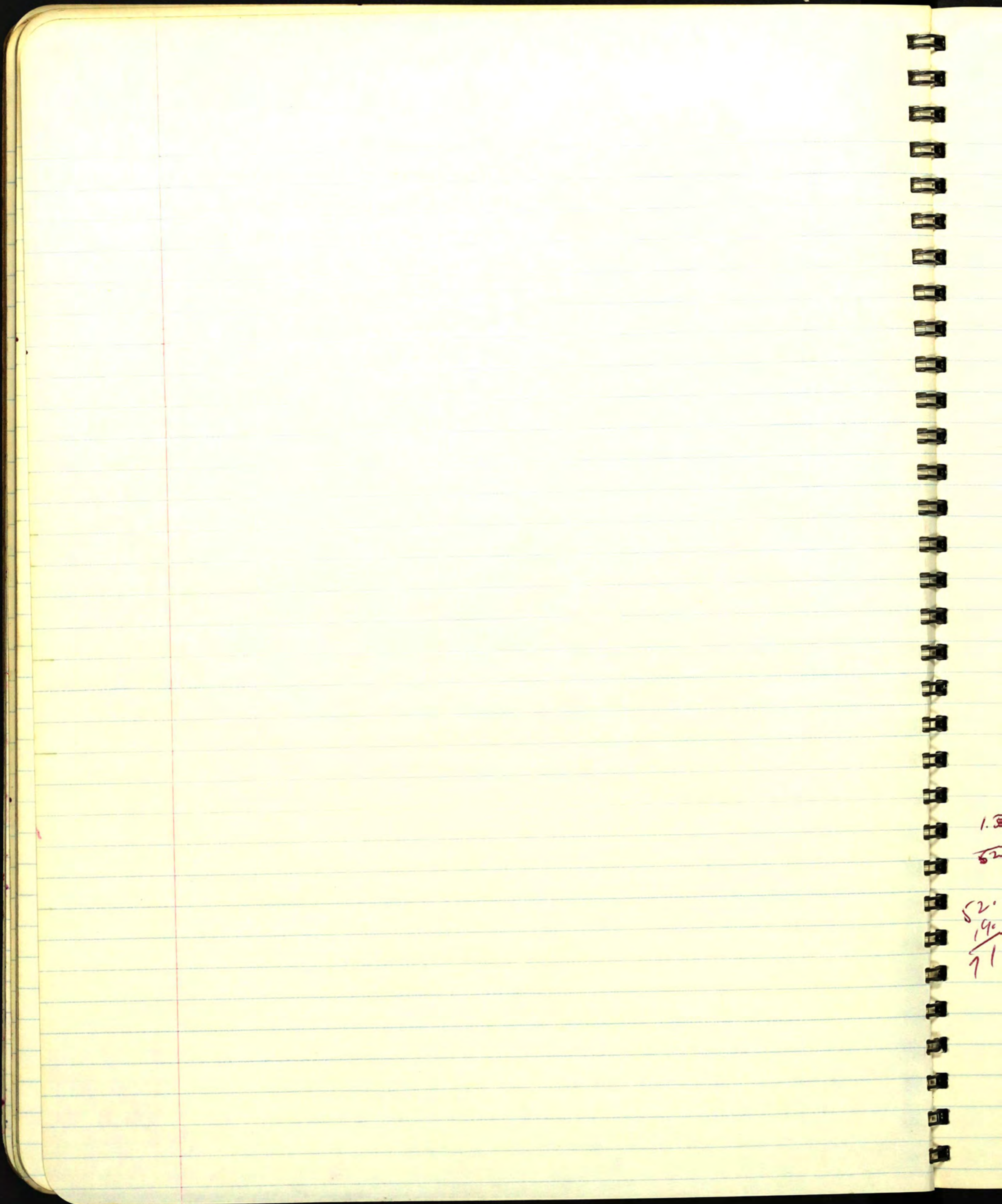
"Check-off" – où the Eer deducts from the Eees regular check that amt. necessary for union dues. – This is found in the Ks of Ford, Continental Can, U.S. Steel and Tobacco, among others. It is authorized by the T-H Act.

So, under the Allen case, there would be a big accounting burden placed on the Eer because he's the one doing the check-off.

Political activities are greatly ltd. by Sec. 313, so the "Political Action Committee" was set up by unions to handle pol. activities of the union (See p. 70 of supp.) [Hatch Act restricts pol. activities by govt. workers.]

Sec. 304 of L-M Rels. Act ←

Finis!



Regular Rate

($1.20 - hr. rate)

works 50 hours

$$\begin{array}{r} \$1.20 \\ \times 40 \\ \hline 48.00 \\ 18.00 \\ \hline \$66.00 \end{array} \qquad 1\tfrac{1}{2} \times 1.20 = \$1.80 \quad \begin{array}{r} \times 10 \\ \hline \$18.00 \end{array}$$

$1.30 = Regular rate

$$50 \overline{)66.00}$$

$$\begin{array}{r} 50 \\ \hline 160 \\ 150 \\ \hline 100 \end{array}$$

So, under sec. 7(a), E^ee is entitled to $1.30 × 40 = $52.00 + ($1.95 × 10) = **$71.50**

$$\begin{array}{r} 1.30 \\ 40 \\ \hline 52.00 \end{array}$$

$$\begin{array}{r} 52.00 \\ 19.50 \\ \hline 71.50 \end{array}$$