History and Provisions of the Minnesota Labor Relations Act

by

Editorial Board

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LABOR—LEGISLATION—HISTORY AND PROVISIONS OF THE MINNESOTA LABOR RELATIONS ACT.—It is the purpose of this note to trace both the pre-legislative and the legislative activity which culminated in the enactment of the present Minnesota Labor Relations Act by the 1939 session of the Minnesota Legislature, and also to discuss certain provisions of that act in so far as the limitations of space permit.

I. PRE-LEGISLATIVE ACTIVITY

Recognizing the devastating effect of the growing strife between labor and industry, the Minnesota State Bar Association took the first step toward the procurement of legislation designed to promote harmonious employment relations in Minnesota when,

in the fall of 1937, it appointed the Committee on Labor and Social Security Legislation.[1]

At its first meeting on January 8, 1938, the committee decided that its work for the ensuing year would be to prepare legislation designed to encourage the peaceful settlement of labor disputes in Minnesota.[2] A detailed investigation of methods of adjusting labor relations and methods of promoting industrial peace under federal laws and the laws in other states and countries was made by the members of this committee.[3] In submitting its report at the annual meeting of the Minnesota State Bar Association on July 11, 1938, the Committee on Labor Law recommended that it be continued and instructed to prepare a proposed law for the 1939 session of the Minnesota Legislature based on the following principles: (a) procedure for the conciliation and voluntary arbitration of labor disputes; (b) inclusion of the right to guaranty of collective bargaining; (c) provision for machinery for the free and unmolested determination by employees of representatives in labor disputes; (d) administration of the law by an independent board so selected as fairly to represent employers, employees and the public.[4] In pursuance of the report and recommendations of the Committee, a draft of a labor relations bill, hereinafter referred to as the Bar Association bill, was prepared by that committee.[5]

In addition to providing for a Minnesota Labor Relations Board, whose duty it would be to enforce the rights granted to both employers and employees, the Bar Association bill not only provided for an independent labor conciliator, who was given the power to act upon his own initiative whenever a labor dispute should arise, but also contained provision for voluntary arbritration by the parties in case the efforts of the labor conciliator

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[1]1938 Minnesota State Bar Association Proceedings 159.

[2]Mitchell, Industrial Relation Laws of Great Britain, Canada, Australia and New Zealand, (1938) 22 MINNESOTA LAW REVIEW 921.

[3]Mitchell, Industrial Relation Laws of Great Britain, Canada, Australia and New Zealand, (1938) 22 MINNESOTA LAW REVIEW 921; 1938 Minnesota State Bar Association Proceedings 159: "The following subjects were thereupon assigned to committee members for investigation: Present Minnesota Labor Laws . . . Federal Railway Labor Act . . . Voluntary Mediation and Conciliation Plans . . . Conciliation Service of the Department of Labor . . . Labor Laws of England . . . Canada and Australia . . . Labor Laws of Other States . . . Labor Laws of Sweden." For reports on these various subjects, see Minnesota State Bar Association Proceedings (1938), pp. 160-164.

[4]1938 Minnesota State Bar Association Proceedings 159.

[5]This bill was later to become Senate File No. 84.

should fail to bring about a peaceful settlement of the dispute.[6]

Another factor which contributed considerably to the ultimate adoption of a new state labor law was the importance attached to the labor question in the gubernatorial campaign of 1938, in which it became a major campaign issue.[7] It was also publicly announced at this time that the Republican Party was in favor of a conference to be called by the governor, to be composed of committees of the Legislature, and representative labor leaders and employers, to seek improved labor relations legislation.[8] In accordance with this announcement the Republican governor, shortly after the election, invited numerous leaders of labor, business and agriculture and a number of state senators and representatives to a conference on labor relations legislation.[9] At this conference the Bar Association bill and also a proposed bill sponsored by the Minnesota State Federation of Labor,[10] hereinafter referred to as the A. F. of L. bill, were considered.

It is interesting to note some of the variances between the two proposed bills. The A. F. of L. bill, unlike the Bar Association bill, set out no unfair practices on the part of the employees.[11] Nor did the A. F. of L. bill specifically recognize the right of employers to associate together for purposes of collective bargaining, whereas the Bar Association bill expressly provided for such a right.[12] Both bills contained provisions for arbitration, but the A. F. of L. bill contained the additional provision that in case the award was made against the employees, they should not be compelled to render services against their consent.[13]

[6]Senate File No. 84, secs. 2, 3, 11, 13 and 14. Sections 8, 9 and 10 set out the rights of employers and employees, and specify certain unfair labor practices on the part of both.

[7]See Minneapolis Journal, Sept. 3, 1938, pp. 1, 2.

[8]See Minneapolis Journal, Sept. 3, 1938, pp. 1 and 2; Minneapolis Star, Sept. 3, 1938, p. 3.

[9]See Minneapolis Journal, Dec. 29, 1938, pp. 1 and 7; Minneapolis Star, Dec. 29, 1938, pp. 1 and 4.

[10]This proposed bill was later to become Senate File No. 545 and House File No. 665.

[11]Compare Senate File No. 545, sec. 8, with Senate File No. 84, sec. 9. The Bar Association bill provided that it shall be an unfair labor practice for any employee, labor union, or officer, agent or member thereof to compel or attempt to compel an employee to join or refrain from joining any labor organization against his will by threats or force. This bill also provided that it should be an unfair labor practice for either party to any lawful collective bargaining agreement to initiate a strike or lockout in violation thereof so long as the other party is complying in good faith with the agreement. Senate File No. 84, sec. 9 (b) and (c).

[12]Compare Senate File No. 545, sec. 7, with Senate File No. 84, sec. 8.

[13]Compare Senate File No. 545, sec. 14(3) with Senate File No. 84, sec. 14. Although the A. F. of L. bill does no more than state the law

Although it stated that a representative chosen by the majority of the employees in an appropriate unit should be the exclusive bargaining agent, the A. F. of L. bill provided that nothing therein should prevent a labor organization or representative selected by less than a majority of the employees in an appropriate unit from exercising any of the rights contained in the bill so long as no representative had been chosen by a majority of the employees in such appropriate unit.[14] The Bar Association bill contained no such qualifying provision in granting the exclusive representation to the labor organization or representative chosen by a majority of employees in an appropriate unit.[15] The A. F. of L. bill contained provision for appointment of a conciliator but set out no duties of that office, as did the Bar Association bill.[16] However, as was pointed out by the governor, in his inaugural address, both proposed bills did have a great deal in common.[17]

The urgent demand on the part of labor, agriculture and business for suitable labor legislation was recognized by the governor and was voiced in the opening address delivered by him to the members of the 1939 session of the Minnesota Legislature.[18] It was during this address that the governor stated that

"by careful consideration in cooperation with interested groups, it is within your [the Legislature's] power to draft and to pass a labor relations law that will go a long way toward the conciliation of differences, the avoidance of strikes and lockouts with their suffering and unemployment, and toward the stabilization of labor relations and the encouragement of more jobs and more business in Minnesota."[19]

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as it existed at the time, the insertion of this provision may have antagonized the conservative faction.

[14]Senate File No. 545, secs. 8(2) and 9. It would seem that such a provision would certainly not tend to eliminate strife within the employee group between different labor organizations seeking to gain the right to represent the employees.

[15]Senate File No. 84, secs. 9 (a) (5) and 10.

[16]Senate File No. 545, sec. 18. Compare with Senate File No. 84, secs. 3 and 13. Apparently the sponsors of the Bar Association bill, after their detailed study of the problem, appreciated to a greater extent the value of a labor conciliator.

[17]See Minneapolis Journal, Jan. 3, 1939, p. 6. In this address the governor pointed out that the Bar Association and the A. F. of L. bills contained the following similarities:

A. Both provided for a labor relations board.
B. Both provided for voluntary arbitration.
C. Both provided for means of election to determine employee representatives.
D. Both refrained from giving the board excessive and arbitrary powers.

[18]See Minneapolis Journal, Jan. 3, 1939, p. 6.

[19]See Minneapolis Journal, Jan. 3, 1939, p. 6.

II. Legislative Activity

Upon the opening of the 1939 session of the Minnesota Legislature, the problem was presented squarely to that body by the governor, who urged the passage of a "law which will become the outstanding labor relations law of the United States."[20]

As a consequence of the need for suitable labor relations legislation and the urgent demand for it, numerous bills dealing with that subject were brought before the Legislature, most of them relating to the problem of peaceful settlement of differences arising between employer and employee. The Bar Association bill was introduced in the Senate on January 16th,[21] and in the House on January 19th.[22] On the same day a bill to amend the existing statutes on arbitration to include labor disputes was introduced in the House.[23] A bill aimed at the prevention of sit-down strikes was introduced in the Senate on January 27th.[24] This latter bill passed the Senate[25] and was referred to the House.[26] On January 31st, another bill relating to labor relations, the Vance-Myre bill, was introduced in the House.[27] This same bill made its appearance in the Senate on February 10th.[28] On the same date, the A. F. of L. bill was introduced in the Senate,[29] and on February 14th it was introduced in the House.[30] An opposing labor group, the Congress on Industrial Organizations, immediately retaliated with their own bill, which was introduced in the Senate on February 27th,[31] and in the House on March

[20]See Minneapolis Journal, Jan. 3, 1939, p. 6; Minneapolis Star, Jan. 3, 1939, p. 6.

[21]See Journal of the Senate, 1939, p. 68 (S.F. 84). The bill was introduced by Senator Galvin.

[22]See Journal of the House, 1939, p. 97 (H.F. 134). The bill was introduced in the House by Messrs. MacKinnon, Nonnemacher and Johnson.

[23]See Journal of the House, 1939, p. 102 (H.F. 164). This bill also was introduced by Messrs. MacKinnon, Nonnemacher and Johnson.

[24]See Journal of the Senate, 1939, p. 136 (S.F. 290). This bill was introduced by Mr. Neumeier, and later became chapter 377, Laws of Minnesota. 1939.

[25]See Journal of the Senate, 1939, pp. 503-504.

[26]See Journal of the House, 1939, p. 675.

[27]See Journal of the House, 1939, p. 189 (H.F. 352). This bill was introduced in the House by Messrs. Vance, Myre, Hartle, Dixon and Nelson. For the period during which House File No. 352 remained as introduced on this date it will be referred to as the Vance-Myre bill.

[28]See Journal of the Senate, 1939, p. 252 (S.F. 534). Introduced by Senators Welch, Sell, and Berglund.

[29]See Journal of the Senate, 1939, p. 253 (S.F. 545). This bill, introduced by Senator Mullin, is referred to as the A. F. of L. bill. See footnote 10 and text.

[30]See Journal of the House, 1939, p. 360 (H.F. 665). This bill was introduced by Messrs. Haglund and Barrett.

[31]See Journal of the Senate, 1939, p. 374 (S.F. 777). This bill was

8th.[32] Finally, on March 29th, a fifth labor relations bill, said to have been backed by the administration,[33] was introduced in the Senate.[34]

Thus during the 1939 session there were before the Minnesota Legislature, at one time or another, the Bar Association bill, the Vance-Myre bill, the A. F. of L. bill, the C. I. O. bill and the Administration bill. Four of these bills provided in some manner and form for the settlement and avoidance of labor disputes. Of these five bills, only the Vance-Myre bill was ever reported out of committee.

The Vance-Myre bill is said to have been conceived in the minds of certain employer groups who obtained, as sponsors, certain rural members of the House.[35] This so-called "farm bloc," remembering their experiences as farmers victimized in recent strikes, were obviously seeking a law that would definitely prevent any interference with the movement of their products on the highways by strikers.[36] Thus at the very outset the attitude of the "farm bloc" appeared to be sharply antagonistic to labor generally.[37] As a consequence of this attitude perhaps, numerous provisions in the Vance-Myre bill might be criticized as highly reactionary. The bill contained a provision making it an unfair labor practice for an employer to enter into a closed shop agreement.[38] Another provision granted to employers the right to engage in concerted activities for purposes of collective bargaining.[39] But the attitude of the sponsors of the bill is most clearly illustrated in the provision setting out no less than ten unfair employee labor practices.[40] Looking at the Vance-Myre bill in its

introduced by Senator Kelly, and will be referred to hereinafter as the C. I. O. bill.

[32]See Journal of the House, 1939, pp. 671-672 (H.F. 1035). The C. I. O. bill was introduced in the House by Messrs. Vukelich and Huhtala, by request.

[33]See Minneapolis Journal, Mar. 29, 1939, pp. 1 and 8; Minneapolis Star, Mar. 29, 1939, p. 1.

[34]See Journal of the Senate, 1939, p. 867 (S.F. 1399). This bill, introduced by Messrs. Galvin, Oliver and Welch, will be referred to hereinafter as the Administration bill.

[35]See Minneapolis Star, Mar. 24, 1939, pp. 1 and 12.

[36]See Minneapolis Star, Mar. 1, 1939, pp. 1 and 2; Minneapolis Star, Mar. 24, 1939, pp. 1 and 12.

[37]See footnote 36.

[38]House File No. 352, sec. 9 (a) (8).

[39]House File No. 352, sec. 8 (b) and (c).

[40]House File No. 352, sec. 9 (a). This part of the bill, in addition to safeguarding the employees' free uninfluenced election to work or not to work and whether or not to join a union, made it an unfair employee labor practice:

"(2) To seize or occupy property unlawfully as a means of forcing

entirety, it certainly cannot be said that the bill evinced any attitude of compromise or cooperation on the part of its backers toward the solution of the labor question.

On March 9th the Vance-Myre bill was reported out of the House Committee on Labor with several amendments.[41] Aside from the amendment requiring registration of both labor and employer organizations, the remaining amendments merely clarified and extended the definitions of unfair employee labor practices.[42] These amendments were highly indicative that the exhibited antagonism of the backers of the bill and the members of the Committee had not been lessened with time and consideration. The bill was then re-referred to the Committee on Civil Administration.[43]

On March 21st the Vance-Myre bill was reported out of the House Committee on Civil Administration with numerous additional amendments,[44] of which several were quite important. One was a provision for a labor conciliator[45] who was to perform the task of attempting to bring about the settlement of labor disputes, and upon failure thereof to seek to induce the parties to submit to arbitration.[46] Another important provision, taking the form of an amendment, which revealed the power of the "farm bloc" in the House was that, in case of a strike in the business of an employer engaged in the production, harvesting or initial processing of a farm or dairy product, the employees should give ten days notice of intention to strike.[47] The committee recommended an amendment striking out one of the more stifling defi-

settlement of a labor dispute;
(3) To call a strike unless a majority of workers in the appropriate bargaining unit of their employer's business approve of a strike in a secret ballot conducted by the labor relations commission . . .
(5) To engage in a strike for any reason other than for modification of wages or other conditions of employment where the strike is to take place [Note that this would eliminate sympathetic strikes];
(6) To picket or boycott by other than employes of the struck plant, or at any other place than the struck plant . . .
(8) To unlawfully interfere with any person in his employment;
(9) To picket any place of business, home or place where labor organization has not been certified as the bargaining agent;
(10) To interfere in any way with the movement of articles of commerce by motor vehicle or teams upon the public roads, streets, alleys and highways in the state."

[41] See Journal of the House, 1939, pp. 694-696.
[42] See Journal of the House, 1939, pp. 695-696.
[43] See Journal of the House, 1939, p. 696.
[44] See Journal of the House, 1939, pp. 911-917.
[45] See Journal of the House, 1939, p. 912.
[46] See Journal of the House, 1939, p. 914.
[47] See Journal of the House, 1939, p. 914.

nitions of unfair employee labor practices,[48] but there appears to have been no other substantial relaxation of the rigor of these definitions. The committee's recommendations were adopted, and the bill was then referred to the House Committee on Appropriation,[49] which returned the bill on March 23d with a few minor amendments, and recommended that the bill pass.[50]

On March 28th the House made the Vance-Myre bill a special order for March 30th.[51] At this point it became quite clear that the Vance-Myre bill had supplanted the Bar Association, the A. F. of L. and the C. I. O. bills and was the bill which the House at the time fully intended should be enacted into law. And it is apparent from the activity in that chamber that, during its entire consideration, but little effort had been made to extract any of the sting contained in its provisions.

On the eve of the day when the Vance-Myre bill was to come before the House on special order, an entirely new labor relations bill, the so-called administration bill, was introduced in the Senate by Senators Galvin, Oliver and Welch.[52] It should be noted that Senator Galvin had been one of the authors of the Bar Association bill,[53] that Senator Welch had been one of the Authors of the Vance-Myre bill as introduced in the Senate,[54] and that Senator Oliver was then recognized as one of the leaders of the "farm bloc" in the Senate. These facts, together with the fact that the Administration bill was not introduced until after considerable debate on and amendment of the Vance-Myre bill, would seem to indicate a compromise between the interested groups seeking labor legislation.

The administration bill originated as a result of a conference by the governor with the authors of the Vance-Myre bill, senators and representatives interested in labor legislation, labor organiza-

[48]Section 9 (a) (5) of the Vance-Myre bill as originally introduced (H.F. 352; S.F. 534) had made it an unfair employee labor practice "To engage in a strike for any reason other than for modification of wages or other conditions of employment where the strike is to take place." The committee recommended that that provision be stricken. See Journal of the House, 1939, p. 913.

[49]See Journal of the House, 1939, p. 917.

[50]See Journal of the House, 1939, pp. 972-973.

[51]See Journal of the House, 1939, pp. 1147-1149.

[52]Senate File No. 1399, Journal of the Senate, 1939, p. 869. This bill will be referred to hereinafter as the administration bill, since it was a result of a conference called by the governor with parties interested in labor legislation, including the authors of the Vance-Myre bill. See Minneapolis Tribune, Mar. 30, 1939, p. 11.

[53]Senate File No. 84.

[54]Senate File No. 534.

tions, representatives of farm organizations and employers, and some members of the faculty of the University of Minnesota.[55] In referring to this bill, the governor stated:

"The attempt throughout the act is first to provide every possible means of peaceful settlement before difficulty arises, following in this respect the conciliation and waiting period provisions to a great degree of the railway labor act and successful laws of Norway, Sweden and Denmark. And, secondly, to definitely set forth our disapproval of certain unlawful acts that have been committed and that have brought reflection upon the entire labor movement on the one hand, and upon employers as a whole on the other, and to correct these acts without at the same time enacting measures that are so drastic or so sweeping as to injure the rights of labor as a whole."[56]

Thus the purpose and intent of the authors of the administration bill reflected the spirit of cooperation and compromise which characterized its creation. The governor, in a radio address on the evening before the Vance-Myre bill was to come before the House on special order, indicated that the Vance-Myre bill would probably be amended to carry out the compromise and constructive proposals embodied in the administration bill.[57]

True to this forecast, on March 30th when the Vance-Myre bill came before the House, it was amended by striking out everything following the enacting clause and inserting in lieu thereof a complete new set of provisions, embodying substantially the provisions contained in the administration bill, which had been introduced in the Senate on the previous day.[58] The special order was then continued until March 31st.[59] During consideration of the amended bill, which will hereinafter be referred to as House File No. 352, on March 31st, numerous amendments were made.[60] Perhaps the most significant of these amendments was the one striking out the provision in the bill, as amended on March 31st, rendering employees violating any of the provisions of sec. 11[61]

[55]See Minneapolis Tribune, Mar. 30, 1939, pp. 1 and 11.

[56]See Minneapolis Tribune, Mar. 30, 1939, p. 11.

[57]See Minneapolis Tribune, Mar. 30, 1939, p. 11.

[58]See Journal of the House, 1939, pp. 1224-1231; Minneapolis Journal, Mar. 30, 1939, pp. 1 and 9. House File No. 352 will be referred to hereinafter by that number, rather than by the term Vance-Myre bill, since House File No. 352 no longer embodied the original provisions of what was termed the Vance-Myre bill.

[59]See Journal of the House, 1939, p. 1231.

[60]See Journal of the House, 1939, pp. 1263-1269, and 1282-1287.

[61]This section set forth certain unfair labor practices on the part of the employee.

ineligible for public relief or unemployment benefits.[62] Thus House File No. 352 was passed by the House on March 31st.[63]

The central theme of House File No. 352 as it passed the House was conciliation.[64] The bill also provided for a ten day waiting period before the institution of a strike or lockout, and in businesses affected with a public interest the waiting period was extended to thirty days, or until an investigating committee appointed by the governor filed its report.[65] The purpose of these waiting periods was to "provide every possible means of peaceful settlement before difficulty arises." The bill as passed by the House on March 31st also set out seven unlawful acts on the part of the employees and a like number of unlawful acts on the part of the employers, and provided that all of them should also be unfair labor practices.[66] It was also provided in this bill that the Minnesota Anti-Injunction Act of 1933[67] should not apply in any suit to enjoin any of these unlawful and unfair practices, and provision was made in following sections (13 and 14) permitting the granting of an injunction to restrain these unlawful actions after certain procedural steps had been taken and efforts made to conciliate and arbitrate.[68] The bill also denied injunctive relief to an employer who may be guilty of violating any of the provisions contained in the bill.[69] Provision also was made in the bill for the election of representatives of employees by secret ballot; and the determination of the appropriate unit for collective bargaining purposes was left to the decision of the labor conciliator.[70]

House File No. 352, thus amended and passed by the House, was transmitted to the Senate on April 14th, at which time it went through first reading and was referred to the Senate Committee on Labor.[71] The bill finally passed the Senate on April 14th[72]

[62]See Journal of the House, 1939, p. 1267.
[63]See Journal of the House, 1939, p. 1287.
[64]See Minneapolis Tribune, Mar. 30, 1939, p. 11.
[65]House File No. 352 as amended, secs. 6 and 7; Journal of the House, 1939, pp. 1226-1227.
[66]House File No. 352 as amended, secs. 11, 12 and 13; Journal of the House, 1939, pp. 1229-1230.
[67]Mason's Minn. Stat., 1938 Supp., secs. 4260-1 to 4260-15.
[68]House File No. 352 as amended, sec. 14; Journal of the House, 1939, p. 1230.
[69]House File No. 352 as amended, sec. 15; Journal of the House, 1939, p. 1230.
[70]House File No. 352 as amended, sec. 16; Journal of the House, 1939, p 1230-1231.
[71]See Journal of the Senate, 1939, pp. 1040 and 1042.
[72]See Journal of the Senate, 1939, pp. 1379-1380.

after having been amended there in several important respects. The first line of sec. 11, which condemned certain employee activities, was amended in such a manner as to make those enumerated activities unfair rather than unlawful labor practices.[73] Section 12 was amended in a similar manner, so as to make it an unfair rather than an unlawful labor practice for an employer to do certain things.[74] Later an amendment created a new subdivision in each of these same sections, which specified that certain unfair employee practices should be unlawful as well as unfair and that certain unfair practices on the part of an employer should likewise be unlawful.[75] Another important amendment by the Senate altered sec. 11 (2) in such a manner as to make it unfair and unlawful for *any* employee to picket *any place of employment* where no strike is in progress at the time.[76] It was also in the Senate that the famous Oliver amendment was added.[77] It was felt that this latter amendment seriously curbed the picketing activities of labor as a whole and practically prohibited any labor activity which caused any interference with travel and transportation.[78]

However, the House refused to concur in the Senate amendments.[79] The matter was referred to a Conference Committee, appointed from the members of both branches of the Legislature,[80] and the report of that committee indicated that the House acceded

[73]See Journal of the Senate, 1939, p. 1200. As amended the section began: "It shall be an unfair labor practice:" and then proceeded to enumerate certain employee practices.

[74]See Journal of the Senate, 1939, p. 1200.

[75]See Journal of the Senate, 1939, pp. 1378-1379.

[76]See Journal of the Senate, 1939, p. 1200. As the bill stood when passed by the House, sec. 11(e) provided that it should be unlawful "for *more than one* person to picket or cause to be picketed *a single entrance* to any place of employment where no strike is in progress at the time." (Italics supplied).

[77]See Journal of the Senate, 1939, p. 1372. This amendment created a new section (13) which provided: "It shall be unlawful for any person to hinder or prevent by picketing or by any actual or unlawful interference with any person or physical property or any threat of such interference the pursuit of any lawful employment or to obstruct or interfere with the entrance to or egress from any place of employment or to obstruct or interfere with the free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel, transportation or conveyance." It is manifest that underneath the surface of this provision lay the same determination to stamp out certain labor activities which led to the creation of sub-sections (8), (9) and (10) of section 9 (a) in the Vance-Myre bill as introduced in the House, January 31. See footnote 40.

[78]See Minneapolis Journal, Apr. 14, 1939, pp. 1 and 9.

[79]See Journal of the House, 1939, p. 1904.

[80]See Journal of the House, 1939, p. 1904; Journal of the Senate, 1939, p. 1441.

to the amendments made by the Senate, with three exceptions.[81] The solution recommended by the Conference Committee was to re-word sec. 6 to require written notice on the part of the employer also, of any intended change in any existing agreement.[82] It was also recommended that sec. 11 (e) should remain the same as passed by the House.[83] Finally, sec. 13, often referred to as the Oliver amendment, was "toned down" by mutual agreement of the members of the committee and re-worded.[84]

The report and recommendations of the Conference Committee were adopted by both the House and the Senate,[85] and House File No. 352 thus amended was repassed by the House on April 17th[86] and by the Senate on April 18th[87] and soon became the Minnesota Labor Relations Act, Laws of Minnesota, 1939, chapter 440.

A comparison of the Vance-Myre bill as introduced in the House on January 31st and House File No. 352 as finally amended and passed by the House and Senate reveals a startling contrast. The Vance-Myre bill, as it stood on January 31st, tipped the scales most markedly toward the side of the employers and agriculture, whereas House File No. 352 as passed appears to have succeeded in striking more of a balance between labor and the group at the opposite end of the scale. The rapidity with which its supporters "backed away" from the Vance-Myre bill is as interesting as their readiness to adopt the more liberal provisions embodied in the administration bill. Perhaps the members of the "farm bloc" suddenly became aware of the

[81]See Journal of the Senate, 1939, p. 1543; Journal of the House, 1939, p. 2025. The three exceptions were: (1) amendments to sec. 6 as passed by the House; (2) amendments to sec. 11(e); (3) amendments to sec. 13.

[82]See Journal of the House, 1939, pp. 2025-2026; Journal of the Senate, 1939, p. 1543. Prior thereto sec. 6 required notice on the part of the employees only of a desire to negotiate a collective bargaining agreement or to make any change in an existing agreement.

[83]See Journal of the House, 1939, pp. 2026; Journal of the Senate, 1939, p. 1544. Thus this section now provides that it shall be unlawful and unfair. "For more than one person to picket or cause to be picketed a single entrance to any place of employment where no strike is in progress at the time." Minn. Laws 1939, ch. 440, sec. 11(e).

[84]See Journal of the House, 1939, p. 2026; Journal of the Senate, 1939, p. 1544. Section 13 as worded by the Conference Committee provides: "It shall be unlawful for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of employment."

[85]See Journal of the House, 1939, p. 2027; Journal of the Senate, 1939, p. 1554.

[86]See Journal of the House, 1939, pp. 2028-2029.

[87]See Journal of the Senate, 1939, pp. 1544-1545.

"monster" they had created, and were impressed with the necessity of immediately dulling its "teeth" before it turned upon their political hopes and aspirations.[88] At any rate the reversal in policy indicates a recognition that there was a good deal more wisdom in meeting that particular political issue by establishing a means of cooperation and compromise than by legalizing a possible exercise of power and oppression.

III. Effect of Certain Provisions of the Minnesota Labor Relations Act

Although a more complete discussion of each provision of the Minnesota Labor Relations Act would be desirable, limitations of space permit only a brief treatment of what are considered the more important provisions of the act.

A. Anti-Picketing Provisions.—The act contains at least three provisions concerning the right of labor to picket.[89] Section 11 (d) provides that it shall be unfair for any person to picket or cause to be picketed any place of employment where a strike is in progress unless a majority of the pickets are employees of the said place of employment.[90] This provision appears to be an attempt to deal with recent experiences with "foreign" pickets, that is, pickets who have no direct interest in the outcome of the particular strike. In this country there has been a marked tendency to enact anti-picketing ordinances, and they generally have been upheld under the police power.[91] However, a recent California ordinance which prohibited picketing except in furtherance of a strike by at least a majority of the employees, and which also prohibited picketing except by an employee of thirty days standing, was held to violate the equal protection clause of the fourteenth amendment.[92] A similar Washington ordinance, which prohibited picketing by persons other than employees

[88]See Minneapolis Star, Mar. 24, 1939, pp. 1 and 12.

[89]Minn. Laws 1939, ch. 440, secs. 11 (d) and (e), and sec. 13.

[90]Minn. Laws 1939, ch. 440, sec. 11 (d). Violation of sub-section (d) is declared to be unlawful in sub-section (h) of the same section.

[91](1938) 31 Col. L. Rev. 1521, 1524-1525; (1939) 88 U. Pa. L. Rev. 118, 119.

[92]People v. Gidaly, (Cal. Super. 1939) 93 P. (2d) 660, discussed in (1939) 88 U. Pa. L. Rev. 118. The ground for the decision in this case appeared to be that in so far as the ordinance permitted picketing in furtherance of a strike by a majority of employees and prohibited such picketing by a minority of employees, the classification was unreasonable. Another objection therein pointed out was that the requirement that all pickets must have been employed for at least thirty days bore no reasonable relation to the purpose of the ordinance.

who had been employed for a period of at least three months and for at least sixty days prior to the picketing, was held invalid in so far as it purported to prohibit peaceful picketing by persons other than "such employees."[93] It is obvious that sec. 11 (d) of the Minnesota Labor Relations Act would not be subject to such objections as were presented and sustained in the California and Washington cases. This provision does not prohibit a minority of employees from picketing the place of business, nor does it prohibit all persons who are not employees of the place of business from picketing. What this provision specifically states is that more than half of any group picketing a place of employment where a strike is in progress must be employees of the said place of employment. Although the question must yet be decided by the courts, it would seem that the regulation embodied in sec. 11 (d) is clearly a valid exercise of the state's police power, in that it appears to be a reasonable regulation, and also to have reasonable relation to the purpose of effecting peaceful settlement of labor disputes.

Section 11 (e) provides that it shall be unfair "for more than one person to picket or cause to be picketed a single entrance to any place of employment where no strike is in progress at the time."[94] This provision raises two problems, namely, the right of labor to picket in the absence of a strike, and the power of a state to regulate rather than prohibit picketing under these circumstances. Although there has been considerable dissension among the courts over the right of persons to picket in the absence of a strike,[95] this provision seems to give rise to a rather clear inference that picketing, in some manner, is to be allowed even in the absence of a strike. The inference is further compelled by the fact that after this sub-section had been amended in the Senate to prohibit any picketing whatsoever in the absence of a strike,[96] the House refused to accept the amendment,[97] and the provision was recast into its original form.[98] It is submitted that this provision impliedly sanctions picketing in the absence of a strike, and is merely an attempt to regulate one phase thereof, viz., picketing the points of entrance to any place of employment

[93]City of Yakima v. Gorham, (Wash. 1939) 94 P. (2d) 180.
[94]Minn. Laws 1939, ch. 440, sec. 11(e). Sub-section (h) of this section declares a violation of sub-section (e) to be unlawful.
[95](1936) 35 Mich. L. Rev. 340; (1938) 32 Ill. L. Rev. 568, 633.
[96]See footnote 75 and text.
[97]See footnote 78 and text.
[98]See footnote 82 and text.

where no strike is in progress.[99] The other problem, concerning the power of a state to regulate this sort of activity, is of a more difficult character. Although it must yet be decided whether labor has the right, under the Act, to picket at other than points of entrance in the absence of a strike, it would seem that a regulation such as that contained in sec. 11 (e) could scarcely be condemned as unreasonable.[100]

Another anti-picketing provision is found in sec. 13, by virtue of which it is unlawful "for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of business or employment."[101] The terms of this section are so broad as to create a doubt as to their constitutional validity. They could conceivably be construed to prohibit any picketing which required the use of public highways or streets and alleys. On the other hand, this section could easily be construed to forbid picketing only when it unreasonably interfered with the use of such highways or streets and alleys by the public. It would seem that the latter construction is more in accord with sub-sections (d) and (e) of sec. 11, wherein the right to picket is directly and indirectly acknowledged. It should also be remembered that sec. 13 is a moderated version of the famous Oliver amendment.[102] Senator Oliver was recognized as the leader of the "farm bloc" in the Senate, and it seems clear that the purpose of this amendment was to accomplish the same end which the members of the "farm bloc" sought to accomplish in the original Vance-Myre bill, that is, definitely to prevent interference with the movement of their

[99]Whether more than one picket will be permitted at the points of entrance to a place of employment where there is a strike in progress is a matter of conjecture, and will probably be determined by the application of the latter part of sec. 13 of the Act.

[100]In connection with the problem of determining what is the proper number of pickets, it has been said that, "In any event, the means of ingress and egress to the shop ought not to be unreasonably impaired." Warm, Judicial Attitude Toward Trade Unions, (1939) 23 MINNESOTA LAW REVIEW 254, 277-278. And in connection with the same problem, but where the picketing was in conjunction with a strike, the United States Supreme Court has stated: "We think that the strikers and their sympathizers engaged in the economic struggle should be limited to one representative for each point of ingress and egress in the plant or place of business. . . ." American Steel Foundries v. Tri-City Central Trades Council, (1921) 257 U. S. 184, 206, 42 Sup. Ct. 72, 66 L. Ed. 189. Although the Court indicated that such a statement was not to be laid down as a rigid rule, it seems to be a good indication of what is a reasonable regulation of such picketing activities.

[101]Minn. Laws 1939, ch. 440, sec. 13.

[102]See footnotes 76 and 83 and text.

products on the highways and streets and alleys by the strikers.[103] If such is the case, it is clear that although the wording of the Oliver amendment was "toned down" to read as the present sec. 13 does, the purpose remains the same. Therefore it would not seem illogical to construe sec. 13 to prevent only real and actual interference with the movement of products on the highways or streets and alleys, in view of these indications that this was all that was intended when the Legislature agreed upon the present wording of sec. 13. Although this problem too awaits official construction, it would seem that sec. 13, thus construed, does not extend beyond the limit of the state's police power. On the other hand, to construe this section as prohibiting any picketing on public highways, streets or alleys would probably send this section to the same fate as befell a similarly worded Colorado statute.[104] It is suggested that a rather narrow construction of this section is necessary to ward off attacks upon its constitutional validity.

B. Effect of An "Unlawful" Act.—Section 11, after setting out certain unfair practices on the part of employees, specifically provides, "The violations of sub-sections (b), (c), (d), (e), (f) and (g) of this section are hereby declared to be unlawful acts."[105] Section 12, after setting out certain unfair labor practices on the part of the employer, contains a similar provision with reference to sub-sections (b), (d), (e) and (f) of that section.[106] To institute or aid a strike or lockout without giving notice of intention to do so at least ten days before such strike or lockout is to become effective is likewise "unlawful."[107] It would seem that failure to give the notice required by sec. 7 when the business, institution or industry is "affected with a public interest" is likewise unlawful.[108] A violation of sec. 13 is also an "unlaw-

[103]See footnote 76.

[104]A statute of Colorado providing that, "It shall be unlawful for any person or persons to loiter about or patrol the streets, alleys, roads, highways, trails . . ." was held invalid in a recent decision by the supreme court of that state. People v. Harris, (Colo. 1939) 91 P. (2d) 989. In referring to that specific provision, the Colorado court indicated that if the section could be construed to be merely a reasonable regulation of peaceful picketing, rather than a prohibition thereof, then the contention that it was valid as an exercise of the police power would have been sound. See People v. Harris, (Colo. 1939) 91 P. (2d) 989, 994.

[105]Minn. Laws 1939, ch. 440, sec. 11 (h).

[106]Minn. Laws 1939, ch. 440, sec. 12 (g).

[107]Minn. Laws 1939, ch. 440, secs. 6 and 11 (b) and (h).

[108]Minn. Laws 1939, ch. 440, secs. 7 and 11 (b) and (h).

ful" act.[109] The distinction between and use of the terms "unfair" and "unlawful" in the Act present several problems.

The first of these is concerned with the applicability of certain Minnesota criminal statutes. One such statute provides that the performance of an act prohibited by statute shall be a misdemeanor.[110] It certainly cannot seriously be contended that the commission of an "unlawful" act is not a performance of an act "prohibited by statute."

As House File No. 352 left the House on March 31st, all the practices set forth in sections 11 and 12 were declared to be "unlawful."[111] While this bill was in the Senate the term "unlawful" was stricken, and the bill was amended by inserting the term "unfair" in lieu thereof.[112] However a subsequent Senate amendment specified that certain of the unfair practices set out in sections 11 and 12 should also be unlawful.[113] The fact that the latter amendment was introduced by a member of the Senate who had also been a co-author of the original Vance-Myre bill, as introduced in the Senate, would seem to evidence an intent to put into the bill a few of the teeth which had been put into the original Vance-Myre bill.[114] Certainly something more than "unfair" was intended by the use of the term "unlawful." And it is suggested that a violation of sub-sections (b), (c), (d), (e) or (f) of sec. 11 will be treated as a misdemeanor, as will a violation of sub-sections (b), (d), (e) or (f) of sec. 12 of the Act.[115]

The use of the term "unlawful" in sections 11 and 13 also raises a problem concerning the applicability of the Minnesota statutes defining riot and unlawful assembly.[116] Unlawful assembly, as defined in the statute relating to that subject, includes the assemblage of three or more persons with intent to commit any unlawful act by force and the carrying out of such purpose in

[109]Minn. Laws 1939, ch. 440, sec. 13.

[110]2 Mason's 1927 Minn. Stat., sec. 10047. Where a person is convicted of a misdemeanor such as the one described in that section, he may be punished by imprisonment in the county jail for not more than three months, or by a fine of not more than one hundred dollars. See 2 Mason's 1927 Minn. Stat., sec. 9922.

[111]See footnote 66 and text.

[112]See footnotes 72 and 73 and text.

[113]See footnote 74 and text.

[114]See Minneapolis Star, March 1, 1939, pp. 1 and 2.

[115]Minn. Op. Atty. Gen. (Aug. 11, 1939) File No. 270, d, 7.

[116]In Strutwear Knitting Co. v. Olson, (D. Minn. 1936) 13 F. Supp. 384, a case arising out of a strike at the Strutwear plant, in which the company sought an injunction against the governor and others, the court in its findings of facts recognized the riot and unlawful assembly statutes, but no discussion of their applicability appears in the opinion.

such a manner as to disturb the public peace.[117] The statute defining riot[118] was applied in a recent Minnesota case, *State v. Winkels,*[119] where the facts showed that, during the efforts of a local union to unionize the employees of a certain store, a group of forty or fifty people forcibly entered the store and remained there for several hours against the protests of the sheriff. In that case the court pointed out that the essential elements of riot as defined by statute are:

"(a) An assemblage of three or more persons for any purpose; (b) use of force or violence against property or persons, or in the alternative, an attempt or threat to use force or violence or to do any other unlawful act coupled with the power of immediate execution; and (c) a resulting disturbance of the public peace."[120]

Thus it would seem that logically the state statutes relating to unlawful assembly and riot could be applied to the commission, by three or more persons, of any of the unlawful acts set forth in sec. 11 or to a violation of sec. 13, where the other necessary elements of either offense are present.

In regard to the problem of the probability of civil liability for a commission of the unlawful acts set out in sections 11, 12 and 13 greater difficulty is presented. As has just been illustrated, a violation of sub-section (h) of sec. 11 or of sub-section (g) of sec. 12 will probably be treated as a crime. It would seem that there is considerable support for the proposition that the violation of a criminal statute can render the violator subject to civil liability.[121] The general rule that when a statute imposes upon a person a duty, for the protection and benefit of a definite class of people, any person belonging to such class who suffers an injury as the proximate result of the failure to discharge such duty, may maintain an action for damages against the delinquent,[122] would

[117]2 Mason's 1927 Minn. Stat., sec. 10282. It is to be noted that where such an unlawful assembly results in the destruction of property, the penalty is much greater than that incident to a misdemeanor. See 2 Mason's 1927 Minn. Stat., sec. 10284.

[118]2 Mason's 1927 Minn. Stat., sec. 10280.

[119](1939) 204 Minn. 466, 283 N. W. 763; cf. State v. Zanker, (1930) 179 Minn. 355, 229 N. W. 311; State v. Perry, (1936) 196 Minn. 481, 265 N. W. 302. In these latter two cases parties engaged in the picketing of the home of an employee of a plant where a strike was in progress were convicted of disorderly conduct for violation of a city ordinance which provides punishment for all persons collecting for unlawful purposes, etc. See Minneapolis Ordinances, 1872-1925, p. 760, sec. 2.

[120]See State v. Winkels, (1939) 204 Minn. 466, 468, 283 N. W. 763.

[121]2 Restatement, Torts, sec. 286, comment c, p. 753; (1928) 27 Mich. L. Rev. 116; Note, (1935) 19 MINNESOTA LAW REVIEW 666.

[122]2 Restatement, Torts, sec. 286, p. 752. That sec. 11 was enacted for the protection and benefit of employers and farmers has been pointed out in

seem to be the basis for the proposition that violation of a criminal statute may create civil liability. It has been pointed out that the court which holds that violation of a criminal statute imposes civil liability does so by imputing to the legislature an intention to create a civil duty.[123] Thus since violation of either of the two sub-sections in question is likely to be treated as a crime, and in view of the fact that sections 11 and 12 were enacted for the protection and benefit of the employer-farmer group and the employee-labor group respectively, it is suggested that a violation of sub-section (h) of sec. 11 or of sub-section (g) of sec. 12 will subject the violator to civil liability for damages caused thereby.

C. *Waiting Periods.*—Perhaps two of the most important provisions in the entire Act are sections 6 and 7, which attempt to delay a strike or lockout for a short period in order to facilitate the peaceful settlement of a labor dispute before the parties resort to such drastic action as a strike or lockout.[124] In its recommendations for a proposed labor relations bill, the Minnesota State Bar Association Committee on Labor Law admitted the desirability of the prohibition of strikes and lockouts pending a chance to conciliate and arbitrate, but the committee was hesitant about doing anything along these lines at that time.[125] However, these two provisions constitute important cogs in the machinery of the present act, and aside from the statute of one other state,[126] they appear to be an innovation in the field of state labor relations laws. The laws of Canada and Sweden have similar provisions.[127]

The apparent purpose of sections 6 and 7 of the Minnesota act is "to provide every possible means of peaceful settlement before the difficulty arises," as indicated by the governor in

a previous section of this note. That sec. 12 was enacted for the benefit and protection of laborers and employees would seem equally clear.

[123]Lowndes, Civil Liability Created By Criminal Legislation, (1932) 16 MINNESOTA LAW REVIEW 361, 364. Although this article is devoted mainly to criticism, its author admits (p. 376) that "the weight of authority takes the view that the violation of a criminal statute is conclusively negligent."

[124]Minn. Laws 1939, ch. 440, sec. 6 provides that it shall be unlawful to institute a strike or lockout unless notice of intention to strike or lockout has been given to the conciliator and the parties to the labor dispute at least ten days before the strike or lockout is to become effective. Section 7 provides that in any industry, business or institution affected with a public interest, no strike or lockout shall be instituted until after the report of an investigating committee appointed by the governor shall be filed or until thirty days after notice of such intention filed with the conciliator, has been given to the governor by the conciliator.

[125]1938 Minnesota State Bar Association Proceedings 47.

[126]Colorado, Laws 1933, ch. 59, sec. 7.

[127]1938 Minnesota State Bar Association Proceedings 47.

speaking of the administration bill at the time of its introduction in the House.[128] The means by which the Act seeks to accomplish this purpose is by providing for some delay in the institution of a strike or lockout, so that the proper officials may have an opportunity to negotiate a peaceful settlement of the dispute before real difficulty arises.

It must not be overlooked that, although these provisions impose upon the parties a duty "to endeavor in good faith" to reach an agreement respecting the dispute, there is nothing in the Act to prevent the parties from instituting the proposed strike or lockout after such good faith attempts at conciliation have been made. These provisions do not compel the parties to a labor dispute to conciliate or arbitrate. They merely direct that the parties make an honest attempt to reach an agreement through conciliation or arbitration before they employ the destructive tactics of a strike or lockout.[129] Although it must yet be determined whether these two provisions exceed the limits of the state's police power, it is submitted that they are a reasonable regulation of the right to institute a strike or lockout and that the means provided are reasonably related to the purpose and intent of these two sections of the Act, that is, to provide some means of peacefully settling a labor dispute before such drastic measures as strikes and lockouts are instituted.

Section 7 provides that where the dispute is in a business, industry or institution "affected with a public interest" the provisions of sec. 6 shall apply, and the labor conciliator must notify the governor, who may appoint a commission of three to make an investigation of the issues involved and the merits of the parties in the particular dispute.[130] And where the particular dispute falls under this section, no strike or lockout is to be instituted until either the report of the commission is filed or thirty days have elapsed after notification by the conciliator to the governor.[131] Perhaps the greatest difficulty here presented is the determination of the meaning of the term "public interest." Section 7 states that public interest

"includes, but is not restricted to, any industry, business or

[128]See footnote 56 and text.

[129]This fact would seem to distinguish the compulsory character of these provisions from the compulsory character of the Kansas arbitration statute, which was held invalid as applied to a business not affected with a public interest in the case of Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas, (1923) 262 U. S. 522, 43 Sup. Ct. 630, 67 L. Ed. 1103, 27 A. L. R. 1280.

[130]Minn. Laws 1939, ch. 440, sec. 7.

[131]Minn. Laws 1939, ch. 440, sec. 7.

institution engaged in supplying the necessities of life, safety or health, so that a temporary suspension of its operation would endanger the life, safety, health or well being of a substantial number of people in any community."[132]

The problem of what constitutes "public interest" in connection with businesses which though not public at their inception may be fairly said to have become such, and thus subject to some governmental regulation, was dealt with in the case of *Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas*.[133] In that case the court indicated that what gives a particular business or industry a public interest is the indispensable nature of the service rendered by that business or industry.[134] Seemingly consistent therewith, the Minnesota Labor Conciliator has made the following statement:

"In determining under sec. 7 whether or not a dispute is affected with a public interest, it should be borne in mind that the number of employees affected by the threatened strike or lockout is not the deciding factor. Of primary concern is the question of how the strike or lockout and the consequential stoppage of the particular business or industry would affect the public who are not participants to the dispute so as to endanger the life, safety, health or well-being of a substantial number of people of any community. For example, 2,000 employees may be affected by a threatened strike in one of a large number of packing plants, and yet the strike would have no major effect upon non-participants, but on the other hand, only two or three hundred employees may be affected in another threatened strike which would involve one of the public utilities, or the engineers of the hospitals, or the employees unloading all incoming food supplies, and yet obviously with the smaller number of actual participants involved the consequential effect upon the general public would be of such a nature as to invoke the public interest clause and call for the appointment of a commission by the governor."[135]

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[132]Minn. Laws 1939, ch. 440, sec. 7.

[133](1923) 262 U. S. 522, 43 Sup. Ct. 630, 67 L. Ed. 1103, 27 A. L. R. 1280.

[134]See Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas, (1923) 262 U. S. 522, 538, 43 Sup. Ct. 630, 67 L. Ed. 1103, 27 A. L. R. 1280. In the case of Nebbia v. People of the State of New York, (1934) 291 U. S. 502, 54 Sup. Ct. 505, 98 L. Ed. 940. 89 A. L. R. 1469, discussed in (1934) 18 MINNESOTA LAW REVIEW 874, the concept of "business affected with a public interest" appears to have been supplanted by a general test of whether the regulation in question is arbitrary, at least in respect to legislative price fixing. However, the wording of Minn. Laws 1939, ch. 440, sec. 7, expressly conditions the application of its terms upon a determination that the business is "affected with a public interest."

[135]Letter of Minnesota Division of Conciliation (Department of Labor and Industry), Dec. 2, 1939, addressed to the MINNESOTA LAW REVIEW.

D. *Closed Shop Agreements.*—The closed shop contract generally has met with widely varying degrees of success before the various courts in this country.[136] And the present Minnesota Labor Relations Act, on the surface, might appear to cast some doubt upon the validity of such an agreement in Minnesota. Section 10(a), after providing that employees shall have the right to organize and bargain collectively, states: "and such employees shall also have the right to refrain from any and all such activities."[137] From this language it might be inferred that a few employees could rightfully object to the effect, upon them, of a closed shop agreement entered into between the employer and the representative of the majority of the employees in an appropriate unit. However sec. 10(a) should be read in conjunction with the other provisions of the Act,[138] namely, sections 12(c) and 16(a). Section 12(c), which, after stating that it shall be an unfair labor practice for an employer to encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment, specifically provides "that this subsection shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employes or a labor organization representing said employes as a bargaining agent as provided by section 16 of this act,"[139] would seem rather strongly to support the contention that a closed shop agreement may be in accordance with the terms of the Act. Section 16(a) provides that representatives designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate unit shall be the exclusive representatives of all the employees in such unit for the purpose of collective bargaining with respect to conditions of employment.[140] Thus it would seem that, should the representatives and the employer enter into a closed shop agreement, the minority of the employees would thereby be bound by its terms even though they do not individually agree. There is also official authority for the proposition that the last sentence of sec. 10(a) confers upon the employees "collectively and not individually" the right to refrain from organizing or bargaining collectively as provided in the first part of

[136]See (1939) 23 MINNESOTA LAW REVIEW 236.

[137]Minn. Laws 1939, ch. 440, sec. 10(a).

[138]See Minn. Op. Atty. Gen. (Aug. 24, 1939) File No. 270.

[139]Minn. Laws 1939, ch. 440, sec. 12(c).

[140]Minn. Laws 1939, ch. 440, sec. 16(a).

sec. 10(a).[141] It is therefore submitted that there may be a valid closed shop agreement between an employer and a representative of the majority of the employees in an appropriate unit which will be in full accordance with the Act.

E. *Clean Hands Doctrine.*—Section 15 deprives any employer, employee or labor organization who violates any of the provisions of the Act with respect to any labor dispute of "any of the benefits" of the Act.[142] It is suggested that this is an attempt to instil into the Act the ancient equity principle that he who seeks equitable relief must come into equity with clean hands.[143]

It would seem that the principal benefit conferred by this Act is the designation of certain acts as "unlawful," thus creating the possibility of civil liability for the violation of a criminal statute. Certainly the "unclean hands" of a party who seeks to recover damages he has suffered as a result of the commission of unlawful acts which are set forth in sections 11, 12, and 13 will not make the violation of the designated provisions any the less a crime. But it may be that sec. 15 could be treated as negativing that duty which the party who violates a criminal statute is regarded by the courts as owing to the parties for whose benefit the statute was enacted. In such case it would appear that the party with the "unclean hands" could not recover his damages, since it has been pointed out that civil liability for the violation of a criminal statute is apparently based upon the idea of a duty to the persons for whose benefit and protection the statute was enacted. Nevertheless, it would seem that commission of the unlawful acts designated in sections 11, 12 and 13 would constitute a misdemeanor despite the "unclean hands" of the party against whom such acts are committed.

It may be that the benefits which would ordinarily accrue to a party to a labor dispute under sections 6 and 7 would be taken away by sec. 15, in that a party who has violated any of the provisions of the Act may be thereby deprived of the right to notice of the proposed strike or lockout.

By virtue of sec. 15, the right to immediate injunctive relief is denied to a party with "unclean hands," but it is available after such party has, in good faith, made use of all the means under the laws of the state of Minnesota for the peaceable settlement of the dispute.[144]

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[141] Minn. Op. Atty. Gen. (Aug. 24, 1939) File No. 270.
[142] Minn. Laws 1939, ch. 440, sec. 15.
[143] See McClintock, Equity (1936) sec. 24, p. 33.
[144] Minn. Laws 1939, ch. 440, sec. 15.

CONCLUSION

It is to be hoped that the Minnesota Labor Relations Act will accomplish the high objectives for which it was designed, as outlined by the governor,[145] thus signalizing a new legal approach to the problems of the stabilization of labor relations, and the promotion of industrial peace, which may serve as a standard for the entire nation. The extent to which the new Act measures up to these aims is in large part dependent upon future interpretation and application of its terms. The legislative history of the provisions involved in the questions of interpretation which are likely to arise may afford a basis for gauging accurately the intent of the legislature.[146] If this discussion should prove in any way useful to any of these ends, its purpose will have been accomplished.

CURRENT LEGISLATION—MINNESOTA, 1939.—It is the purpose of this note to discuss briefly the more important statutes passed by the Minnesota Legislature at the 1939 session, and, in so far as is possible in a limited space, to refer the reader to cases and other material and statutes which may be pertinent thereto.[1]

[145]See footnotes 19, 20 and 56 and text.

[146]In determining legislative intent as to the effect of statutes, the Minnesota court has consulted legislative journals, State v. Gardner, (1902) 88 Minn. 130, 92 N. W. 529; Lien v. Board of County Commissioners of Norman County, (1900) 80 Minn. 58, 82 N. W. 1094; Jaques v. Pike Rapids Power Co., (1927) 172 Minn. 306, 215 N. W. 221, and has taken into account the fact that certain provisions were brought in by amendment. International Harvester Co. v. Elsberg, (1936) 197 Minn. 360, 268 N. W. 421. And the court has construed statutory language in the light of previous statutes on the subject, Binder v. City of Fergus Falls, (1911) 115 Minn. 66, 131 N. W. 849; Austro-Hungarian Consul v. Westphal, (1912) 120 Minn. 122, 139 N. W. 300; Howley v. Scott, (1914) 126 Minn. 271, 148 N. W. 116; State ex rel. Hilton v. Esseling, (1923) 157 Minn. 15, 195 N. W. 539; Suhr v. County of Dodge, (1931) 183 Minn. 299, 236 N. W. 463, and in the light of the factual background of the time at which the statute was enacted. Funk v. St. Paul City Ry., (1895) 61 Minn. 435, 63 N. W. 1099.

[1]Research for this section was done by the members of the class in legislation at the law school of the University of Minnesota. Members of this class, which meets under Professor Horace E. Read, are: Irving Beaudoin, Helen Carey, James Clement, Melvin Cohen, Edward Converse, Herbert Cook, A. Laurence Davis, Arthur Douville, Robert Dunlap, Aldon Engebretson, Kenneth Enkel, Harold Erlandson, Kenneth Erlandson, Rudolph Fischer, Justin Halpern, Gerald Heaney, George Hedlund, Carl Holmquist, Alden Houck, Marshall Houts, Lee Ilstad, Arthur Jebens, Andrew Kohan, Howard Kohn, Stig Larson, Vincent Lord, Harold McKinney, John Miller, Bromby Mills, John Mordaunt, John Nelson, William Odell, William O'Hara, Sigvald Oyen, James Pomush, William Randall, Charles Richardson, Philip Richardson, Herman Rosenmund, Donald Schmitt, Erwin Schwartz, Frank Schwartz, Henry Segal, Irving Shapiro,