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## 1952 VIRGINIA LABOR LEGISLATION PROMPTED BY UNITED STATES SUPREME COURT

Virginia, along with other states, is involved in a struggle to preserve a measure of her sovereignty in the regulation of labor relations. Affirmative Congressional legislation in this field and subsequent judicial interpretation denying concurrent activity to the states have contracted the sphere of operation of local legislation and increasingly restricted the exercise of the states' police power.

Historically, state legislatures have taken the lead in enacting statutes relating to problems affecting labor and management.<sup>1</sup> However, with the enactment of the National Labor Relations Act (the Wagner Act)<sup>2</sup> in 1935, the Federal Government stepped into the field of general regulation of labor disputes by restraining management from interference with lawful union activity and providing machinery for the establishment of union contracts and conciliation of disputes growing out of them. Initially, the courts viewed this enactment as leaving open to the states concurrent sovereignty in the field. In *WLRB v. Fred Reuping Leather Co.*<sup>3</sup> the Wisconsin Supreme Court held that the entrance of the Federal Government into the field of labor relations did not exclude the states from operating in this field, since the source of the Government's authority was the commerce power while that of the states was their police power. The United States Supreme Court in *Allen-Bradley Local v. WERB*<sup>4</sup> confirmed this theory, saying that "Congress designedly left open an area for state control" and that "the intention of Congress to exclude the State from exercising their police power must be clearly manifested."

Following the passage of the Act, several states, assuming a right of concurrent jurisdiction to exist, adopted similar protective statutes in conformance with the act, Wisconsin being the first (1937) to pass a "Baby Wagner Act."<sup>5</sup> On the other hand many states enacted restrictive statutes regulating labor relations. In 1945, in passing on the validity of such a restrictive statute, the Supreme Court took a more limited view of the states' powers. The

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1. E.g., NEW YORK PENAL CODE § 171(a) (1887); MINN. R. L. § 509.7 (1905); MO. LAWS 1893 p. 187.
  2. 49 STAT. 449 (1935), 29 U.S.C. §§ 151-166 (1946).
  3. 228 Wis. 773, 279 N.W. 673 (1938).
  4. 315 U.S. 740, 750, 749 (1942).
  5. WIS. STAT. § 111 (1937).

decision in *Hill v. Florida*<sup>6</sup> qualified the language of the *Allen-Bradley* case, indicating that where the Wagner Act had bestowed a general right (in the instant case the freedom of employees to choose their bargaining representatives) a state statute may not limit it (by requiring a license.) A series of decisions placed further limitations upon state regulation by judicial classification of certain industries as "affecting commerce" within the meaning of the Wagner Act, making it clear that federal labor legislation applies even to privately owned public utilities operating wholly within state boundaries.<sup>7</sup>

The passage of the Labor-Management Relations Act of 1947 (Taft-Hartley Act)<sup>8</sup> extended the operation of the Wagner Act by amendment to include the conduct of employees and unions as a subject of regulation by the Federal Government. Where the Wagner Act's primary function had been the protection of lawful union activity, the Taft-Hartley Act restricted such activity. This law ostensibly returns to the states a portion of the power over labor disputes which prior interpretation of the Wagner Act had lost to them. Section 10 (a) provides for ceding jurisdiction of such disputes to mediation boards established under state statutes when the provisions of such statutes are not inconsistent with corresponding provisions of the federal statute.

Virginia had, in 1947, enacted a Public Utilities Labor Relations Law<sup>9</sup> which provided, after reaffirming the right of collective bargaining,<sup>10</sup> that lockouts, strikes and work-stoppages were unlawful unless certain conditions were complied with. The statute set forth a procedure for seizure by the Governor of a utility involved in a labor dispute if, after a "cooling off" period, a strike seemed imminent.<sup>11</sup> Public utilities occupy a unique position in the labor picture. Clothed as they are with the public interest, any interruption in their operation will obviously affect the health and welfare of the citizens served by them. Therefore Virginia had not been alone in enacting, prior to the Taft-Hartley Act, legislation to promote

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6. 325 U.S. 538 (1945).

7. *E.g.*, NLRB v. Virginia Elec. & Power Co., 314 U.S. 469 (1941); Pueblo Gas & Fuel Co. v. NLRB, 118 F.2d 304, 305, 306 (10th Cir. 1941); Consumers Power Co. v. NLRB, 113 F.2d 38, 39-41 (6th Cir. 1940).

8. 61 STAT. 136 (1947); 29 U.S.C. §§ 141-197 (Supp. 1946).

9. VA. CODE ANN. §§ 40-75 through 40-95 (1950).

10. VA. CODE ANN. § 40-76 (1950).

11. VA. CODE ANN. § 40-78 (1950).

prompt and efficient handling of labor disputes involving these corporations, and to insure the continuous flow of their services if free collective-bargaining should break down.<sup>12</sup> Wisconsin had passed a statute known as the Public Utility Anti Strike Law.<sup>13</sup> In the debate on the passage of Wisconsin's legislation the Virginia statute had been considered and certain of its provisions rejected because it was shown that the unions had expressed their attitude toward the Virginia act during a telephone strike in early 1947 by prefacing their handling of calls with the operator's saying "due to an unjust law, I am compelled to handle your call"; and management spokesmen had been equally opposed to the law on the grounds of its seizure provisions.<sup>14</sup> The legislation finally enacted by Wisconsin provided, in lieu of seizure, for compulsory arbitration of labor disputes in the event of an "impasse and stalemate" in collective bargaining which was likely to result in an interruption of an "essential public utility service."<sup>15</sup>

But the general tenor and intent of the Wisconsin and Virginia statutes is in accord. Therefore when the United States Supreme Court, in *Bus Employees v. Wisconsin Board*,<sup>16</sup> declared the Wisconsin statute to be invalid as in conflict with the Taft-Hartley Act, Virginia was alerted to amend her statute in order to bring it into conformity with the federal law.

In the Wisconsin case, after reviewing the extent to which Congress has acted in the regulation of peaceful strikes for higher wages, the Court concluded that this field had been closed to state regulation. It pointed out that public utilities fall under the operation of the Taft-Hartley Act, their special treatment having been expressly rejected. Recalling that it had previously found invalid a Michigan statute which sought to impose conditions on the right to strike inconsistent with restriction in the limited sense imposed by Congress in the Taft-Hartley Act, it held that the Wisconsin statute, by making arbitration mandatory, sought to deny the right entirely.

It was in an effort to resolve any inconsistencies with the federal act, in the light of this decision, that the Virginia General Assembly in the 1952 session enacted a new public utility labor

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12. See Note, 1948 WIS. L. REV. 597.

13. WIS. STAT. § 11.50 et seq. (1947).

14. See Note 1948 WIS. L. REV. 597.

15. WIS. STAT. § 111.50 (1947).

16. 340 U.S. 383 (1951).

relations law repealing the 1947 Act in toto and substituting new provisions therefor (to be known as Code of Virginia (1950) §§ 40-75.1 through § 40-75.6).<sup>17</sup>

Specifically the new act repeals §§ 40-76 and 40-77 of the Code of Virginia, which deal with collective bargaining and lockouts in public utilities, and § 40-78, which imposes conditions on the right of employees of utilities to strike; provisions which—under the language of the Wisconsin case—are in direct conflict with the Taft-Hartley Act. The new sections relating to labor disputes involving public utilities are carefully worded to avoid incompatibility with the Federal Act. § 40-75.1 designates the Department of Labor and Industry as the authorized state agency to mediate and conciliate labor disputes. § 40-75.2 provides for notice to the Department of Labor and Industry of any anticipated termination of a collective bargaining contract covering employees of any utility “to which Federal legislation does not apply.” § 40-75.3 directs the Commissioner of Labor to inform the Governor of the nature of the dispute and provides that “if the Governor deems it necessary the Commissioner, or his designated agent, shall offer to meet and confer with the parties in interest and undertake to mediate and conciliate their differences *to the extent of the mediation and conciliation by state agencies contemplated by the National Labor Relations Act or similar Federal legislation. In the event Federal Legislation does not apply*, it shall be the duty of the utility and its employees, or designated representatives, to meet and confer with the Commissioner or his agent—for the purpose of mediating and conciliating their differences.” (Italics supplied.) Finally, § 40-75.4 charges the Commissioner with keeping the Governor fully informed as to the progress of negotiations under the Act and to report the probability of any strike or lockout. The concluding sections are procedural only.

The language of these sections seems innocuous enough. The Legislature has merely provided a means of mediation where one does not otherwise exist, and made it possible for the Governor to keep well informed regarding matters relating to the public interest.

The General Assembly, in this same session, however, enacted another law which must be considered in conjunction with the above legislation. This is a public utilities seizure act<sup>18</sup> patterned after the

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17. Acts of Assembly 1952, c. 697.

18. Acts of Assembly 1952, c. 696.

existing Ferry Seizure<sup>19</sup> and Mine Seizure Acts.<sup>20</sup> It provides that "whenever in the judgment of the Governor there is an imminent threat of substantial curtailment, interruption or suspension in the operation of any public utility . . . he shall promptly make an investigation . . .," gives the Governor authority to take possession of the utility where in his judgment such interruption of operation would constitute a menace or threat to the public health, safety or welfare, and sets forth the procedure for the seizure and operation of the utility.

It is interesting to note how closely the sections of this act parallel the sections of the companion act which this Legislature deemed necessary to repeal. With the exception of former §§ 40-76, 40-77 and 40-78 (dealing with strikes and lockouts), the new seizure act embodies all of the repealed sections. And the new law, though apparently disinfected by the omission of any reference to "labor disputes," "strikes," "lockouts" or "work-stoppages" as incidents of interruption of public service warranting seizure, preserves the controversial character of the legislation it displaced by prohibiting picketing, once the State has taken possession, in the broadest possible terms.

It is believed that the question remains whether Virginia has in fact resolved the conflict between state and federal regulation of labor relations, despite this artless dismemberment of the original act. Although arbitration is not made mandatory in labor disputes to which the Taft-Hartley Act is applicable, and labor disputes, strikes, and lockouts are not specified as warranting seizure, the conclusion seems inevitable that as a matter of practical application of the legislation as a whole Virginia is seeking to continue the curtailment of the right to strike by employees of public utilities.

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19. VA. CODE ANN. §§ 33-202 through 33-208 (1950).

20. VA. CODE ANN. §§ 45-145 through 45-157 (Supp. 1950).