Survey of the United States Supreme Court Decisions Affecting Labor-Management Relations During the 1962-1963 Term

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up to the Congress to erect the signs that are necessary to facilitate predictable passage through this cross-roads.\textsuperscript{71}

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Survey of the United States Supreme Court Decisions Affecting Labor-Management Relations During the 1962-1963 Term\textsuperscript{*}

The labor law decisions of the Supreme Court during the 1962-1963 term were primarily significant in clarifying perennial labor issues. The Court was faced with many recurring problems—jurisdiction of the National Labor Relations Board, federal court pre-emption, rights under Section 301 of the Taft-Hartley Act, and a union's use of dues for political contributions—and it resolutely drafted new guidelines in an attempt to clarify the existing complexity. But the Court was not entirely relegated to redefining the old problems as it also was called upon for its initial construction of recent significant developments such as the agency shop agreement and superseniority to strike replacements.

The Court took final action on eighty-four labor cases during the term. Twenty-two of these cases were disposed of by opinion, sixty were denied review, one was reversed upon grant of review, and one was remanded with directions to dismiss as moot. The following is a summary of those twenty-two cases on which the Court granted review.

I. JURISDICTION OF THE NLRB

The National Labor Relations Board receives its authority from Congress by way of the National Labor Relations Act.\textsuperscript{1} The power


The author acknowledges use of Happer, "The Liquidation-Reincorporation Problem" (unpublished seminar paper, University of North Carolina School of Law, May 1963), as an aid in research. The opinions of that paper do not appear herein except in such case as they coincide with those of the author.

\textsuperscript{*} The author would like to express his sincere appreciation to Professor Daniel H. Pollitt for the encouragement and guidance given in the preparation of this paper.

of Congress and thus the NLRB to regulate labor-management relations is limited by the commerce clause of the United States Constitution. The NLRB, therefore, can regulate labor problems only in respect to activities and labor disputes which have a substantial effect on "commerce with foreign Nations, and among the several States . . . ."

The Court determined three "commerce clause" cases during the term involving the question of the jurisdiction of the NLRB over the subject matter.

A. Interstate Commerce

In NLRB v. Reliance Fuel Oil Corp., a New York fuel oil distributor questioned the jurisdiction of the NLRB over his labor practices, claiming he was a local distributor and was not engaged in interstate commerce. The Board had determined that Reliance had purchased more than 650,000 dollars worth of fuel oil and related products from Gulf Oil Corp., an out-of-state supplier who was concededly engaged in interstate commerce. The Board found that the activities of Reliance affected interstate commerce within the meaning of section 2(7) of the National Labor Relations Act so as to give it jurisdiction over the alleged unfair labor practices of the distributor.

The Supreme Court affirmed, holding that in passing the National Labor Relations Act "Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause." In finding that the activities of Reliance undoubtedly were within the constitutional reach of Congress, the Court pointed to the fact that "Congress has explicitly regulated not merely transactions or goods in interstate commerce but activities which in isolation might be deemed to be merely local but in the interlacings of business across state lines adversely affect such commerce." The Court found the situation "representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce."

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4 371 U.S. at 226. (Emphasis added.)
5 Id. at 226-27.
6 Id. at 226.
NOTES AND COMMENTS

B. Foreign Commerce

It is generally agreed that Congress has the power under the commerce clause to apply the National Labor Relations Act to the crews of foreign-flag ships while they are operating in American waters. But in two successful attacks against the Board's jurisdiction during the term the Court decided that Congress has not exercised such power.

The Court determined in McCulloch v. Sociedad National de Marineros de Honduras that under the Taft-Hartley Act the Board had no jurisdiction over foreign-flag ships employing foreign crews, even though the ships were owned by a subsidiary of a United States corporation. The case arose when the Board ordered an election, after petition for certification by the National Maritime Union (NMU), among the crew of a Honduran vessel to determine whether or not they wished to be represented by a union.

The Board discovered that an American corporation, United Fruit Company, owned all the stock of the Honduran corporation, Empresa, which time-chartered the vessels to United Fruit. It also determined that all the crew of the vessels, including officers, were Honduran (except one Jamaican) and claimed that country as their home; and that the crew was controlled by a collective bargaining agreement with a Honduran union. United Fruit, however, directed the use of the vessels. The Board concluded that United Fruit operated a single, integrated maritime operation within which were the Empresa vessels, reasoning that United Fruit was a joint employer with Empresa of the seamen covered by NMU's petition. Using a "balance of contacts" test, it concluded that the maritime operations involved substantial United States contacts, outweighing the numerous foreign contacts present, and that the Board had jurisdiction. The Court of Appeals reversed.

In argument before the Supreme Court the Board attempted to distinguish a prior case, Benz v. Compania Naviera Hidalgo, S.A.

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11 300 F.2d 222 (2d Cir. 1962).
In that case the Court held that the Taft-Hartley Act did not apply in a suit for damages "resulting from the picketing of a foreign ship operated entirely by foreign seamen... while the vessel was temporarily in an American port." [Congress] inescapably describes the boundaries of the Act as including only the workingmen of our own country and its possessions." In distinguishing, the Board urged that unlike the vessel in the Benz case (1) these United Fruit vessels were not temporarily in United States waters, but were operating in a regular course of trade between foreign ports and the United States, and (2) the foreign owner was in turn owned by an American corporation.

The Court voted down the Board's argument and its balance of contacts test:

We note that both of these points rely on additional American contacts and therefore necessarily presume the validity of the "balancing of contacts" theory of the Board. But to follow such a suggested procedure to the ultimate might require that the Board inquire into the internal discipline and order of all foreign vessels calling at American ports. Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice.

The Court concluded that for it to "sanction the exercise of local sovereignty under such conditions in this 'delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed,'" and that there is no specific language in the Taft-Hartley Act or in its legislative history including foreign vessels within its coverage.

The Court then applied its Sociedad decision to Ingres S. S. Co. v. IMWU, which was granted certiorari with Sociedad. It held that since the National Labor Relations Act does not apply to foreign-reg-

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13 Id. at 139.
14 Id. at 144.
15 372 U.S. at 18-19.
16 Id. at 19.
17 Id. at 21-22.
18 Id. at 19.
istered ships employing alien seamen, a state court has jurisdiction of an action for damages and injunctive relief brought by such a ship-owner against a United States union for picketing during a campaign to organize.

The Court reversed the New York court decision that the Labor Board had exclusive jurisdiction. Although it was "arguable" at the time of the trial court's decision that the Board's jurisdiction extended to this dispute, the decision in Sociedad negated such jurisdiction now. "The Board's jurisdiction to prevent unfair labor practices, like its jurisdiction to direct elections, is based upon circumstances 'affecting commerce,' and we have concluded that maritime operations of foreign-flag ships employing alien seamen are not in 'commerce' within the meaning of § 2(6)...."

II. STATE LEGISLATION

As indicated by the New York court decision in Incres, one of the major objectives of the National Labor Relations Act is to provide an element of uniformity and certainty in the conduct of labor relations. To this end the United States Supreme Court has acted to strike down state legislation which attempts to interfere with the federal law. During the past term the Court heard five cases which questioned the validity of state statutes in view of their potential conflict with the national labor policy.

A. Anti-Discrimination Statute

The Court held in Colorado Anti-Discrimination Comm'n v. Continental Airlines, Inc. that state laws forbidding racial discrimination in hiring practices may be applied to airlines and other interstate employers. The Court reversed the Colorado Supreme Court, and commanded affirmance of the Colorado Anti-Discrimination Commission's order that Continental Airlines hire a licensed and qualified Negro pilot.

The Airline argued that this state law would burden commerce through conflicting and diverse regulations. The Court answered

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21 372 U.S. at 27.
this by pointing out that there was no federal conflict involved in a state statute forbidding racial discrimination in hiring. It stated in essence that the threat of diverse and conflicting regulation of a carrier's hiring practices is virtually nonexistent since any state or federal law requiring a carrier to practice racial discrimination in hiring would be invalid as unconstitutional.

The Airline vigorously argued that the federal law has so pervasively covered the field of protecting people in interstate commerce from racial discrimination, that the states are barred from enacting legislation in this field. Justice Black rejected this preemption contention, pointing to the federal law referred to by the Airline. He made these points:

(1) Although the Federal Aviation Act contains broad general provisions against unjust discrimination, neither the Federal Aviation Agency nor the Civil Aeronautics Board have assumed the authority to prohibit racial discrimination by air carriers. There can be no preemption as long as such power remains dormant and unexercised.

(2) Nothing in the Railway Labor Act places upon the employer a duty to engage in fair employment practices.

(3) Presidential Executive Orders requiring government contractors to include non-discriminatory pledges in their contracts cannot be held to have preempted the field. Even assuming that the Executive Order could foreclose state legislation, "it is impossible for us to believe that the Executive intended for its order to regulate air carrier discrimination among employees so pervasively as to preempt state legislation intended to accomplish the same purpose."

Thus, the Court's opinion makes it clear that state anti-discrimination laws are not to be regarded as threatening interstate carriers with conflicting and diverse regulations which would burden commerce, and that such laws are not preempted by federal regulation. The decision permits states to require interstate employers to adhere to state enacted fair employment practice legislation.

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24 372 U.S. at 721.
25 Id. at 723-24.
27 Id. at 725.
B. Public Utility Strike Law.

States cannot require employees to forego the federally guaranteed right to strike, even in industries of local importance. This position was reiterated this past term when the Court invalidated Missouri's King-Thompson Act in *Amalgamated Ass'n of Street Employees v. Missouri.* The King-Thompson Act authorized the state to seize struck public utilities and to forbid strikes thereafter. The Governor of Missouri utilized the statute in thwarting a strike against a Kansas-Missouri transit company. The Court found the statute unconstitutional under the supremacy clause, declaring

The short of the matter is that Missouri, through the fiction of "seizure" by the State, has made a peaceful strike against a public utility unlawful, in direct conflict with federal legislation which guarantees the right to strike against a public utility, as against any employer engaged in interstate commerce. In forbidding a strike against an employer covered by the National Labor Relations Act, Missouri has forbidden the exercise of rights explicitly protected by § 7 of that Act. Collective bargaining, with the right to strike at its core, is the essence of the federal scheme.

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28 In *Amalgamated Ass'n of Street Employees v. Wisconsin Employment Relations Bd.*, 340 U.S. 383 (1951), the Court held invalid under the Supremacy Clause a Wisconsin statute which made it a misdemeanor for any group of public utility employees to engage in a strike which would cause an interruption of an essential public utility service.


Section 295.200(1) provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

Section 295.200(6) provides: "The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder."

The Taft-Hartley Act excludes from its coverage employees of any state or political subdivision thereof. National Labor Relations Act §2(2), as amended, 61 Stat. 137 (1947), 29 U.S.C. § 152(7) (1958). But in the instant case the Court found that the transit company employees did not in actuality become employees of the State. No property of the company was actually conveyed, transferred, or otherwise turned over to the State. The State did not in any way participate in the management of the company's business.

C. Picketing By Non-Employees

A Virginia statute prohibiting picketing by non-employees was held unconstitutional in Waxman v. Virginia. By a per curiam order the Court reversed a Virginia Supreme Court of Appeals decision which held that neither the Taft-Hartley Act nor the first amendment prevents the state from prohibiting picketing by non-employees. The Supreme Court first held to the contrary over twenty-three years ago in AFL v. Swing.

D. Right-To-Work Laws

A union, as a social institution, is dependent for its continued existence upon its ability to meet the particular needs of its members. To meet these needs a union must have the strength to obtain rights for itself as an organization. A usual method of obtaining such strength is through "union-security agreements" contained in collective bargaining contracts. The "closed-shop agreement" was the strongest form of union-security. It provided that the employer could hire only members of a specific union, and that the employer would discharge any employee who did not remain a member in good standing throughout the life of the agreement. But this form of union-security was abolished in 1947 by section 8(a)(3) of the Taft-Hartley Amendments.
Section 8(a)(3) does permit, under certain conditions, other forms of union-security agreements. A union and an employer may make an agreement requiring all employees to join the union in order to retain their jobs. This is the "union-shop agreement." But the Taft-Hartley Act severely limited the application of union-shop agreements in section 14(b), which declares that nothing in the federal statute authorizes the execution or application of union-security agreements in any state or territory "in which such execution or application is prohibited by State or Territorial law." This section in effect, has carved out an exception to the preemption doctrine for state right-to-work laws.

Another form of "union-security" is the "agency-shop" agreement. Under this arrangement membership in the union is not compulsory, but non-union employees of the bargaining unit are required to pay support money to defray their share of the bargaining expenses of the union. The union justifies this because it is required to bargain for and represent all the employees of the unit regardless of their union affiliation. In unanimous decisions during the past term, the Court resolved two much-litigated issues involving the validity of agency-shop agreements in the face of state right-to-work laws.

The Indiana right-to-work law was the point of departure in under §8(a)(3). But Congress permitted some union-security agreements by enacting a proviso which exempts the union-shop from the reaches of §8(a)(3). This exemption, however, does not include the closed-shop contract.

A lawful union-shop agreement can not require that applicants for employment be members of the union in order to be hired. The most that can be required is that all employees in the group covered by the agreement become members of the union within a certain period of time after the contract takes effect. Membership may be required only after thirty days following the effective date of the contract or the beginning of the employment, whichever is later. The union is also required to admit all eligible employees to membership without discrimination, although the union reserves the right to make its own rules of eligibility. The union may seek an employee's discharge for non-membership only when membership has been withdrawn for failure to tender an initiation fee or periodic dues. If the employer has reasonable cause to believe that membership was denied or terminated for any other reason, discharge for membership may be an unfair labor practice on the part of either the employer or the union, or both, depending on the circumstances of the case. See generally, Symposium—Union Security Under the Taft-Hartley Act, 11 SYRACUSE L. REV. 37 (1959).


IND. ANN. STAT. §§ 40-2701 to -2705 (Supp. 1961). Section 40-2701
The Indiana statute had been construed by an Indiana Appellate Court in *Meade v. Hagberg* as permitting agency-shop agreements. That court pointed out that there are two types of right-to-work statutes in this country—(1) those which prohibit the compulsory paying of fees to labor organizations, and (2) those which prohibit only the conditioning of employment on union membership. The Indiana statute is of the latter type. Since both types of statutes existed prior to the Indiana statute, the court stated that it would seem that the clear, unequivocal language of the Indiana act was intended to apply to union membership and not to outlaw "agency-shop" agreements which provide for the payment of fees and dues to labor organizations properly designated as collective bargaining representatives. Had the legislature intended to make such provisions and such conduct illegal it should have so expressly declared in the language of the act.

After the *Meade* case was decided, the United Auto Workers demanded that a General Motors plant in Indiana bargain on the same type agency-shop agreement as in *Meade*. General Motors refused to bargain, claiming the agency-shop was an unfair labor practice under federal law. The union filed a refusal to bargain charge with the NLRB. The Board found the agency-shop is a lawful subject of bargaining, but the Court of Appeals reversed.

-provides: "Public Policy. It is hereby declared to be the public policy of the state of Indiana that membership or nonmembership in a labor organization should not be made a condition to the right to work or to become an employee of or to continue in the employment of any employer...and any agreements between employers and labor organizations which make membership or the maintenance thereof, or nonmembership, in a labor organization a condition of employment or continued employment, and any denial, severance or interruption of employment because of such membership or nonmembership are violations of said rights and are against the public policy of the state of Indiana."

Section 40-2703 prohibits any agreement by an employer or a labor organization to exclude or discharge an employee by reason of membership or nonmembership in a labor organization.

Section 40-2704 prohibits any conduct which encourages exclusion or discharge of an employee by reason of membership or nonmembership in a labor organization.

Section 40-2705 declares violations of the provisions of the act shall be a misdemeanor.

- Id. at —, 159 N.E.2d at 414.
- General Motors Corp. v. UAW, 133 NLRB 451 (1961).
- General Motors Corp. v. NLRB, 303 F.2d 428 (6th Cir. 1962).
The Supreme Court reversed, holding that an agency-shop constitutes a permissible form of union-security under the Taft-Hartley Act. Therefore, the employer was not excused from his duty under the Act to bargain over an agency-shop proposal.

The Court referred to its language in *Radio Officers Union v. NLRB*, where it had determined that the legislative history of section 8(a)(3) indicates that Congress recognized the validity of unions' concern about free riders, i.e., employees who receive the benefits of union representation but are unwilling to contribute their fair share of financial support to such union, and gave unions the power to contract to meet that problem while withholding from unions the power to cause the discharge of employees for any other reason.

The Court pointed out that an agency-shop contract is the practical equivalent of a union-shop contract, since in both the employment is conditioned on the employee's payment of an amount equal to the union dues and fees. The Court found that the only substantial difference between the union-shop and the agency-shop is that the former puts the option of choice of membership on the employer, where the latter places that choice on the employee. "Such a difference between the union and agency shop may be of great importance in some contexts, but for present purposes it is more formal than real."

In *Retail Clerks Int'l Ass'n v. Schermerhorn*, the Court found that since the agency-shop is within the sanction of section 8(a)(3) as found in *General Motors*, it is also within the scope of section 14(b). Therefore a state is within its authority under section 14(b) in invalidating union-shop and agency-shop contracts where such contracts are contrary to state law. Since Florida, in the instant case, had held the agency-shop contract invalid under its right-to-work law, the Court dismissed the appeal. But the Court restored

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48 *Id.* at 744.
50 *Retail Clerks Int'l Ass'n v. Schermerhorn*, 141 So. 2d 269 (Fla. 1962).
51 Fla. Const. § 12: "The right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."
the case to the calendar for reargument as to whether the Florida courts, rather than exclusively the NLRB, are tribunals with jurisdiction to enforce the state's prohibition against such arrangements.62

Thus the Court substantially removed many doubts as to the application of state right-to-work laws to the agency-shop agreement. Future agreements can be entered into with more predictability in following the teachings of these cases:

(1) An agency-shop agreement is not an unfair labor practice, but rather is a valid form of union-security agreement within section 8(a)(3) of the NLRA.
(2) Since an agency-shop agreement is within section 8(a)(3), it is also within the preemption exception of section 14(b).
(3) Not all state right-to-work laws prohibit agency-shop agreements, as shown in the construction given the Indiana statute.

III. Federal Preemption

Since the Wagner Act in 1935,63 the Court has been called upon to determine the extent to which state labor regulation must yield to overriding federal authority. The Court has concerned itself with the potential conflict between federal and state systems—their inconsistent standards of substantive law and their differing remedial schemes. The unifying consideration of the Court's decisions has been "regard to the fact that Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience."64

In Garner v. Teamsters Union,65 the Court explained:

Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial

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62 On Dec. 3, 1963, the Court held that the state court has jurisdiction to enforce its state right-to-work law's prohibition against the agency shop clause. Retail Clerks Int'l Ass'n v. Schermerhorn, 32 U.S.L. Week 4018 (U.S. Dec. 3, 1963).
relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid those diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law.

In complying with the congressional intention, the Court has adopted the doctrine of federal preemption in labor cases.

The principles making up the doctrine of federal preemption were aptly summarized by the Court in its opinion in San Diego Bldg. Trades Council v. Garmon, as follows:

1. "When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

2. The initial determination of whether a particular activity is subject to the Act is exclusively the responsibility of the NLRB.

3. The failure of the NLRB to determine the status of the disputed activity does not necessarily give the state the power to act.

4. State regulation is precluded regardless of the remedy sought, if the conduct to be remedied is potentially subject to the Taft-Hartley Act. The doctrine applies to damage awards as well as to injunctions, to state court proceedings as well as to regulation by state labor agencies, and to actions based on general statutory or common law as well as to proceedings under a state labor relations statute.

The Garmon rule was clear and concise. It charted a simple and direct course of conduct for state courts to follow. It seemingly performed the invaluable task of warning state judges to stay out of the field of regulating strikes, boycotts and picketing which comes within the jurisdiction of the NLRB. But the warning has fallen

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60 Id. at 490-91.
62 Id. at 245.
63 Id. at 495.
64 Ibid.
65 Id. at 245-46.
66 Id. at 246-47.
on some unheeding ears, and the Court decided four cases during the past term by utilizing the Garmon principles of federal preemption.

In *Local 438, Constr. Union v. Curry*, a Georgia non-union contractor brought suit against a union for picketing the construction site for the purpose of forcing him to hire only union labor. He sought a temporary injunction, but it was denied without opinion. On appeal the Georgia Supreme Court reversed, holding that the Georgia Superior Court had jurisdiction to issue the temporary injunction. On writ of certiorari the United States Supreme Court reversed, ruling that the picketing involved an arguable violation of the Taft-Hartley Act and that the NLRB has exclusive primary jurisdiction. Because of the doctrine of federal preemption, the Georgia Supreme Court had no jurisdiction to issue a temporary injunction against the picketing.

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The Court found that the allegations of the complaint, as well as the findings of the Georgia Supreme Court, made out at least an arguable violation of § 8(b) of the Taft-Hartley Act. The Georgia court had said the picketing was for the purpose of forcing respondents to employ only union labor and that the picketing therefore violated the Georgia right-to-work law. On the other hand, the union contended that its peaceful picketing was for the sole purpose of publicizing the facts about the wages paid by the contractor. In finding preemption applicable, the Court pointed to several specific provisions which the NLRB may find were violated:

- Section 8(b)(1)(A) prohibits unions from restraining or coercing employees in the exercise of their rights under § 7 of Taft-Hartley;
- Section 8(b)(2) prohibits unions from causing or attempting to cause discrimination by an employer against an employee;
- Section 8(b)(4)(B) prohibits secondary boycotts by unions;
- Section 8(b)(7)(C) prohibits organizational and recognitional picketing by non-certified unions unless a representation petition is filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing.

In another aspect of the case, the Court was faced with the initial task of establishing its own jurisdiction over the controversy. 28 U.S.C. § 1257 (1958) limits the Court's appellate jurisdiction to the review of final judgments of state courts, and the state court here had issued only a temporary injunction. The Court decided it could review because the judgment constituted a final and erroneous assertion of jurisdiction by a state court beyond its power and in the face of a substantial claim that its jurisdiction is preempted by federal law.

In support of its decision to take jurisdiction, the Court said that a temporary injunction effectively may dispose of the union's rights and render illusory its right to review as well as its right to a hearing before the NLRB. The Court continued, "the policy...against fragmenting and prolonging litigation and against piecemeal reviews of state court judgments does not
In *Local 100, United Ass'n of Journeymen v. Borden* a union member sought damages in a state court against his union for refusal to refer him to a job upon request by the employer. The member alleged that the union had discriminatorily interfered with his right to contract, and had breached a promise implied in the union contract not to discriminate unfairly. The union asserted that Borden had violated an internal union rule prohibiting solicitation of work, and therefore was not eligible for referral. The state court found for Borden. The Supreme Court reversed on the basis of the *Garmon* rule.

[I]n the absence of an overriding state interest such as that involved in the maintenance of domestic peace, state courts must defer to the exclusive competence of the National Labor Relations Board in cases in which the activity that is the subject matter of the litigation is arguably subject to the protections of §7 or the prohibitions of §8 of the National Labor Relations Act. This relinquishment of state jurisdiction...is essential 'if the danger of state interference with national policy is to be averted,' ...and is as necessary in a suit for damages as in a suit seeking equitable relief.

The Court asserted that the conduct here was subject to NLRB cognizance. "[I]t is certainly 'arguable' that the union's conduct violated §8(b)(1)(A) ...and 8(b)(2)" in refusing to refer

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prohibit our holding the decision of the Georgia Supreme Court to be a final judgment, particularly when postponing review would seriously erode the national labor policy requiring the subject matter of respondent's cause to be heard by the National Labor Relations Board, not by the state courts." 371 U.S. at 550.

The Georgia Court had already resolved the merits of the issues raised in the course of the hearing upon the temporary injunction. The petitioner admitted that there were no further factual or legal issues to be solved by the Georgia trial court. "Since there was nothing more of substance to be decided in the trial court, the judgment below was final within the meaning of 28 U.S.C. §1257 ...." 371 U.S. at 551.

The decision is significant in providing for a "speeding-up" of the time-consuming process of appealing a picketing injunction through the state courts and then to the Supreme Court. It will no longer be necessary to wait until a permanent injunction is issued; the appeal may be taken on the temporary injunction.


*373 U.S. at 693-94.*

*Id.* at 694. Section 8(b)(1)(A) makes it an unfair labor practice for a labor organization to restrain or coerce an employee in the exercise of his rights
Borden. "And there is a substantial possibility in this case that Borden's failure to live up to the internal rule prohibiting the solicitation of work from any contractor was precisely the reason why clearance was denied."\(^6\) Thus the Board may find that the union conduct was protected concerted activity within section 7. "It is sufficient for present purposes to find, as we do, that it is reasonably 'arguable' that the matter comes within the Board's jurisdiction."\(^7\)

In *Local 207, Int'l Ass'n of Bridge Workers v. Perko*,\(^7\) the plaintiff union member sued in a state court for damages for an illegal conspiracy which led to his being discharged. Perko had worked as a foreman and superintendent and was suspended for violating a union rule, and was thereafter laid off by the company at the union's insistence. The Court held that the subject matter of the action was arguably within the jurisdiction of the NLRB to deal with unfair labor practices, and that the state court had no jurisdiction over the controversy.

[I]t may well be that a union's insistence on discharge of a supervisor for failure to comply with union rules would violate § 8(b)(1)(A) because it would inevitably tend to coerce non-supervisory employees into observing those rules. If so, it would surely be within the Board's power under § 10(c) to order the union to reimburse the supervisor for lost wages.

Moreover, if a union forces an employer to discharge a supervisor, such conduct may well violate 8(b)(1)(B) because it coerces the "employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances."\(^7\)

In *Ex parte George*,\(^7\) a Texas court issued a temporary injunction restraining the National Maritime Union and its officers from peacefully picketing a refinery operated by a subsidiary of an oil

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under §7 of the Taft-Hartley Act. (Section 7 gives employees the right to self-organization, to bargain collectively, to join labor unions, to strike for better working conditions, and to refrain from activity in behalf of a union.)

Section 8(b)(2) makes it an unfair labor practice for a labor organization to cause an employer to discriminate against an employee in regard to wages, hours, and other conditions of employment for the purpose of encouraging or discouraging membership in a labor organization.

\(^6\) Id. at 695.
\(^7\) Id. at 696.
\(^7\) 373 U.S. 701 (1963).
\(^7\) Id. at 707.
\(^7\) 371 U.S. 72 (1962).
company with which the NMU was engaged in a labor dispute.\textsuperscript{74} It found the subsidiary had a valid collective bargaining agreement with another union and that the object of NMU’s picketing was to secure the breach of the collective bargaining agreement, in violation of a Texas statute.\textsuperscript{76} When the picketing continued, the NMU was adjudged in contempt, and the Texas Supreme Court affirmed, ruling that such picketing was neither prohibited nor protected by the Taft-Hartley Act.

On certiorari, the Court held that the peaceful picketing was at least arguably protected by section 7 of the NLRA and that the state court was therefore without jurisdiction to issue the injunction. “In the absence of the Board’s clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essentially undisputed facts, it is not for this Court to decide whether such activities are subject to state jurisdiction.”\textsuperscript{78}

IV. Section 301 Exception to the Preemption Doctrine

In Smith v. Evening News Ass’n,\textsuperscript{77} the Court definitely established that the preemption doctrine does not apply to suits brought under section 301(a) of the Taft-Hartley Act,\textsuperscript{78} even when the action complained of is admittedly an unfair labor practice.

Section 301(a) was enacted in 1947 to give federal district courts jurisdiction over suits for violation of certain specified types of collective bargaining contracts. It was thereafter contended that the state courts were preempted from subject matter jurisdiction because of that section. The Court in Dowd Box Co. v. Courtney\textsuperscript{79} disallowed that argument. It found that the statute provided only that suits may be brought in federal district courts, not that they must be. The statute did not even suggest that federal jurisdiction be exclusive.

\textsuperscript{74} Ex parte George, 163 Tex. 103, 358 S.W.2d 590 (1962).
\textsuperscript{76} 371 U.S. at 73.
\textsuperscript{77} 371 U.S. 195 (1962).
\textsuperscript{78} Labor Management Relations Act (Taft-Hartley Act) § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958): “Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.” See generally Annot. 17 A.L.R.2d 614 (1951).
\textsuperscript{79} 368 U.S. 502 (1961).
The legislative history makes clear that the basic purpose of the § 301 (a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations. Moreover, there is explicit evidence that Congress expressly intended not to encroach upon the existing jurisdiction of the state courts.\footnote{Id. at 508-09.}

The Court found that, "instead, Congress deliberately chose to leave the enforcement of collective agreements to the usual processes of the law."\footnote{Id. at 513.}

Then in \textit{Local 174, Teamsters Union v. Lucas Flour Co.}\footnote{369 U.S. 95 (1961).} the Court established dicta from \textit{Dowd Box} that the state courts in section 301 cases must apply the principles of the federal labor law policy.

In \textit{Evening News}, a suit was brought under section 301 by a union member in a Michigan court against his employer, alleging breach of a collective bargaining agreement in discriminating against him in favor of non-union employees. Both the trial court and the Michigan Supreme Court\footnote{Smith v. Evening News Ass'n, 362 Mich. 350, 106 N.W.2d 785 (1962).} dismissed the action on the theory of preemption, since the action made out an unfair labor practice and was arguably within NLRB jurisdiction. The United States Supreme Court reversed. It consolidated its holdings in \textit{Dowd Box} and \textit{Lucas Flour} that the preemption doctrine is not relevant in section 301(a) suits, and the state court is free to apply federal law.

Thus the Court seemed to definitely establish a tort-contract distinction, leaving the \textit{Garmon} decision intact as to torts which also involve unfair labor practices, and excepting contracts so that state courts have concurrent jurisdiction with federal courts in applying federal substantive law of collective bargaining.

In reaching the decision the Court overruled its decision in \textit{Association of Westinghouse Salaried Employees v. Westinghouse}\footnote{348 U.S. 437 (1955).} on another point. That case held that section 301 did not apply to the enforcement of the personal rights of individual union members by either the unions or the members. The Court in the instant case determined that this holding was based on the misconception that section 301 was merely procedural in nature for the benefit of the
signatory parties to the collective bargaining contract. The Court pointed out that *Textile Workers v. Lincoln Mills*\(^8\) has

long since settled that § 301 has substantive content and that Congress has directed the courts to formulate and apply federal law to suits for violation of collective bargaining contracts. . . . Individual claims lie at the heart of the grievance and arbitration machinery, are to a large degree inevitably intertwined with union interests and many times precipitate grave questions concerning the interpretation and enforceability of the collective bargaining contract on which they are based. To exclude these claims from the ambit of § 301 would stultify the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law.\(^8\)

A subsequent case during the term reiterated the *Evening News* decision that section 301 (a) gives jurisdiction to enforce individual employee rights. In *General Drivers Union v. Riss & Co.*\(^7\) the Court held that section 301 (a) gives a United States District Court jurisdiction to enforce a final and binding grievance procedure award requiring reinstatement of discharged employees with full back pay and seniority to the time of reinstatement, as long as the award is the parties' chosen instrument for the definitive settlement of grievances under the collective bargaining agreement.

V. CO-ORDINATION OF LABOR POLICY WITH GOVERNMENT AGENCIES

Just as the Supreme Court has concerned itself with the doctrine of federal preemption in order to eliminate the frustration of the purposes of federal labor legislation, it has been cognizant of the problems of co-ordinating government agencies so as to best achieve the Congressional purposes. This problem was before the Court in two cases during the term.

In *Los Angeles Meat and Provision Drivers Union v. United States*,\(^8\) the conflict was between the federal labor policy and the anti-trust laws. Section 6 of the Clayton Act\(^9\) specifically exempts labor organizations from the reach of the anti-trust laws, and sec-

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\(^8\) 353 U.S. 448 (1957).
tion 4 of the Norris-LaGuardia Act\(^{90}\) prevents federal courts from entering injunctions in "labor disputes."

Here, "grease-peddlers" purchased grease from restaurants, hotels, etc., and sold it to processors. The grease-peddlers were mere middlemen in the transaction and made their living from the profit margin on the resale. Four of the grease-peddlers joined the Teamster local to fix prices at a higher profit margin. The union agents enforced the prices by threatening the exercise of union economic power in the form of strikes and boycotts against any processor who dealt with non-union grease-peddlers. The Justice Department brought suit under section 1 of the Sherman Act.\(^{91}\) The district court found\(^{92}\) there was a violation of the anti-trust law, enjoined such further action, and in addition directed the termination of the grease-peddlers' union membership. The union appealed the termination order.\(^{93}\)

The Supreme Court affirmed, holding that businessmen who combine in unreasonable restraint of trade in violation of the Sherman Act can not immunize themselves from that sanction by calling themselves a labor union. The Court could not find any job or wage competition or economic relationship justifying the grease-peddlers' membership in the union. Rather, the Court found they were organized into the union solely to enable them to use the union as an enforcer of a cartel to fix the price and allocate the market. The case did not involve a labor dispute, but involved an "illegal combination between businessmen and a union to restrain trade."\(^{94}\)

Mr. Justice Douglas dissented.\(^{95}\) He felt there was a labor dispute within the meaning of the Norris-LaGuardia Act, and that therefore the federal court had no power to compel the grease-peddlers to terminate their union membership. Moreover, in \textit{Allen}

\(^{91}\) Sherman Act § 1, 69 Stat. 282 (1955), 15 U.S.C. § 1 (1958), amending 26 Stat. 209 (1890). "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal..."
\(^{93}\) In anti-trust cases where the United States is the complainant, 15 U.S.C. § 29 (1958) requires a direct appeal from the district court to the Supreme Court.
\(^{94}\) 371 U.S. at 102.
\(^{95}\) \textit{Id.} at 108.
Bradley Co. v. Local 3, IBEW98 the Court held that a union's combination with business interests in order to violate the antitrust laws could be enjoined only as respect to those prohibited activities. Otherwise the injunction would directly counter to the Norris-LaGuardia Act. According to Justice Douglas, "when we sanction the addition of the penalty of expulsion from union membership, we qualify the Allen Bradley decision."97

In Burlington Truck Lines, Inc. v. United States98 the Court considered the overlapping functions of the Interstate Commerce Commission and the NLRB. Several non-union intrastate motor carriers in Nebraska were involved in a labor dispute with a union. The union tried to put pressure on the intrastate carriers by boycotting the traffic of unionized interstate carriers to and from Nebraska. The intrastate carriers formed a corporation and applied to the ICC for a permit to act as an interstate motor carrier. The ICC granted the authority on the basis that the union boycott had resulted in inadequate service to a large section of the public. The Commission made no findings to justify the choice of this remedy instead of other forms of relief under other sections of the Act. Several interstate carriers sought review on the basis that the new corporation would divert traffic from them. The district court sustained99 the ICC order as within its scope of authority, although in the interim between the ICC order and the District Court decision Congress had passed the LMRDA100 which raised serious questions as to the validity of such union-induced boycotts. On appeal to the United States Supreme Court, held, judgment reversed and remanded to set aside the Commission's order, and to remand the case to the ICC for further proceedings. The ICC should be particularly careful in its choice of remedy because of the possible effect of its decision on the functioning of the national labor relations policy.

The Commission acts in a most delicate area here, because whatever it does affirmatively (whether it grants a certificate or enters a cease-and-desist order) may have important consequences upon

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98 325 U.S. 797 (1945).
the collective bargaining processes between the union and the employer. The policies of the Interstate Commerce Act and the labor act necessarily must be accommodated, one to the other.\textsuperscript{101}

VI. UNFAIR LABOR PRACTICES

As usual the Court was called upon to construe the unfair labor practice provisions of the Act to novel or unique situations.

A. \textit{Super-seniority to Strike Replacements}

The National Labor Relations Act specifically provides that employees have a right to strike. Section 7 states in part, "Employees shall have the right... to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."\textsuperscript{102} Strikes are among the concerted activities protected for employees by the section. Section 13 provides, "nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."\textsuperscript{103}

The strike is a legitimate economic weapon when used within the limitations and qualifications prescribed in the NLRA. Section 2(3)\textsuperscript{104} of the Act protects the strikers, preserving their status as employees while they are striking for economic reasons and providing that they may not be discharged. But as a protection for the employer the Court decided in 1938 in \textit{NLRB v. Mackay Radio & Tel. Co.}\textsuperscript{105} that an employer may hire replacements during an economic strike in order to continue his business, and he need not, at the end of the strike, discharge the replacements to reinstate the returning strikers. During this term the Court was called upon to determine whether the right of replacement in \textit{Mackay} carries with it a right to adopt a super-seniority policy that would assure the replacements some form of tenure.

\textsuperscript{101} 371 U.S. at 172.
\textsuperscript{105} 304 U.S. 333 (1938).
In *NLRB v. Erie Resistor Corp.*, Local 613 of the International Union of Electrical, Radio and Machine Workers struck in support of new contract demands after the expiration of the old contract. All 478 unit employees participated in the strike. The company continued minor production by the use of clerks, engineers and non-unit personnel. The employer began hiring permanent replacements for the strikers after a month had passed, assuring the replacements they would be retained after the strike ended. The company notified the union that it intended to give the replacements some form of super-seniority. It then announced that replacements and strikers who returned to work would be given twenty years additional seniority for layoff purposes. Within two weeks the number of strikers returning to work caused the union to give up the strike. With the strike ended, the company reinstated all the strikers whose jobs had not been filled. But layoffs soon followed and the employees laid off were largely reinstated strikers whose seniority could not match the super-seniority granted to others. The NLRB determined that a super-seniority offer to strike replacements and to economic strikers who abandon the strike was discriminatory and destructive of the strike. The Court of Appeals reversed on the basis that the right of an employer to replace economic strikers carries with it the right to adopt a seniority policy, provided that the policy is adopted solely to protect and continue the business.

On appeal the Supreme Court reversed the Court of Appeals and affirmed the NLRB decision, holding that an employer's grant of super-seniority to replacements for economic strikers and to employees who abandon the strike is so inherently discriminatory and destructive of union activity as to violate the Taft-Hartley Act without regard to the employer's motivation.

The Court pronounced that "super-seniority by its very terms operates to discriminate between strikers and nonstrikers, both during and after a strike, and its destructive impact upon the strike and union activity cannot be doubted." In reaching this decision the Court affirmed the Board's finding that super-seniority has the following effects and characteristics:

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108 Erie Resistor Corp. v. NLRB, 303 F.2d 359 (3d Cir. 1962).
109 373 U.S. at 231.
(1) it affects the tenure of all strikers, whereas permanent replacement affects only those who actually are replaced; 
(2) it necessarily operates to the detriment of those who participated in the strike as compared with nonstrikers; 
(3) if made available to bargaining-unit employees, as well as new employees, it offers individual benefits to the strikers to induce them to abandon the strike, thus dealing a crippling blow to the strike efforts; 
(4) it renders future bargaining difficult, if not impossible, for the collective bargaining representative; 
(5) it is in effect offering individual benefits to the strikers to abandon the strike. 

The business purpose the employer seeks to serve in ending the strike is outweighed, in the view of the Supreme Court and the Board, by the harmful effects a policy of super-seniority has on union rights. "Under § 8(a)(3) it is unlawful for an employer by discrimination in terms of employment to discourage membership in any labor organization, which includes discouraging participation in concerted activities such as a legitimate strike." Thus, a grant of super-seniority during a strike is violative of section 8(a)(3) without regard to the motivation of the employer.

B. Refusal to Bargain About Agency Shop

In NLRA v. General Motors Corp., discussed earlier, the Court determined that an employer's refusal to bargain with a certified union over the union's proposal for the adoption of an agency shop is an unfair labor practice.

Section 8(a)(5) of the Taft-Hartley Act makes it illegal for an employer to refuse to bargain in good faith about wages, hours, and other conditions of employment with the representative selected by a majority of the employees in a unit appropriate for collective bargaining. However, the employer is not required to bargain over a proposal that he commit an unfair labor practice.

In the instant case, General Motors refused to bargain over the agency shop proposal on the grounds that the agency shop was an

\^10\ Id. at 230. 
\^11 Id. at 233. 
\^12 373 U.S. 734 (1963). See also note 38 supra and accompanying text. 
unfair labor practice within section 8(a)(3) of the Act. The Court decided that an agency shop was a lawful subject of bargaining, and therefore General Motors committed an unfair labor practice in refusing to bargain over the proposal.

VII. RAILWAY LABOR ACT

The policy of collective bargaining by employees through representatives of their own choosing received its initial peacetime Congressional encouragement in the Railway Labor Act in 1926.114 The Act encouraged the making of agreements relating to all working conditions for railroad employees, and recognized that both the carriers and their employees have the right to choose their own bargaining representatives.115 A board of mediation was established to facilitate settlement of disputes between the representatives.116

The success of the Act led the movement toward the adoption of federal labor legislation for all industry affecting interstate commerce. Because of its special problems, however, the Railway Labor Act has remained separate from the general labor acts. During the past term the Court heard two Railway Labor Act cases which were of particular import to the entire labor field.117

117 The Court also heard two labor cases which involved the application of specialized sections of the Railway Labor Act. In Brotherhood of Locomotive Eng’r v. Louisville & N.R.R., 373 U.S. 33 (1963), the Court held that an employee’s right under the Railway Labor Act to bring a federal district court suit for enforcement of a National Railroad Adjustment Board’s “time lost” award deprived his union of the right to strike to compel payment of the award by the employer. The Court found that the Act provided a mandatory and exclusive procedure which does not permit either party to resort to economic self-help at any stage.

In International Ass’n of Machinists v. Central Airlines, 372 U.S. 682 (1962), the Court ruled that federal district courts have jurisdiction over a non-diversity suit brought by an airline union to enforce an arbitration award of an airline system board of adjustment created pursuant to the Railway Labor Act by the union and the airline. The Court held that such a suit is a suit arising under the laws of the United States (28 U.S.C. §§ 1331, 1337) (1958), so as to give jurisdiction to federal courts. Section 204 of the Railway Labor Act, which requires carriers and unions to establish system boards of adjustment, makes contracts providing for such adjustment boards federal contracts that are governed and enforced by federal law in federal courts.
A. Work Rules Dispute

The Court sent the long-standing work-rules dispute between the railroads and the operating brotherhoods back to the bargaining tables in *Brotherhood of Locomotive Eng'r v. Baltimore & O.R.R.* This dispute was formally initiated on November 2, 1959, when the railroads served on the brotherhoods notices of intended changes in work-rules, rates of pay, and working conditions in order to eliminate alleged featherbedding and anti-productivity factors. The dispute raged on without success through National Conferences, a Presidential Railroad Commission, and the National Mediation Board. Finally, after the union refused to arbitrate under the Railway Labor Act, the railroads put into effect their rules changes. The union sought an injunction against the change, but it was denied in the district court and in the court of appeals. The Supreme Court affirmed, holding that both parties have exhausted all the statutory procedures, and are relegated to self-help in the adjusting of the dispute, subject only to the invocation of the President's power to appoint an emergency board to avert a threatened strike.

The decision, despite the headlines it created, seems significant only as a minor victory for the right of management to exercise its own prerogatives in dispute areas when resort to bargaining fails and the procedural requirements of the Act are exhausted.

B. Union Political Contributions

In *Brotherhood of Ry. Clerks v. Allen* the Court was called upon to construe a North Carolina decision in the light of the recent *International Ass'n of Machinists v. Street* decision. The North Carolina Supreme Court had affirmed, by an equal division of the

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119 Unreported decision.
120 *Brotherhood of Locomotive Eng'r v. Baltimore & O.R.R.*, 310 F.2d 503 (7th Cir. 1962).
121 Railway Labor Act § 10, as amended, 48 Stat. 1197 (1934), 45 U.S.C. § 160 (1958): "If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter, and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon in his discretion, create a board to investigate and report respecting such a dispute."
court, a Superior Court injunction relieving dissenting employees of all obligations to pay union dues exacted under union-shop contracts where the union used part of the dues for political purposes to which the employees objected.

The Supreme Court reversed. It announced that according to Street a union has no power to use an employee's dues, over his objections, to support political causes which he opposes. But the injunction here was found improper in relieving the employees of all obligations to pay the moneys due under the contract. The injunction "sweeps too broadly... and might well interfere with the union's performance of those functions and duties which the Railway Labor Act places upon them to attain its goal of stability in the industry."125

In compliance with the Street rule, the Court remanded the case for the determination of the following factors: (1) What expenditures disclosed by the record are political? (2) What percentage of total union expenditures are political expenditures?126

The objecting employee is entitled to restitution of the moneys "exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget..."127 In determining such proportion, the Court determined that "basic considerations of fairness" compel that the union bear the burden of proof since they possess the facts and records from which it may be calculated.128

The Court thought it "appropriate to suggest, in addition, a practical decree to which each respondent proving his right to relief would be entitled. Such a decree would order (1) [a proportionate refund] ... and (2) a reduction of future such exactions from him by the same proportion."129 But the Court, recognizing that such proportions may in actuality vary from time to time, encouraged unions to

consider the adoption... of some voluntary plan by which dissenters would be afforded an internal union remedy.... if a union agreed upon a formula for ascertaining the proportion of political expenditures in its budget, and made available a simple

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125 373 U.S. at 120.
126 373 U.S. at 121.
127 Ibid.
128 Id. at 122.
129 Ibid.
procedure for allowing dissenters to be excused from having to pay this proportion of money due from them under the union-shop agreement, prolonged and expensive litigation might well be averted.130

The Court then suggested that precedent for such a plan exists in the Trade Union Act of 1913.131

This decision permits the union to eliminate the so-called "free rider," i.e., it permits the union by agreement with the employer to require all employees to join the union and pay dues as a condition of continued employment; but the decision prevents the union from using these exacted funds for "political" purposes when the dues payer objects.

VIII. CONCLUSION

The problems arising from automation, increasing unemployment and new legislation have made the law of labor-management relations increasingly complex. During the past term the Court took the opportunity to reduce some of this complexity by handing down clear and concise guidelines in the areas of decision and by placing more emphasis on the rulings of the National Labor Relations Board.132 The continuation of such a policy by the Court will necessarily eventuate in a predictable and more uniform application of the Taft-Hartley Act to labor-management relations.

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130 Id. at 122-23.
131 Id. at 123, n.8.
132 It is pertinent to illustrate the agreement between the Court and the Labor Board during the term. The Court heard five cases on appeal from the Board, and affirmed four of these. See 32 U.S.L. Week 3037 (U.S. July 16, 1963). This becomes significant when the entire record of the Kennedy Labor Board is compared with the record of the Eisenhower Board before practically the same Court. In the 1961-1962 term the Court affirmed all eight decisions from the first Kennedy Board. See 26 NLRB Ann. Rep. 21 (1962). During 1960-1961, the Court reviewed ten decisions from the Eisenhower Board, affirming only two and modifying one. See 25 NLRB Ann. Rep. 19 (1961). In the 1959-1960 term, the Court reviewed six Eisenhower Board decisions, affirming one and modifying one. See 24 NLRB Ann. Rep. 14 (1960). The record of the Kennedy Board indicates that there is finally a mutual understanding in the application of the federal labor policy between the Board and the Supreme Court.