THE LAW OF TRADE DISPUTES -
COMMON LAW AND STATUTORY.

by

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Submitted to the Department of
Political Science and the
Faculty of the Graduate School
of the University of Kansas
in partial fulfillment of the
requirements for the degree of
Master of Arts.

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May 23, 1921.
To

My Father and Mother.
PREFACE

All who have taken even a glance at the law of trade disputes realize the futility of an attempt to state briefly the law on this subject. The short time which the author has spent upon the study and research of this subject has served to increase his conviction of this difficulty. But perhaps even as brief a treatise as this one can be justified since the questions involved are necessarily of present interest to every thinking citizen.

Much material on this and closely allied subjects has been presented in the last few years, varying greatly in the methods of approach. But since there have been many attempts to formulate rules and plans for the settlement of labor difficulties in many of the states, and especially since the author's own state, Kansas, has made an attempt at a gigantic forward stride, it may be that the following treatment showing the gradual evolution of these schemes will not be amiss, especially to those interested in progressive labor legislation.

To enumerate all the sources of suggestion and
information to which the author is indebted would be an almost impossible undertaking. The great part of the material has been taken from case decisions and statutory law, references to which are made in the footnotes. Material drawn from other sources is likewise acknowledged. However, special mention should be made of valuable assistance which runs throughout the spirit and organization of the treatise. To an attorney-at-law, Mr. A.W. Relihan, Smith Center, Kansas, the author is indebted for the suggestion that this material presented an appropriate field. Prof. Blaine F. Moore, Head of the Department of Political Science, University of Kansas, has rendered invaluable assistance by his many kindly suggestions and patient co-operation. Honorable William L. Huggins, Chairman of the Kansas Court of Industrial Relations, has been very helpful by his impartial explanation of the Kansas scheme. To Dr. Wm. L. Burdick, Acting Dean of the School of Law, and to Dr. F.W. Blackmar, Dean of the Graduate School - both of the University of Kansas - the author is deeply indebted for special permission to undertake the treatment of this subject.

University of Kansas, Lawrence, Kansas, May 23, 1921.

L.E.W.
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INTRODUCTION.

Large-scale production, together with its incidents of amassed capital and organized labor, has produced a great problem. Upon society is placed the burden to provide peaceable means for the settlement of trade disputes. Early English decisions made strikes illegal and it was held that a combination among laborers to raise their wages was an indictable conspiracy (1). The earliest English Act of conciliation and arbitration was passed in 1603, but the first English statute referring specifically to the arbitration of labor disputes is 1 Anne c. 22, passed in 1701 (2). Practically all of the more important countries today have some means for the settlement of trade disputes (3). In the United States, Maryland is said to have had the first provision for such, passed in 1878 (4). Today, over three-fourths of the states have laws on this subject.
The law of trade disputes divides itself logically into two phases: the body of rules and principles evolved in our courts irrespective of legislation on the subject, and the legislative enactments. Hence, it is convenient to divide the law on this subject into: (1) common law; and (2) statutory law. The brief summary of the court decisions constitutes "Part I" of this discussion. It must be borne in mind that these rules are laid down by courts of general jurisdiction without any legislative guidance on the subject. "Part II" confines itself to an explanation of the various legislative enactments creating specially formed bodies or plans for the adjustment of labor disputes. This entire treatise deals only with the United States, except as it is convenient to include reference to foreign countries for comparison.

(1) Rex v. Journeyman-Tailors, 8 Mod. 10 (Eng.)
(2) "Industrial Conciliation and Arbitration", (1905), by Douglas Knapp, Chapter VI, p.99.
(3) See Part II, "United States".
There is great diversity in the rules of law laid down by the court decisions in labor disputes. This lack of uniformity appears not only in different states, but often in the same state. A convenient method of attack is to divide the discussion into the topics "strikes", "boycotts", and "picketing". Although this scheme cannot be followed out with exactness due to the fact that all of them interweave more or less and that one case often involves all, yet it serves the purpose. From the great mass of case law on this subject, this brief treatment attempts only to select some of the more illustrative cases and rules.

As stated above, the rights of organized labor as determined by the courts differ widely in the different states and, even in the same state, it is often difficult to reconcile the decisions. Too, dissenting opinions are very common. These differences are due not only to real differences in the law, but quite
largely to differences in the terms used, for the terms "strike", "boycott", and "picketing" have no standard legal meanings.

STRIKES

The courts have held that laborers have a right to organize themselves into labor unions in order to promote their common welfare. The United States Supreme Court has consistently held that no legislative restrictions may be placed upon an employee either in joining or agreeing not to join a labor union (1). Such restrictions, the Supreme Court has declared to be invasions of personal liberty guaranteed by the Fifth Amendment to the Constitution of the United States. Beginning with 1871, England has steadily progressed by legislation in the direction of recognizing trade unions (2). A number of the states in the United States have legislated directly to the effect that the organization of trade unions in itself is not unlawful (3). From this right


(3) Mass., L. 1914, c.778; W.Va., L. 1915, c.10; Utah, L.1917, c.68; Iowa, L.1919, c. 213; Michigan, L. 1919, no.231; Oregon, L. 1919, c.346; Wash., L.1919, c.185; Wisconsin, L.1919, c.211.
to combine, there follows in most states, the right to strike. But this right to strike is confined within certain limits.

There is diversity in the definitions of the word "strike" depending upon the particular emphasis desired by the person defining. Due to this diversity of opinion as to the important phases and scope, it is almost useless to seek an all-inclusive definition. Bouvier's Law Dictionary gives the following definition:

"A combined effort of workmen to obtain higher wages or other concessions from their employers by stopping work at a preconcerted time."

Pomeroy, in quoting Martin (4) says:

"... a strike may be defined as a simultaneous cessation of work, by workmen acting in combination to compel their common employer to accede to demands made on him by such combination."

"Unionization and strikes are no longer per se illegal" (5), but there are important limitations. Both the right to combine and the right to strike must be within lawful means. In a brief discussion, it is almost impossible

(5) Ibid., vol. 5, #2035.
even to hint at all the qualifications entering with this phase, but some of the more important only can be included. So long as it is done peaceably and without violence, workers may strike for any reason or even for no reason at all (6)(7). Further than this, it is said that "what one individual may do, a number of his co-laborers may join him in doing, provided the thing done is lawful" (8). This is corroborated in the following statement (9):

"An employee has a right to place a price and impose conditions upon his labor unless restricted by contract and if not complied with has a right not to work and what one may do, all may lawfully combine to do, except that this right to combine and to strike or quit work must be exercised in a peaceable and lawful manner, without violence or destruction of property or other coercive measures intended to prevent the employer from securing other employees, or otherwise carrying on his business according to his own judgment."

In a leading case (10), Vice-Chancellor Stevenson says:

"From an examination of the cases and a very careful consideration of the subject, I am unable to discov-

(6) This is declaratory of the common law only and excludes legislative restrictions. Part II of this treatise discusses legislation.
(8) Roddy v. United Mine Workers (Okla.1914),139 /Pac.126.
er any right in the courts, as the law now stands, to interfere with this absolute freedom on the part of the employer to employ whom he will, and to cease to employ whom he will; and the corresponding freedom on the part of the workmen, for any reason or no reason, to say that they will no longer be employed; and the further right of the workmen, of their own free will, to combine and meet as one party, as a unit, the employer who on the other side of the transaction, appears as a unit before them."

Whether a strike is lawful or not depends upon the means (11). 

"In the absence of a contract for a fixed term, the employer may discharge the employee, or the employee may quit, at his own pleasure, for the employers and workingmen have equal rights to form an organization. ... The employees have a right to combine to improve their working conditions, standards of living, or to procure shorter hours and higher wages, or for any other lawful or useful purpose. ... The employees have a right to persuade other workmen to cease work in a legal and proper manner." (12).

In this decision, as well as in Wabash R. Co. v. Hannahan, supra, it is seen that emphasis is placed upon the fact that the employee may not quit if by doing so he violates his contract of employment. Other courts hold likewise (13). Not only must the employee not break his


own contract of employment, but he must not encourage others to break their contracts. Thus those seeking to enlarge a union may not, after notice of the contract not to join a union, encourage the employees in such place of business to join the union (14).

Labor organizations may issue circulars and other information truthfully setting out the circumstances of a strike or to solicit and collect funds to support a strike provided they do not use fraud, threats, or other coercive measures (15). Where the strikers intimidated customers who were prospective guests at a hotel, injunction was granted on the ground that it is a property right to carry on a lawful business without obstruction (16).

The legality of the purpose of a strike is a question of law to be decided by the court (17) and a strike containing both a legal and an illegal purpose is an illegal strike (18). Union workmen have a right

(16) Local Union No. 313 Hotel & Rest. etc. et al v. Stathakis (Ark. 1918), 205 S.W. 450.
to strike upon the employer's refusal to discharge non-union men in his employ (19), but if the labor union before calling the strike has not secured from the employer an agreement to give all his work to members of the union, a strike to compel the employer to do so is illegal (20). But the fact that a strike is incidentally an injury to a fellow employee does not necessarily make it illegal. A strike to secure the discharge of a fellow employee was held legal on the ground that, although it was directly detrimental to the plaintiff, it had sufficient justification in the fact that it had a direct relation to the benefits of a more uniform distribution of work, and thus of wages (21). A sympathetic strike is declared illegal. In Picket v. Walsh (22), which involved both a direct and a sympathetic strike, the Massachusetts court declared illegal the sympathetic phase as follows:

"In our opinion organized labor's

right of coercion and compulsion is limited to strikes on persons with whom the organization has a trade dispute; or to put it another way, we are of the opinion that a strike on A, with whom the striker has no trade dispute, to compel A to force B to yield to the striker's demands, is an unjustifiable interference with the right of A to pursue his calling as he thinks best."

Only in California is it settled law that all strikes are legal (23), while in Kansas, by legislation, the other extreme is represented (24).

Corresponding to this right on the part of the laborers to combine, the employer has the right to employ whom he pleases (25). On the legality of strikes, Justice Holmes says (26):

"If it be true that working men may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control."

(24) See Part II, "Kansas".
The "Law of Strikes" seems to be very well summarized in the following (27):

"The 'law of strikes' is well established, at least to the following extent: In the absence of a contract for an unexpired specific term of service and hire, there being here no question of any such, the employer has the absolute right at any time and for any cause to discharge his employees, one or more, and, on the other hand, his employees have the right at any time, singly or collectively, and for any cause, even at their own mere will, to leave his employment, and, if such employees think they have any grievance against him, their employer, - e.g., for the discharge of a fellow employee - they may not only strike - that is, themselves leave his employment - but may by picketing, attempt to peaceably persuade other workmen not to enter his employment and take their vacant places, and even persuade their former fellow workmen still remaining in the service, to leave and join them in the strike. Their efforts to attain such result, however, must be confined to the acts of peaceable persuasion. Certainly they may not extend to violence, threats, or even verbal abuse; and, if they do so extend, they thereby become unlawful."

BOYCOTTS

"From the year 1327, the date of the boycotting of the monks of Christ's Church by the citizens of Canterbury" to the time of the Revolution, there were many instances of boycotting in England (28).

But the term "boycott" seems to have arisen about 1880 (29), and a history of the term may be found in State v. Glid-

den (30). Over forty of the states of the United States have some legislation on the subject of boycott, direct or indirect, and a few definitely prohibit it by name (31). But the great majority of these statutes are indefinite, and the decisions regarding boycott, in most instances, are decided upon common law principles.

It is well at the outset of a discussion of boycotts to note the distinction between a "primary boycott" and a "secondary boycott". Justice Henshaw, after saying that organized employees have the right, by concerted action, to cease their employment, continues (32):

"We think, moreover, that no court questions the right of those same men to cease dealing by concerted action, either socially or by way of business, with their former employer, and this latter act, in its essence, constitutes the 'primary boycott'."

In the same discussion, after saying that the boycott may go further than the primary boycott, the Justice thus defines the "secondary boycott":

This last proposition necessarily involves the bringing into a labor dispute between A and B, C who has no difference with either. It contemplates that C, upon the demand of B, and under the moral intimidation lest B boycott him, may thus be constrained to withdraw his patronage from A, with whom he has no

(30) 55 Conn. 46, 8 Atl. 890.
(32) Pierce v. Stablemen's Union Local No.8760 (1909), 156 Calif. 70, 103 Pac. 324.
Another definition of secondary boycott follows (33):

"A secondary boycott is a combination not merely to refrain from dealing with a person or to advise or by peaceful means persuade his customers to refrain, but to exercise coercive pressure on such customers, actual or prospective, in order to cause them to withhold or withdraw their patronage, through fear of loss or damage to themselves."

Thus it is seen that the primary boycott confines the dispute to two parties, while the secondary boycott includes a third party. As bearing a close analogy to the justifiable strike, the primary boycott is regarded as entirely lawful (34). This is the generally accepted doctrine, for it is generally conceded that if the end sought is justifiable, no liability exists in the primary strike and the primary boycott (35). The secondary boycott and the sympathetic strike are condemned by the great weight of authority in England and in the United


States (36). With a few exceptions (37), the courts of the United States declare the secondary boycott illegal (38). Justice Henshaw, in holding that a secondary boycott may be legal (39), even admits that the secondary boycott is denied legality by the English courts, the federal courts, and many of the states of this union.

"An individual cannot injure another's property rights by controlling the acts of third persons through coercion, duress, oppression, or fraud." (40).

(36) Ibid., p. 4611.
(39) Pierce v. Stablemen's Union, supra.
(40) Auburn Draying Co. v. Wardell et al, supra.
A compulsory labor boycott is declared illegal (41).

A general boycott is illegal. Where a boycott in Chicago against the Pullman Palace Car Co. was being extended by the boycotters by causing strikes among the employees of all the railroads, it was said that the United States government has control over inter-state commerce and power over the transmission of the mails, hence an injunction was issued (42). In order that a boycott may be enjoined it must appear that there is a conspiracy causing irreparable damage to the complainant's business or property (43).


PICKETING

A few states have legislation on picketing (44), but in most states its legality is determined on common law principles. In most states picketing within certain limits is permitted, but in those where it is permitted in certain forms, its legality seems to turn upon the question as to whether the means employed are coercive or intimidating. Practically all the courts say that intimidation is unlawful, but they differ greatly as to what constitutes intimidation. Strikers can dissuade, but not restrain, workmen from accepting employment (45).

"Employees may strike in a body and post pickets near the plant to quietly and peaceably persuade other workmen not to take their places, but cannot use threats, force, or intimidation for that purpose. If they do, the labor union which has its members do so, is liable for damages." (46).

In addition to the fact that the employees have the right to per-

(44) e.g., regulated, Utah, L.1911, c.74; defined and legalized, Mass. L.1913, c.690; peaceful allowed, N.Hamp., L.1913, c.211; prohibited, Wash. L.1915, c.181.


(46) Berry Foundry Co. v. Inter. Moulders' Union et al, 164 S.W. 245, 177 Mo. App. 84.
suade peaceably, the employer is entitled to free access to his business (47). Picketing during a strike is not unlawful unless unreasonable in fact or forbidden by legislative mandate (48).

"Picketing by members of labor organizations for the sole purpose of peaceful persuasion, argument, or entreaty is not unlawful or actionable. Inducing persons, patrons, and intending patrons to refrain from patronizing a moving picture theater because of alleged unfairness to union labor, with no compulsion, threats, or intimidation, does not state a cause of action for conspiracy." (49).

In holding constitutional and in construing the Clayton Act (50), which was popularly construed as absolutely forbidding injunctions in trade disputes, the court said (51) that notwithstanding the restriction of injunction by the Clayton Act, the officials of a union who maintain a strike on feigned grounds for the purpose of forcing the employer to maintain a closed shop have no right to picket to the extent of intimidation. The court in the same case said that the word "peaceful" will be construed strictly. In a

(49) Root v. Anderson et al (1918), 207 S.W. 255.
(50) U.S. Laws, 1913-14, c. 323.
case (52) where a grocer's clerks refused to pay dues to a local union and such union declared a strike against the employer, having no trade dispute with him and picketed his place and sought to prevent persons from buying from him, their acts were illegal and the union and its members were liable therefor.

The courts of California declare that all picketing amounts to intimidation, under the theory that there can be no such thing as peaceful picketing (53). Massachusetts has held that even two pickets constantly in front of a person's place of business, who at times went further than mere advice, and used social pressure and threats of personal injury, is sufficient intimidation to be enjoined (54). Mass picketing by a combination of striking workmen and others for the purpose of forcing the employers to adopt a policy of a closed shop accompanied by threats, abuse, domiciliary visits, and physical assaults on the employees and potential employees, was held unlawful and enjoined (55). Any conduct of

(53) Goldberg, Bowen & Co. v. Stablemen's Union, (1906), 149 Calif. 429, 86 Pac. 806, etc. supra, (41); Moore et al v. Cooks', etc. Union (1919), 179 Pac. 417; Pierce v. Stablemen's Union (1909), supra.
pickets amounting to coercion or intimidation is unlawful (56) and will be enjoined, for the courts will protect a right to carry on a lawful business without obstruction which is a property right (57).

DAMAGES

For a violation of certain rules and principles of law, liability naturally ensues. Where there is interference with the plaintiff's efforts to procure employment from another, and malice, or a purpose to do the plaintiff injury is the moving force to the commission of the act, a recovery may be had is the rule in many jurisdictions (58). If damage is done "for its own sake", liability is sure to be made out (59). Labor unions are held liable for malicious acts. Where the


(57) Local Union No. 313 Hotel and Rest. Employees' Inter. Alliance et al v. Stathakis (Ark.1918), 205 S.W. 450.


members of a union, with intent to destroy the business of a firm, circulated false statements that the builders were employing non-union masons so that the union masons would not work, the action was held malicious, i.e. without legal justification and constituted conspiracy making the union liable in damages (60). However, it has been held that members of a trade union may refuse to work for an employer unless he will give all the work of their trade, though they thereby deprive persons not members of employment (61). A trade union, conducting a strike is liable for unlawful acts of the members and others associating themselves with the strikers, unless such acts be disavowed, and in case of the members themselves, the offenders be disciplined or expelled (62). The liability of members of a labor union is determined by the character of the strike and not by the motive in electing to be parties to it (63).

"Any person or combination of persons who unlawfully, by direct or indirect means obstruct or interfere with another in the conduct of his lawful business are liable in damages for the loss wilfully caused by such action. All parties to a controversy to ruin the business of another because he refuses to do some act against his will or judgment are liable for all the overt acts done pursuant to such conspiracy and for the resultant loss, whether they were active participants or not." (64).

Calling a strike because of the employment of non-union men makes a prima facie case for the plaintiff - i.e., the defendant must show justification in order to escape liability (65). A party to a strike illegal because to unionize a shop as well as to get higher wages, is a party to an illegal strike, though he personally became a party to get an increase in pay. The Massachusetts court held consistently (66) that intimidation by excessive fine upon members of a union was illegal, until fines upon the members was legalized by legislation (67).


Some states have even regulated blacklisting by statute (68), thus removing for the courts all doubts.

What seems a very good summary of the court decisions, as they stand, in general, at the present says (69):

"Analysis shows that strikes and boycotts can be grouped under three heads:

1. A strike against B for better working conditions,
2. A strike against B to compel him to cease employing C, or to cease dealing with C,
3. Striking against B, compels D, by threats of strike or boycott, to cease dealing with B.

With the first group, it is generally held lawful. The second group requires justification, and those in the third group constitute illegal means and are generally held unlawful."

Certain authorities insist that the swing of the pendulum of justification in the last few years has been toward the unions and that it is now beginning to swing back, while others assert that it has not ceased yet to swing in the direction of labor.

The principal weapon used against these declared unjustifiable interferences on the part of labor has been the injunction. "The first injunction was issued in 1884, but not until the Debs case [supra] ten years later did the public generally know anything about the

(68) Conn. L. 1911, c. 163; Oregon L. 1911, c. 139; Calif. L. 1913, c.350.
use of injunctions in labor disputes" (70). In 1908 a new menace appeared to labor in the damage suit under the Sherman anti-trust act, in the famous Danbury hatters' case (71). Organized labor then bent its efforts toward legislation and scored what was thought a "signal victory" in 1914 in the inclusion in the Clayton Act a provision to the effect that anti-trust laws should not be construed to forbid the existence of labor organizations nor to restrain their members from carrying out its "legitimate objects". Decisions seem to show, and one only a few weeks ago (72) that even this has not put labor beyond the restrictions of these anti-trust laws (73).

It takes no explanation to show that the decisions are conflicting and jumbled and that there is no very definite court made law. Probably the questions are too

(71) Ibid., and Loewe v. Lawlor (1908), 208 U.S. 274, 28 Sup. Ct. 301.
(72) Duplex Printing Press Co. v. Deering et al (1921), 41 Sup. Ct. 172 says that the provisions of the Clayton Act, (U.S. Laws 1913-14, c.323), must be strictly construed.
(73) At least sixteen (16) states of the Union have passed laws limiting the injunction in trade disputes and most of them have been modelled on the Clayton Anti-Trust Act of 1914, U.S. Comp. Stat. 1916 #8835f, 1243d. See Appendix B for a list of these states with statutory citations.
large and complicated to be handled by judicial procedure because of the many social, economic, and human questions involved. In many of the questions, law, strictly speaking, is a minor part of the question. It seems not to be going too far to say that this industrial problem is not one that the judicial departments of our country can solve unaided. Or in other words, the problem cannot be solved by the courts of general jurisdiction. Elastic as they are, the common law principles without more adequate machinery apparently are helpless, and the courts of general jurisdiction, to stay within their bounds, must merely content themselves with codifying the "rules of war". The courts have wrestled with the problem for years and there has been no great progress. They are very little nearer a solution than at the beginning.

The succeeding pages of this discussion is an attempt to classify and graduate the legislation, meager as some of it is, which has been enacted in the United States in furtherance of the idea that more adequate machinery is needed.
PART II
STATUTORY LAW

INTRODUCTION

Thirty-eight states of the United States, Alaska, Porto Rico, the Philippine Islands, and the federal government have some means or machinery for the purpose of adjusting labor disputes. (1). No one basis of classification will thoroughly suffice to group all of them logically, yet there are marked gradations and distinctions. There are differences in organization and in procedure. Much variation manifests itself in the machinery, in the powers and methods of investigation, and in the manner of making and enforcing awards and decisions. On the other hand, there are some very common features running through practically all of them. For example, publicity is relied upon in most of the schemes. But even though it is necessary to study each scheme separately,

(1) The discussion of statutory law is confined to the U.S., except where others, as Australasia and Canada, are included for comparison.
yet it is valuable to have some general classification. This plan divides them into three groups.

The first group is composed of those states having no permanent machinery, but which have provision for ad hoc machinery. For example, many of this group have labor commissioners, or other officials, with the power to appoint boards to consider particular controversies.

The second group comprises those states having permanent machinery, yet voluntary submission to arbitration and the lack of binding force to decisions are essential characteristics. In several of this group compulsory investigation is provided for, and although in reality this passes beyond the stage of voluntary submission, yet in none of them can there be binding decisions without the consent of the parties.

The third group includes the two states which unquestionably have the highest forms of machinery: Colorado and Kansas. Colorado is similar to Canada in respect to this topic, while Kansas goes beyond Australasia. Colorado is the only state forbidding strikes prior to or pending investigation, and Kansas is the only state applying compulsion at every stage. The characteristic feature of this group is the substitution of the word "compulsory" for the word "voluntary".
The various distinctions can be best understood by discussing each scheme separately. No effort has been made to arrange the states in any particular order or gradation within each group. There are noticeable similarities running entirely through the second group especially, which is the largest group by far. This uniformity in the greatest group may indicate that there is room for something new if the higher forms prove a real improvement.
GROUP I

As stated above, this group of states has no permanent machinery for arbitration or adjudication of labor disputes. Such permanent officials as there are have no greater power than conciliation, with power to appoint boards of arbitration for particular controversies.

To this group belong:

- Arkansas
- Georgia
- Indiana
- Iowa
- Nevada
- New Jersey
- North Dakota
- Rhode Island
- South Dakota
- Washington
- Wyoming
- Alaska

ARKANSAS

A Bureau of Labor and Statistics was created in 1913 for a period of fifty years to be under the charge and control of a Commissioner of Labor and Statistics (2). The Commissioner is appointed by the governor for two years and may be removed for cause by the governor (3).

(3) Ibid., #2.
The Commissioner "may inquire into the cause of strikes and lockouts and other disagreements between employers and employees; and, whenever practicable, offer his good offices to the contending parties with a view of bringing about friendly and satisfactory adjustment thereof". (4).

Beyond this, the Bureau of Labor, the Commissioner or his assistants have no jurisdiction whatever. Thus, if the Commissioner is not called upon he has no more power than the ordinary individual in the matter of handling strikes. The Commissioner makes every effort to keep in touch with conditions and to report conditions as accurately as possible, but is met with many obstacles, as is readily seen from the lack of authority on his part to make investigations.

The report for the year ending June 30, 1920 shows controversies lasting from one to sixty days. The total number of members involved was estimated at 4,503 with a loss in days of 66,302 and wages $327,932. These cover only reports made on blanks sent to labor unions. (5).

(4) Ibid., #11; or Digest of Stat., 1916, Kirby & Castle #5425; or Act 322, Session Laws, 1913.
GEORGIA

A Department of Commerce and Labor was established in 1911 (6), the Commissioner being elected for two years. In addition to his duties pertaining to the industries and resources of the state and the condition and welfare of the laboring people, he "may inquire into the causes of strikes and lockouts, and other disagreements between employers and employees; and, whenever practicable, offer his good offices to the contending parties with a view of bringing about friendly and satisfactory adjustments thereof."

INDIANA

The Constitution of Indiana (7) expressly provides that "tribunals of conciliation may be established with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of jurisdiction, but such tribunals or other courts when sitting as such, shall have no power to render a judgment to be obligatory on the parties, unless they voluntarily submit their matters of

difference and agree to abide the judgment of such tribunal or court." Thus it is readily seen that Indiana could have no such court as Kansas has, without amending her constitution.

Under this authority granted by the constitution, the legislature in 1915 passed an act providing for mediation, conciliation, and arbitration in controversies between employer and employees (8). The provision of the act applies where more than fifty employees are involved. When any controversy threatens the public welfare and convenience, the governor may appoint a board of mediation and conciliation of three members for the particular controversy. The Secretary of State is secretary of the board, but for performing this duty he receives no extra compensation. The other members of the board receive ten dollars a day and expenses. No one may be a member of the board if an interested party. Either party to the controversy may apply to the governor and

(8) Acts 1915, c.118. In the same year, 1915, the labor commission which had some power of arbitration was abolished by c.106,#53 and an Industrial Board created by c.106,#50. This Industrial Board consists of three members appointed by the governor for four years. Its duties consist principally in inspection and administration of the workmen's compensation act, under which it has the power to arbitrate compensation.
when he appoints a board its first duty is to use its best efforts by mediation and conciliation to reach an agreement. If it fails in this, the board endeavors to induce the parties to submit the controversy to arbitration. If however, it is unable to induce them to do this, it is then the duty of the board to investigate the facts and publish its findings. In cases where the parties agree to arbitrate, then the governor appoints a board of arbitration of three members. The agreement to arbitrate must be in writing and signed by duly accredited representatives, shall state specifically the question, that a majority of the board shall be competent to make an award, that the parties will resume work and will execute the award. The report of the arbitration board is transmitted to the board of mediation and conciliation. The board of arbitration has the power to compel the production of testimony and the attendance of witnesses.

IOWA

An Act was passed in Iowa in 1913 (9) authorizing the appointment of a board of arbitration and con-

conciliation for the settlement of particular controversies. In case of threatened or actual strike or lockout which involves ten or more wage earners, and the situation is one not covered by interstate boards of conciliation, if the dispute is one which does or is likely to interfere with the ordinary course of business, or menace public peace or the welfare of the community, either or both parties to the dispute, or the mayor, chairman of the county board of supervisors, twenty five citizens of the county over the age of twenty-one, or the labor commissioner may make written application to the governor for the appointment of a board of arbitration and conciliation to which the dispute may be referred. A manager of any concern or a majority of the employees, or twenty of the latter, may make application. If the governor is satisfied that the dispute is one which falls under the provisions of the act, he at once notifies the parties to the dispute of the application and requests each of them to submit to him within three days a list of five persons who have no direct interest with the dispute and from each list he appoints one. If either party fails to make recommendation by this list, the governor appoints a suitable person. These two must recommend to the governor the appointment of a third person within five days,
or the governor will appoint the third member directly. Members of the commission receive five dollars for each day of actual service and necessary expenses; may summon witnesses, administer oaths, require the production of books, papers, and documents. As soon as practicable, the board visits the place where the controversy exists and makes a careful inquiry into the cause and with the consent of the governor may conduct such inquiry beyond the limits of the state. The investigation must be completed within ten days from the date of their appointment unless the time is extended by the governor, and during the pendency of such investigation neither party may engage in a strike or lockout. The board makes a written decision which is made public. A decision made by the board dates from the date of the appointment of the board and is binding upon the parties only if both parties agree by the terms of the application for a board to be bound. In such a case the decision is binding for one year. Every decision and report is filed in the office of the governor, a copy served upon each party, and a copy is furnished the labor commissioner for publication in the report of the bureau of labor statistics which appears biennially. The decision must also be published in two newspapers in the county.
Obviously, one of the main features of the law is compulsory investigation. It is seen that citizens and officials not directly connected with the dispute may make application for a board and the governor has authority to proceed even if both parties fail to make application or submit a list of suitable arbitrators. Although the decision in this case cannot be made binding, yet it is made public. The intent seems to be to force the real facts into public light and let public opinion have its weight toward settlement. By June 30, 1918 five cases involving serious labor situations had been settled under the provisions of this Act. (10). Each report of the bureau of labor statistics gives a full report of each case decided.

NEVADA (11)

Nevada has provision for mediation by state authorities. Whenever a controversy arises between employer and his employees, seriously interrupting or threatening to interrupt the business of the employer, the governor upon request of either party puts himself in communication with the parties at once and uses his best efforts

by mediation and conciliation, to settle the dispute amicably. He may either exercise these powers himself or appoint a commission for the purpose. If the efforts of conciliation are unsuccessful, then it is the duty of the governor to endeavor at once to bring about an arbitration.

If the parties consent to arbitrate the controversy, the dispute is submitted to a board of arbitration consisting of three persons. One is to be named by the employer, one by the labor organization to which the employees belong, or if to more than one, by the concurrent action of all such labor organizations. The two thus chosen select a third, but in the event of failure to name the third arbitrator within five days, he is chosen by the governor. A majority of the arbitrators is competent to make a binding and valid award. The submission must be in writing, signed by the employer and by the labor organization or organizations representing the employees, must specify the time and place of meeting, and the questions to be decided. The submission must state that the board shall commence their hearing within ten days from the date of the appointment of the third arbitrator, that they shall file an award within thirty days from same date, and that pend-
ing the arbitration the status existing immediately prior to the dispute shall not be changed; provided that no employee can be compelled to render personal service without his consent. The submission also must stipulate that the award and papers will be filed with the clerk of the district court; that the award will be final and conclusive upon both parties, unless set aside for error of law apparent on the record; that the parties will execute the award and that it may be enforced as far as the courts of equity permit, except that injunction cannot force a laborer to work against his will; that employees dissatisfied with the award shall not quit service on account of such dissatisfaction before three months without giving thirty days notice, and that an employer likewise dissatisfied shall not dismiss any employee within three months because of such dissatisfaction without thirty days notice; that the award shall continue in force for one year after it goes into practical operation, and no new arbitration can be had on the subject until the expiration of one year if the award is not set aside. The agreement of arbitration must be acknowledged by the parties before a notary public and recorded. A copy is sent to the governor and the secretary of state fixes the time and place of meeting, which
must be within fifteen days from the execution of the agreement.

The arbitrators have power to administer oaths, sign subpoenas, require testimony of witnesses, production of books, papers, contracts, agreements, and documents, and may invoke the aid of the courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents as the courts determine to be material and competent. If either party fails to maintain a status quo pending the arbitration, he thereby subjects himself to liability for damages. When the award is filed in the clerk's office of the district court it goes into practical operation at the end of ten days unless either party within that time files exceptions for matter of law apparent on the record. The award goes into practical operation, nevertheless, pending the decision of the district court or appeal therefrom. Unless appeal is taken to the Supreme Court within ten days following decision of the district court, judgment is entered. Only such portion of the record is transmitted to the Supreme Court as is necessary to a proper understanding and consideration of the questions of law which are presented. The determination of the Supreme Court upon such questions is final.
NEW JERSEY

Following Maryland only two years, New Jersey probably was the second state in the United States to enact legislation for the adjustment of labor disputes (12). The law provides that employees may propose arbitration to employers and if this method is chosen, each may appoint an arbitrator and the two select the third arbitrator. The finding is binding upon all the parties.

The parties may previously or mutually agree as to costs. If not they shall be fixed by the arbitrators.

NORTH DAKOTA

The governor is authorized and empowered (13) to take any measure necessary to prevent any pending disaster or calamity which threatens to destroy life or property; and in the event of strike or threat of strike or lockout or threatened lockout of employees of a coal mine or public utility threatening to endanger life or property, the governor shall have power to commandeer and take for use during such emergency any coal mine or other public utility, to operate the same and to distribute and sell products of same.

(13) Special Session, Nov.25,1919-Dec.11,1919, of the Sixteenth Legislative Assembly, c.43.
RHODE ISLAND

Rhode Island has a State Board of Labor (14) which consists of the labor commissioner, who is chair-
man, and four other members, two of whom are representa-
tives of employers of labor in the state and two of whom are representatives of labor in the state. The governor appoints these latter four members, with the advice and consent of the senate, for terms of six years - two being appointed every three years. (15). The board must meet at least once a month, at which time the commission-
er of labor reports to the board.

The duties of this board with regard to labor dis-
putes can best be given directly from the Act (16) itself, since it is brief:

".... It shall be the duty of the board to do all in its power to promote the voluntary mediation and conciliation of controversies and disputes between employers and employees, and to avoid resort to strikes, lockouts, boycotts, blacklists, discriminations, and legal proceedings in or arising out of such controversies and disputes and matters of em-
ployment. In pursuance of this duty, the board may, whenever it deems advisable, but subject to the approv-
al of the governor, appoint a board of mediation and conciliation for the consideration and settlement of

(15) Also, with the advice and consent of the senate, the governor appoints for two years the Com-
(16) Laws 1919, c.1741, #4.
such controversies and disputes. The said board shall prescribe rules of procedure for such mediation and conciliation, and the said mediation and conciliation boards shall have power to conduct investigations, to hold hearings and to summon witnesses."

The deputy commissioner, who is a representative of labor and appointed by the governor with the advice and consent of the senate for two years, assists any board of mediation and conciliation appointed by the state labor board (17).

Note: According to a statement by the Labor Commissioner, the board offers its services to both parties. If accepted, it proceeds to attempt a reconciliation as the case presents itself, but it has no set rules.

SOUTH DAKOTA

The laws of South Dakota require the Industrial Commissioner (18) to endeavor to conciliate and then to investigate. The Act (19) provides:

"In case of strikes, lockouts or other controversies between employers and employees, the Industrial Commissioner, whenever he deems it advisable in the interest of the public or either party, shall endeavor to conciliate the parties to the con-

(17) Laws 1919, c.1741,#2, as am'd by Laws 1920, c. 1865.
(18) S.Dak. Rev. Code 1919: #10119-20 - the State Board of Immigration, consisting of the Governor, Secretary of State, and Commissioner of school and public lands, appoints a qualified elector to be Commissioner of Immigration. #9464 - the Commissioner of Immigration is ex officio Industrial Commissioner.
troverv and induce them to confer with each other and compose their differences. If his efforts as conciliator prove unsuccessful, he shall thereupon impartially investigate the matters in difference between the parties giving each ample opportunity for presentation of the facts and shall thereupon make his report of the issues involved and his recommendation for settlement of the controversy and furnish a copy thereof to each of the parties and to the local newspapers for publication for the information of the public. The Industrial Commissioner shall have the right, if he so desires, or if requested by either party, to call in two capable and disinterested citizens to assist in the investigation and advise with him as to his recommendations."

WASHINGTON

It is the duty of the State Labor Commissioner (20) upon application of any employer or employee having differences, to visit, as soon as practicable, the location of such differences and make a careful inquiry into the cause and to advise the parties what, if anything, ought to be done or submitted to by both to adjust the dispute. If the parties still fail to agree to a settlement through the Commissioner then it is the duty of the Commissioner to endeavor to have the parties consent in writing to submit their differences to a board of arbitration to be chosen from the citizens of the state as follows: the employer to appoint one and the employees acting through a

(20) App't by governor, Labor Laws 1919,c.1,#1; Pierce's Code (1919),#3433. The arbitration law is found in: Labor Laws (ed.1919), c.2; Pierce's Code, (1919), #3427-3433.
majority, one, and these two select a third, these three constituting the board of arbitration and the findings of the board of arbitration are final. The proceedings of the board are held before the commissioner of labor who acts as moderator or chairman, without the privilege of voting and keeps a record of the proceedings, issues subpoenas and administers oaths to the members of the board and any witness the board may deem necessary to summon.

Any notice or process issued by the board is served by any sheriff, coroner, or constable to whom it is directed. The arbitrators receive five dollars for each day actually engaged and necessary travelling expenses.

If the Labor Commissioner fails in any case to secure the creation of a board of arbitration, it is his duty to request a sworn statement from each party to the dispute of the facts upon which their dispute and their reasons for not submitting the same to arbitration are based. Any such sworn statement is for public use and is given publicity in such newspapers as desire it.

Note: The Legislature of 1921 has consolidated the different departments. Under the new Administrative Code, the department of labor is divided into three divisions, one of which is the Division of Industrial Relations and the Director of this Division becomes the state mediator under the arbitration law. The old arbitration law still exists.
The constitution (21) of Wyoming provides that:

"The legislature shall establish courts of arbitration, whose duty it shall be to hear and determine all differences and controversies between organizations or associations of laborers, and their employees, which shall be submitted to them in such manner as the legislature may provide." "The legislature may provide by law for the voluntary submission of differences to arbitration for determination and said arbitrators shall have powers and duties as may be prescribed by law, but they shall have no power to render judgment to be obligatory on parties, unless they voluntarily submit their matters of difference and agree to abide by the judgment of such arbitrators."

An important part of this constitutional provision is the fact that no binding judgment can be provided for unless the parties agree that it shall be binding.

The legislative provision is not far reaching or explicit. It provides (22) that all persons who have any controversy, except when the possession to the title of real estate may come in question, may submit the controversy to the arbitrament of any persons mutually agreed upon by the parties. The parties may enter into arbitration bonds, may have the benefit of legal process to compel attendance and a party must appear or be guilty of

(21) Const. Wyo. (adopted 1889), Art. 5, #28, Art. 19, #1. For constitutional provisions of other states, see APPENDIX C.

contempt. The arbitrators and witnesses are sworn. The award is in writing and may be enforced in the courts of general jurisdiction.

Note: The State Commissioner of Labor and Statistics has acted as mediator in cases through the consent of the governor and the mutual consent of the parties.

ALASKA (23)

Whenever a controversy concerning wages, hours, or labor or conditions of employment arises which interrupts or threatens to interrupt the business, the governor, either personally or through a commission, must endeavor to settle the dispute by mediation. If this fails, with the written consent of the parties, he must endeavor to bring about arbitration through a board of three persons, one to be named by the employer, one by the union or unions concerned, and the third a disinterested person chosen by these two. If the third arbitrator is not named in the first five days of the meeting, the arbitration is cancelled. A majority of the board can make a binding award. The submission must stipulate:

(1) that the board shall commence within ten days

(23) Laws 1913, c.70.
after the appointment of the third arbitrator and file its award thirty (30) days after such appointment; that a status quo be maintained pending the decision;

(2) that the award and all papers shall be filed with the district court and shall be final and conclusive unless set aside for error of law apparent on the record;

(3) that the parties will abide by the award;

(4) that the parties, if dissatisfied with the award will not stop work, or discharge men respectively, before three months after the award, except upon thirty days' notice;

(5) that the award shall be in force for one year, and unless set aside no new arbitration can be had in the meantime.

Careful provision is made against compelling the performance of a contract for personal labor against the laborer's will.

The District Court may pass on exceptions and within thirty days appeal may be had to the U.S. Circuit Court of Appeals for the Ninth Circuit. This court can receive only questions of law.

The arbitrators can administer oaths and require the attendance of witnesses and production of documents. Agreements to arbitrate must be acknowledged before a notary public or clerk of the district court; a copy is filed in the precinct and one forwarded to the governor, who calls a meeting of the arbitrators. He may decline to do so, however, if he is convinced that the signers do not represent a majority of the employees. The agreement to arbitrate must provide for compensation and expenses of the arbitrators. Violation of the provision not to stop work or discharge employees makes the offending party liable in damages.
GROUP II

The majority of the states belong to this group. It comprises those states having more permanent machinery, yet voluntary submission to arbitration. Although several of this group provide for compulsory investigation which in reality passes beyond the stage of voluntary submission, yet in none can there be binding decisions without the consent of the parties. Twenty-five states, Porto Rico, and the federal government belong to this class.

ALABAMA (24)

The governor appoints three members of a State Board of Mediation and Arbitration whose duties are to endeavor to settle threatened or existing strikes or lockouts. It lies within the discretion of the governor to call all the members of the board to the locality of controversy. Under an agreement to continue in business or at work pending a decision, and also to abide by the decision, disputants may voluntarily submit their controversy in writing to the board. The board has power to subpoena witnesses, take testimony,

and call for documents, papers, and books, but must render decisions and written reports within ten days after the completion of investigations. Provision is also made for the submission of a labor dispute to a local board of three members, one chosen by the employees, one by the employer, and a third, who is chairman, is appointed by these two. Such a local board has the same powers and duties as the state board.

**CALIFORNIA**

The governor is authorized to appoint three persons - one representing employers of labor, one representing employees, and one neither - for one year to serve as a State Board of Arbitration and Conciliation (25). The parties also may agree on special local boards which have the same powers for settling controversies as the state board. The board may make such rules of procedure as they deem best to carry out the provisions of the act.

When any controversy or difference arises which would involve a strike or lockout, the board upon applic-

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(25) Act no.219, Stats.1891,p.49. No appropriation, however, was ever made and hence no Commission was ever appointed under the Act. The Act is set out in its entirety also on page 43 of Labor Laws, 1917. A new bill was introduced in the legislature,1921.
ation must visit the locality as soon as practicable and make careful inquiry, hear all persons who may come before the board, advise the respective parties what, if anything, ought to be done to adjust the dispute and make a written decision which is made public.

The application must be signed by the employer or a majority of his employees, or their duly authorized agent, or both parties, and must contain a concise statement of the grievances complained of, and a promise to continue in business or at work until decision is made, which, if possible, must be made in three weeks from the date of the filing of the application. Upon receipt of the application, the chairman of the board causes public notice to be given of the time and place of hearing. If the petitioners fail to keep their promise, the board proceeds no further without the consent of the adverse party.

The decision is binding upon the parties who join in the application for six months or until either party has given the other written notice of his intention not to be further bound after the expiration of sixty days. Both employers and employees have the right at any time to request the board for an investigation. The board may then investigate and publish the facts, but is not compelled to do so.
This state has provision for a State Board of Mediation and Arbitration consisting of three members appointed by the governor with the advice and consent of the senate for two years. One member is selected from the party which at the last general election cast the greatest number of votes for governor, one from the party which at the last general election cast the next greatest number of votes for governor, and the other from a bona fide labor organization of the state.

Whenever a grievance or dispute arises, between an employer and his employees, the parties may submit it directly to the state board in writing, stating clearly their grievance and agreeing to continue in business or at work without a strike or lockout pending a decision of the board, provided such is rendered within ten days after the completion of the investigation. A majority of the board is competent to render a decision which must be in writing.

Whenever it comes to the knowledge of the board that a strike or lockout has occurred or is threatened, it is the duty of the board to proceed, as soon as

practicable, to the locality of such controversy and seek by mediation to effect a settlement. The board "may inquire into the causes of the controversy, and may subpoena witnesses and send for persons and papers". The board reports annually to the governor the workings of the board and also "such suggestions as to legislation as may seem to it conducive to harmony in the relations between employers and employed".

IDAHO

The constitution of Idaho provides explicitly that (27)

"the legislature may establish boards of arbitration whose duty it shall be to hear and determine all differences and controversies between laborers and employers which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all powers and authority in respect to the administration of oaths, subpoenaing witnesses, and compelling their attendance, preserving order during sittings of the board, punish for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on Justices of the Peace".

Thus when in 1897 the legislature passed, and in 1899 amended (28) a law giving power to a commission power to act in labor disputes, there was no question of constitutionality. According to the provisions of

(27) Const. of State of Idaho (1889), Art. 13, #7.
(28) Laws 1897, 141; Laws 1899, 319.
this Act (29), two members comprising a Labor Commission are appointed for two years by the governor with the advice and consent of the senate. One of the members must have been an employee for six years for wages and at the time of his appointment affiliated with the labor interest. The other member must have been an employer of labor for six years. Neither member can be less than twenty five years of age nor hold any other State, county, or city office while he is serving on the commission. The members must not be members of the same political party.

Upon receiving authentic information of the existence of a strike or lockout affecting the labor or employment of fifty or more persons, it is the duty of the commissioners to go to the place of the complication and offer their services as mediators. If there are less than fifty persons involved as laborers, the commission may use its discretion and act as though there were fifty or more. If the commission does not succeed in effecting adjustment, it is then its duty to endeavor to induce the parties to submit their differences to arbitration either under the pro-

visions of this law or as they choose.

For the purpose of arbitration, the labor commissioners, and the Judge of the District Court of the district in which the controversy arises, constitute the board. If the parties agree, they may add two others, one being named by the employer and the other by the employees. An agreement to enter into arbitration must be in writing, must state the issue, and has the effect of agreement to abide by and perform the award of the board. This agreement must be signed by the employer or a committee of the employees or two thirds of the employees. If one commissioner is absent, the Judge of the District Court may appoint a commissioner pro tem. The District Judge is the presiding member and has power to issue subpoenas. "The proceedings shall be informal in character, but in general accordance with the practice governing the District Courts in their trial of civil cases." The sittings are open and public. An award can be rendered by three members in case there are five members on the board and by two if there are three on the board. This award is in writing and delivered to the Clerk of the District Court. Either party may present to the District Court or judge thereof, in
vacation, a petition that the award has not been com-
plied with. The judge then makes such an order direct-
ing the parties before him in personam as shall give
effect to the award. Disobedience now becomes con-
tempt of court and is punishable accordingly.

An employer or his employees, not less than
twenty five in number, between whom differences exist
which have not resulted in open rupture, may apply
to the labor commission for arbitration. In such case,
arbitration proceeds in the same manner as above de-
scribed.

The labor commission with the advice and assist-
ance of the Attorney-General makes the rules and regu-
lations, which must not be inconsistent, however, with
the provisions of the Act. Arbitration proceedings
have precedence over any other business pending in
the judge's court. If the judge is engaged in a trial
which cannot be interrupted without loss to parties
or is disabled by sickness or otherwise, he may ap-
point a judge of an adjoining district to sit upon
the board.

If the parties fail after five days following
the first communication of the labor commission to
them, to adjust their differences or to submit them
to arbitration, the commission proceeds at once to investigate the facts. It may then issue subpoenas and command the attendance of persons and in the case of disobedience, the District Judge grants a rule against the disobeying person or persons to show cause why they should not obey or be adjudged guilty of contempt.

There is provision for the confidential communication of facts, the publication of which would be injurious to the business of the employer.

ILLINOIS

Under the reorganization of the state departments by the Civil Administrative Code of 1917 (30), the work of the Board of Arbitration and Conciliation was placed under the control of the Industrial Commission. By that Act the governor appoints the members (five) of the Industrial Commission by and with the advice of the senate. They serve for four years. The Industrial Commission, working under the department of labor, administers the Arbitration and Conciliation Act. (31).

When any controversy or difference not involving a question which may be the subject of an action at law or bill in equity arises between an employer of not less than twenty five persons and his employees, the Commission upon application must visit the locality, make inquiry, hear all persons interested who may come before them, and make public a decision of what ought to be done. The application must be signed by the employer or a majority of the employees or both and must contain a statement of the grievances and a promise to continue in business or at work pending the decision of the commission if made in three weeks after filing the application. The commission has power to summon witnesses, issue subpoenas, require the production of books and papers. If anyone is served with a subpoena and fails to obey, it is the duty of the Circuit Court or the County Court of the county in which the hearing is being conducted to issue attachment for such witness. The commission makes a written decision which is open to public inspection and is published in the annual report. The decision is binding upon the parties who join in the application for six months or until notice is given by one party to the other of his intention not to be bound at the expiration of sixty days. Whenever
there is failure to abide by a decision in which the employer and employees have joined in the application, any person aggrieved may file with the Circuit Court or the County Court of the county in which the offending party resides or where the employment is located (in the case of an employer) a copy of the decision and a verified petition that the decision has not been complied with. The court, or judge thereof, if in vacation, then grants a rule against the party to show cause within ten days why it has not been complied with. To secure compliance it is within his power to punish for contempt, but it cannot extend to imprisonment.

Employers having a common difference with the employees may join in the application.

When it comes to the knowledge of the Industrial Commission that a strike or lockout is seriously threatened involving an employer of not less than twenty-five persons and employees, it is the duty of the commission to put itself in communication with the parties at once to endeavor by mediation to effect amicable settlement, or endeavor to persuade them to submit to the Board for arbitration.

It is the duty of the mayor, president of an incorporated town or village, officer of a labor organization
to notify the commission in case of a threatened or occurred strike or lockout involving more than twenty five persons. Whenever it appears that the general public may suffer injury or inconvenience with respect to food, fuel or light or the means of communication or transportation or any other respect and neither party will consent to arbitration, then the commission after due effort to effect a settlement by conciliation may proceed to make an investigation of such strike or lockout and make public the findings.

Notice or process by the commission is served by any sheriff, coroner, or constable.

LOUISIANA

Louisiana has a constitutional provision as follows (32):

"It shall be the duty of the General Assembly to pass such laws as may be proper and necessary to decide differences by arbitration."

The governor appoints five competent persons to serve as a Board of Arbitration and Conciliation (33). Two must be employers, selected or recommended by some associa-

(32) Art.176.
(33) Act 139, 1894, p.174,#1-14; or Wolff's Const. & Stat. La.,1920, Arb.,#1-14.
tion or board representing employers of labor; two must be employees selected or recommended by the various labor organizations and not employers of labor, and the fifth is chosen upon the recommendation of the four members. If the four members have not agreed at the end of thirty days as to the fifth member he is appointed by the governor. The members serve four years with overlapping terms.

When any controversy or difference not involving questions which may be the subject of a suit or action in any court of the State exists between employer and employees, if the employer has not less than twenty persons as employees, the board upon application visits the locality of the dispute and makes careful inquiries, hears all persons interested, and advises the respective parties what ought to be done. If mediation fails to bring adjustment, the board must then make out a written decision, make it public at once and record it on the books of the board and publish it in the annual report.

The application can be made by either or both of the parties to the controversy and must be signed in the respective instances by the employer or a majority of the employees or duly authorized agent of each or both. The names of the employees giving the authority
are kept secret. The application must contain a concise statement of the grievances, a promise to continue in business or at work without a lockout or strike until a decision of the board, if made within ten days of the date of the filing of said application. Public notice is given by the secretary of the board of the time and place of hearing, but public notice need not be given when both parties join in the application and present a written request that no public notice be given. However, the board may make a public notice at any stage of the proceedings, notwithstanding such request. If a petitioner or petitioners fail to perform the promises made in the application the board proceeds no further until they have complied with the order and requirement of the board.

The board has power to summon witnesses, to require the production of books and papers, the power to administer oaths, and to compel the attendance of witnesses.

The district judge or mayor may invoke action of the board by notification if it appears that a strike or lockout is threatened or actually has occurred. If the concern employs not less than twenty persons, the board proceeds at once to put itself in communication
with the disputants. It is then the duty of the board to endeavor to adjust the controversy by mediation and conciliation and to endeavor to persuade them, if a strike or lockout has not actually occurred or is not then continuing, to submit the controversy to the state board of arbitration and conciliation. The board then proceeds to investigate under the same powers as above, whether the parties agree to submit or not and makes a report assigning blame or responsibility.

It is thus seen that the board may investigate without the consent of the parties. It is not bound by technical rules but by the broad principles of law and equity. The board makes a biennial report to the governor and legislature. The members are paid five dollars a day and necessary expenses.

Note: The Commissioner of Labor reports that at its last session, the legislature of Louisiana refused to pass an act as in Kansas and would not attempt any drastic legislation.

MAINE

(35) Changed to five members, Laws 1913, c.143.
governor, with the advice and consent of the council for terms of three years. One member must be an employer of labor or selected from some association representing employers of labor, and another must be an employee or a person selected from some bona fide trade or labor union and not an employer of labor. The board meets and organizes on the third Wednesday of September in each year. It is the duty of the board to endeavor to settle disputes, strikes and lockouts between employers and employees. The board makes such rules of procedure as it thinks necessary and makes an annual report to the governor and council.

Notification that a strike or lockout is seriously threatened or has actually occurred may be given by employer or employees, and it is also the duty of the mayor of a city or the selectmen of a town to give such notice to the board. If it appears that as many as ten employees are directly concerned, it is the duty of the state board to put itself into communication with the disputants and endeavor by mediation to obtain an amicable settlement or to endeavor to persuade them to submit the matters in controversy to the state board or to a local board. If the matter is submitted, then the board to which the matter is submitted must inves-
tigate the matter and fix the responsibility and publish a report of the same. However, the governor can request the state board to investigate whenever in his opinion the controversy threatens to affect the public welfare.

When application is made for an inquiry the board as soon as practicable must visit the place of controversy and make a careful inquiry, and may with the consent of the governor conduct the inquiry beyond the limits of the state. The board must hear all persons interested who come before it, advise the respective parties what ought to be done, and make a written decision which is at once made public and open to public inspection. Such decision is binding for six months upon the parties who join in the application or until sixty days after either party has given notice to the other in writing of his intention not to be bound.

The application for such inquiry may be signed by the employer or by a majority of the employees or by their duly authorized agent or by both parties. The application must contain a concise statement of the matter in controversy and a promise to continue in business or at work without any strike or lockout until the decision of the board if made within three weeks from the date of filing of the application. The sec-
Secretary of the board must give public notice of the time and place of hearing unless both parties join in an application that no public notice be given. Nevertheless, the board may give public notice notwithstanding this request. The board may summon witnesses and require the production of books and administer oaths.

Provision is also made to submit such controversy to a local board of arbitration and conciliation which may be either mutually agreed upon or may be composed of three persons, one of whom is designated by the employer and one by the employees, and the third chosen by these two members. Such a board has all the powers of the state board and its decision has the same effect. A decision of such a board must be rendered within ten days after the close of the hearing.

Any employer who advertises for employees (36) during a strike or lockout must state that such condition exists. The necessity for such ceases when the state board declares, upon application of the employer, that the business is again being carried on normally. A fine of twenty five to fifty dollars is imposed for violation of this provision.

(36) Laws 1913, c.16.
MARYLAND (37)

A commission known as the State Board of Labor and Statistics was created in 1916 (38) composed of three members appointed by the governor with terms of two years. All matters concerning the settlement of disputes between employers and employees were transferred to this commission. Upon information furnished by an employer or his employees or any reliable source that a controversy may result in a strike or lockout, the board shall at once visit the place of controversy or dispute and seek to mediate between the parties. If mediation cannot be effected, it is the duty of the board to endeavor to secure the consent of the parties to the formation of a board of arbitration, which shall be composed of one employer and one employee engaged in the same or similar occupation to the one in which the dispute exists, but who are not parties to the dispute, and are selected by the respective parties to the controversy, and a third arbitrator selected by these two members. If the third member is not thus selected, the state board appoints the third member. The board of arbitration has power to summon witnesses, enforce their

(37) Maryland is said to have had the first scheme in the U.S. for arbitration of labor disputes: 1878, c. 379, #3. The plan has been improved, as herein shown.
attendance and administer oaths. The decision is final. If the parties mutually agree that the matter shall be arbitrated in a manner different from the one prescribed, such agreement is valid and the determination by such mode is final and conclusive between the parties.

If attempts at mediation or endeavors to secure the consent of the parties to the controversy or dispute to submit the matter to arbitration fail, then the state board of labor and statistics must proceed to thoroughly investigate the cause of the dispute or controversy and must ascertain which party is mainly responsible and publish a report in some daily newspaper. In conducting such investigation it has power to summon both parties before it and to take their statements under oath, to issue summons for the attendance of witnesses and to enforce their attendance, to require the production of papers and books, to the same extent that power is possessed by courts of record or judges thereof in the state. All information of a personal character or pertaining to the private business of any person, firm, or corporation which might have a tendency to expose profits is deemed confidential.

It is declared to be the duty of the State Board of Labor and Statistics to do all in its power to pro-
mote the voluntary mediation, arbitration, and conciliation of controversies and disputes between employers and employees and to avoid resort to lockouts, boycotts, blacklists, discriminations, and legal proceedings.

Note: The Baltimore City Code, 1906, has provision for arbitration by the Board of Trade.

MASSACHUSETTS

Through the reorganization of the state departments (39) the Board of Conciliation and Arbitration became a division of the Department of Labor and Industries. (40). The Department of Labor and Industries consists of a board of five commissioners - the commissioner of labor and industries, three associate commissioners, and an assistant commissioner - all of whom are appointed by the governor with the advice and consent of the council. The commissioners serve for terms of three years, the associate commissioners having overlapping terms. These associate commissioners take over the functions of the Board of Conciliation and Arbitration, except as to matters of an administrative nature, and continue the name of that board. Of the associate commissioners, one must be a representative of labor

(40) Ibid., #69-72.
and one a representative of employers of labor.

The board has three functions: conciliation, arbitration, and investigation (41). Notice that a strike or lockout is threatening or has actually occurred may be given by the employer or employees concerned in the controversy. It is also the duty of the mayor of a city or selectmen of a town to give notice at once to the state board. When the state board has knowledge that a strike or lockout is seriously threatening or has actually occurred, involving not less than twenty five persons in the same general line of business in any city or town, the state board must, as soon as may be, communicate with the parties and endeavor by mediation to obtain an amicable settlement, or endeavor to persuade them to submit the controversy to a local board of conciliation and arbitration or to the state board. If no settlement is agreed upon and the parties refuse to submit the dispute to arbitration, it is the duty of the board then to investigate the cause and

(41) Acts 1886, c.263, providing for State Board of Arbitration, am'd by Acts 1887,c.269; Acts 1888,c.261; Acts 1890,c.385. Acts 1892,c.382 relates to duties of expert assistants. Revision was made in 1901. Rev.Laws, c.106 (am'd by Acts 1902,c.446, and Acts 1904,cs.313 & 399) was re-enacted in Acts 1909,c.514. This codified law has since been amended by Acts 1913,c.444; Acts 1914,c.681; Acts 1916, c.89, c.143; Acts 1918, c.251. See especially Acts 1909, c.514,#11-16. The re-organization act,1919, as indicated supra, merely transferred the functions.
assign the blame or responsibility in a published report. For this purpose, the board may employ assistants. The governor may request the state board to investigate and report upon any controversy if in his opinion it affects the public welfare. The state board also must inform employers and employees of their duty to give notice to the state board before resorting to a strike or lockout.

If the controversy is one which does not involve questions which may be the subject of an action at law or suit in equity and is one involving twenty five employees in the same general line of business, the board upon application must visit the place of controversy as soon as practicable and make careful inquiry into the cause, and may, with the consent of the governor, conduct such inquiry beyond the limits of the commonwealth.

The board must hear all persons interested who come before it, advise the parties what ought to be done, and make a written decision to be made public at once and open to public inspection. A short statement must also be published in the annual report. The decision is binding for six months upon the parties who join in the application, or until the expiration of sixty days after either party has given notice in writing to the other
party and to the board of his intention not to be bound thereby.

The application above referred to must be signed by the employer or by a majority of his employees or their duly authorized agent, or by both parties, but the names of the employees giving the authority must be kept secret. The application must contain a concise statement of the controversy and a promise to continue in business or at work without any strike or lockout until the decision of the board, if made within three weeks after the date of filing the application. The secretary of the board must give public notice of the time and place of the hearing, unless the parties joining in the application request otherwise, and then, notwithstanding such request, the board may give public notice. In any instance, however, the secretary of the state board is required to notify the employers and workmen of the hearings (42). If the petitioner or petitioners fail to perform the promise made in the application, the board must proceed no further thereon without the written consent of the adverse party.

(42) Acts 1918, c. 251.
Provision is also made for expert assistants to the board. Each party has the right to nominate in writing to the board experts from which the board chooses one for each party. The board may, however, appoint such additional experts as it considers necessary (43).

In all investigations and proceedings conducted by the associate commissioners, they shall have authority to summon witnesses, to administer oaths, to take testimony and to require the production of books and documents (44).

The parties also may submit the controversy to a local board which may be composed of three members mutually agreed upon (45), or a member named by the employer, one by the employees, and a third named by these two members. Such board has all the powers of the state board and its decision has such binding effect as is agreed upon by the parties in the written submission. This board has exclusive jurisdiction but may ask the advice and assistance of the state board. The decision must be made within ten days after the

(45) Acts 1909, c.514, #16.
close of the hearings and must be filed with the clerk of the city or town in which the controversy arose and with the clerk of the state board.

Any person affected by an order, rule, or regulation of the department (46) may appeal to the associate commissioners for a hearing at which they may revoke, amend, or suspend such order, rule, or regulation. Any person aggrieved by an order approved by the associate commissioners may appeal to the superior court, if taken within fifteen days after the date the order is approved, and the superior court may enforce or annul such order. This does not deprive any person of the right to pursue any other lawful remedy.

A penalty is provided for failure to state explicitly in an advertisement for employees that a strike or lockout exists (47), but this provision is inoperative when upon the employer's application to the state board, a certificate is issued by the board that the business of the employer in respect to which the strike occurred, is being carried on in the normal and usual manner and to the normal and usual extent. These certificates are

called normality certificates.

The state board publishes its decisions separately in each case and also issues an annual report. The Department of Labor and Industries issues a bulletin of current activities of the department.

**MICHIGAN**

In 1889 Michigan enacted a law creating a State Court of Mediation and Arbitration but this law was repealed in 1911 (48). The present law was enacted in 1915 (49). It applies to employers and employees in the following: railroads, mines, public utilities, including electric light, power, and water: provided, that the employers and employees of such other industries not herein enumerated who may voluntarily agree to come under the operation of the Act may do so by filing with the commissioner of mediation and conciliation such agreement.

The governor appoints, with the advice and consent of the senate, a commissioner of mediation and conciliation for two years and in the same way appoints another commissioner with per diem pay who works only

(48) Laws 1911, c.254.

(49) Laws 1915, Act 230, p.387; or Comp. Laws 1915, c.104, #5564-5577.
as needed. The first commissioner occupies all his time with the office. These two commissioners constitute the Board of Mediation and Conciliation.

Whenever a controversy threatens to interrupt the business of an employer to the detriment of public interest, either party may apply to the board to invoke its services and to bring about a settlement, or the parties may agree to submit it to arbitration. Upon the request of either party the Board of Mediation and Conciliation must put itself in communication with the parties and use its best efforts by mediation and conciliation to bring about an agreement. Failing in this, the board endeavors to induce the parties to submit to arbitration. In case of a controversy over the meaning or application of an agreement, either party may apply to the board for an opinion.

If the controversy cannot be settled by mediation and conciliation, or the parties prefer to submit to arbitration, the controversy may be submitted to a board of arbitration of four persons. The employer names one, the employees one, and these two name the other two members. If the two arbitrators fail to choose one or both of the arbitrators, the board of mediation and conciliation chooses the remaining ones
to complete the board.

The agreement to arbitrate must be in writing, signed by the representatives of employer and employees, state the question to be submitted, that a majority of the board shall have power to make a valid and binding award, shall fix the date to commence the hearing, the period within which the board shall hand down an award, the date from which the award shall be effective and during which it shall continue in force, that the parties will execute the award and abide by its provisions, that the award and papers, testimony, and proceedings certified under the hands of the arbitrators shall be filed in the office of the board of mediation and conciliation, and if there is any dispute as to the meaning or application of the award it shall be referred to the same board or a sub-committee for a ruling which shall have the same effect as the original award. The arbitrators shall have power to administer oaths, sign subpoenas, require the attendance and testimony of witnesses, require the production of books, papers, contracts, agreements, and documents material to the investigation of the matters under investigation. The board may also invoke the aid of the courts to compel witnesses to attend and testify and to produce books,
papers, contracts, and documents. The agreement to arbitrate must be acknowledged by the parties before a notary public or clerk of a court of record or before a member of the board of mediation and conciliation. When the arbitrators are selected and notified, they must organize and make their rules for conducting hearings. They must furnish a certified copy of the awards to the parties in controversy and must transmit the original award and all the papers to the office of the board of mediation and conciliation. The board of mediation and conciliation fixes the compensation of the board of arbitration.

The commissioner of the board makes an annual report.

Note: Acts 1919, c.281, created an Industrial Relations Commission which has nothing to do directly with this subject, but does indirectly in that its duty is that of "stabilizing employment".

MINNESOTA (50)

Minnesota has provision for a State Board of Arbitration of three members appointed by the governor by and with the advice and consent of the senate for two years. One must be a laborer, one an employer,

and one neither who is appointed on the recommendation of the other two members. If no recommendation is made, the governor appoints the third member also directly. Before the board has authority to act, it must be shown that ten or more employees are involved in the controversy. The board upon learning that there is a strike, actual or threatening, must attempt to procure a settlement by submission to the state board or to a local board, for which there is also provision. If the application is mutual, the decision is binding for six months.

The members of the board receive five dollars for each day actually employed in the work of the board. The board is in session only when an occasion demands its assemblage.

Note: The Legislature, 1921, enacted a new law on this subject, but was not available in printed form in time for this article.

MISSOURI (51)

The governor, with the advice and consent of the senate, appoints three competent persons to serve as a State Board of Mediation and Arbitration, one of whom is an employer of labor, or selected from some assozia-

tion representing employers of labor, one an employee holding membership in some bona fide trade or labor union; the third is some person representing the interests of neither employer nor employee. The members serve three years with overlapping terms. The board appoints a secretary who holds office during the pleasure of the board, and keeps the records, issues subpoenas and administers oaths, under the direction of the board, calls for and executes books and papers. The compensation of the members of the board is five dollars a day for time actually engaged and necessary expenses.

Whenever it comes to the knowledge of the board that a strike or lockout is about to occur or is seriously threatened involving ten or more persons, it is the duty of the board to proceed to the locality as soon as possible and place itself in communication with the disputants and attempt a settlement by mediation. Failing in this, its duty is then to inquire into the cause of dispute and it has authority to subpoena and examine witnesses, to send for books and to require the production of papers. All process issued by the board may be delivered or sent to any sheriff, constable, or officer with such power who must serve or post as required.
If a person wilfully neglects or refuses to obey a subpoena issued by the board to appear and testify, he is guilty of a misdemeanor and liable to arraignment and trial in any court having competent jurisdiction and on conviction is fined twenty five to five hundred dollars, or imprisonment not to exceed thirty days or both (52).

It is the duty of the disputants - the employer and the employees, if ten or more are involved - to submit the dispute for investigation. A copy of the decision is furnished to each party, the governor, and some local newspaper. If the application for arbitration is mutual or both parties agree to submit to a decision of the board, the decision is final and binding. In all cases where either party refuses to agree to arbitration, the decision is final and binding, unless exception is filed with the clerk of the board within five days after the decision is rendered and announced.

Any employer or employee violating the conditions

(52) But note the decision of the Supreme Court of Missouri: This board is not a court, and cannot exercise any power that is purely judicial in its character, nor can the legislature confer any such power upon it. Circuit courts cannot punish for contempt before this board. State ex rel v. Ryan, 182 Mo.349; 81 S.W. 435. The board has authority to subpoena witnesses, State ex rel v. Ryan 180 Mo.32,46; 79 S.W. 429.
of the decision of the board is guilty of a misdemeanor and upon conviction, in any court of competent jurisdiction, is fined fifty to one hundred dollars or imprisonment in the county jail for six months or both.

The board makes a biennial report to the governor.

Note: There has been no board appointed for several years, since the legislature has made no appropriation for such.

MONTANA (53)

Montana has provision for a State Board of Arbitration and Conciliation of three members who are appointed by the governor with the advice and consent of the senate and who serve for two years. One must be an employer or selected from some association representing employers of labor; one must be a laborer, or selected from some labor organization and not an employer of labor; and the third member must be a disinterested person.

The board establishes such rules of procedure as are necessary subject to the approval of the governor.

When any controversy or dispute not involving a question which may be the subject of a civil action exists between an employer (if he employs twenty or more persons in the same general line of business in

the state) and his employees, the board must on application, visit the locality and make inquiry, hear all persons interested, advise the respective parties what, if anything, ought to be done by either or both, to adjust the dispute. The board makes a written decision which is at once made public and recorded by the clerk of the board and published in the annual report.

The application must be signed by the employer or a majority of his employees in the department of business in which the controversy exists, or their duly authorized agent. The application must state the grievances, a promise to continue in business or at work without any lockout or strike until a decision of the board, if it is made within four weeks after the date of filing of the application. The names of the employees giving the authority are kept secret. Public notice of the time and place of the hearing is given unless both parties request otherwise, but the board can make such notice public notwithstanding such request.

Each party may nominate a list of experts from which lists the board selects one for each party. The board can appoint additional experts if it sees fit. Should the petitioners fail to perform the promise made in the application, the board proceeds no further with-
out the consent of the adverse party. The board has power to summon witnesses, examine them under oath, and to require the production of books and papers.

The decision is written, open to public inspection, and is published in the annual report to the governor. Any decision made by the board is binding upon the parties who join in the application for six months, or until either party has given the other notice in writing of intention not to be bound by the same at the expiration of sixty days.

Provision is also made for local boards of arbitration, which may be mutually agreed upon or the employer may appoint one, the employees one and these two members may choose the third. This local board has all the powers of the state board and the decision has whatever effect the parties agree upon in the submission. It may ask the assistance of the state board. The decision must be rendered within ten days after the close of the hearing and must be filed at once with the clerk of the county in which the controversy arose and a copy sent to the state board. It is the duty of the mayor of a city or two commissioners of any county to notify the state board of strikes and lockouts which are threatened or actually in existence. When it comes to the knowledge
of the state board (if there are twenty employers involved as stated above) it is the duty of the state board to communicate with the disputants and try to settle the dispute by mediation, and if this fails to endeavor to persuade them to submit it to a local or state board.

The state board, if it deems it advisable, may investigate the cause or causes of a controversy, and ascertain who is responsible and make and publish a report assigning responsibility.

The arbitrators receive five dollars for each day of actual services and necessary travelling expenses.

NEBRASKA (54)

The governor appoints three persons, one of whom is a member of a labor organization affiliated with the state federation of labor, one an employer of labor and one who is chosen from the general state citizenship and who is not a member of either the class of employers or employees. These members serve two years and constitute the state board of mediation and investigation. The Chief Deputy Commissioner of Labor

(54) Laws 1913, c.207 or Rev.Stat.1913,#3633, sec.83-#3634, sec.84; and as amended by Laws 1919,c.161.
is the secretary of the board and keeps the records. The governor in his appointment designates one member as chairman. The governor has the power to remove any member at any time who in any manner becomes incompetent to perform the duties of his office.

Whenever a strike or lockout occurs or is seriously threatened, it is the duty of the board, upon request of the governor or the employer or employers at interest, or upon request of employees at interest to proceed promptly to the locality of such strike or lockout and endeavor by mediation to effect an amicable adjustment of the controversy. The board proceeds without request to the locality of controversy whenever the governor deems it advisable and a majority of the board concur therein, and in such case the board has the same powers as in the case of a controversy submitted to it for investigation by mutual agreement. The board can hold meetings whenever the chairman deems it advisable. Three members constitute a quorum.

At a special election held on September 21, 1920, the people of the state adopted an amendment to the constitution (55) as follows:

(55) Constitution of Nebraska 1875 as amended by the Constitutional Convention 1919-1920, Art. 15, #9, and adopted by the people in special election Sept. 21, 1920.
"Laws may be enacted providing for the investigation, submission and determination of controversies between employers and employees in any business or vocation affected with a public interest, and for the prevention of unfair business practices and unconscionable gains in any business or vocation affecting the public welfare. An Industrial Commission may be created for the purpose of administering such laws, and appeals shall lie to the Supreme Court from the final orders and judgments of such commission."

Note: A bill providing for such a commission as above mentioned was introduced in the legislature in the regular session 1921, but failed to pass.

NEW HAMPSHIRE (56)

The labor commissioner is head of the bureau of labor and is appointed by the governor with the advice and consent of the council, and holds office for three years. (57). A State Board of Conciliation and Arbitration consisting of three persons is appointed by the governor, with the advice and consent of the council, who serve for three years with overlapping terms. One member must be an employer of labor or must be selected from an association representing employers of labor, one must be selected from a labor organization and not an employer of labor, and the third member is appointed upon the recommendation of the other two members. If they do not agree within thirty days prior to the expiration of a term, the third one is appointed by the governor.

Whenever any controversy or difference arises (56)L.1911,c.198,am'd by L.1913,c.186 and L.1917,c.142. (57)L.1911,c.198,#1.
between employer and employees, such controversy involving the interest of employees not less than ten in the same general line of business, the labor commissioner must upon application and as soon as practicable visit the locality of dispute and make careful inquiry into all conditions and circumstances, hear all persons interested who may come before him, advise the parties what, if anything, ought to be conceded by either or both, and adjust such controversy or difference and within five days after the inquiry make a written decision, a copy of which must be furnished each party and a copy kept on file in the bureau. Neither the proceedings nor any part thereof can be received in evidence for any purpose in any judicial proceeding before any other court or tribunal whatever.

The application must be signed by the employer or by a majority of his employees or their duly authorized agent, or by both parties, and must contain a concise statement of the grievance. The names of the employees giving authority to an agent are kept secret.

If the parties fail to agree to a settlement through the commissioner, then he must endeavor to have them consent to submit their differences to the board of arbitration. The findings of the board of
arbitration are final and binding for six months, or until sixty days after either party has given notice to the other in writing of his intention not to be bound. A status quo must be maintained pending the decision of the board. Any sworn statement made to the labor commissioner is for public use and published in the newspapers.

Whenever it comes to the knowledge of the commissioner by notice from a mayor of a city, county commissioners, president of a board of trade, or other representative body, or president of a labor council, or of any five reputable citizens, that a strike or lockout is seriously threatened or has actually occurred involving not less than ten employees in the same line of business, it is the duty of such commissioner to put himself in communication with the parties and endeavor to secure an amicable settlement by mediation or to persuade the parties to submit the matter to arbitration and conciliation. If they will not agree, he may investigate the cause and publish a report assigning the responsibility.

The report of the labor commissioner as to ways in which disputes have been settled 1911-1920 shows that in the majority of cases the settlement has been by the
labor commissioner. The services of the state board have also been invoked in a number of cases, while in some the influence of the labor commissioner has been invoked by indirect means.

Note: By Laws 1917, c.146, a fine of $500-1000 and imprisonment for not more than nine months, or both, is imposed for any attempt to influence or for any influence or coercion of any person to strike or make a lockout during war if such industry involved in any way contributes to the supplying of the army or navy.

NEW YORK

The Head of the Department of Labor is an Industrial Commissioner appointed by the governor with the advice and consent of the senate for four years (58). The Deputy Commissioner is appointed and removed by the Commissioner. There is also an Industrial Board of three members appointed by the governor with the advice and consent of the senate.

The Industrial Commissioner is given power (59) to establish divisions and bureaus which are necessary and to change, consolidate or abolish divisions or bureaus. It is his duty and power (60) to inquire into the cause of all strikes, lockouts, and other industrial controversies, and to endeavor to effect amicable set-

(58) Laws 1921, c.50, constituting c.31 of the Consolidated Laws repeals c.36 of Laws 1909 as am'd and creates these offices.
(59) Laws 1921, c.50, Art.2,#20.
(60) Ibid., Art.2,#21-(5).
tatement. The Industrial Commissioner has power to create within the department a board to which controversies between employers and their employees may be submitted for mediation and conciliation (61).

Whenever a strike or lockout occurs or is seriously threatened, it is the duty of an officer or agent of the bureau of mediation and arbitration, if practicable, to proceed promptly to the locality and endeavor by mediation to effect an amicable settlement. If the commissioner deems it advisable the board of arbitration may proceed to the locality and inquire into the cause and for that purpose has all the powers conferred upon it in the case of a controversy submitted to it for arbitration. The board of mediation and arbitration consists of the chief mediator and two other officers of the department of labor. A grievance or dispute between an employer and his employees may be submitted to the board for their determination and settlement. Such submission must be in writing, must contain a statement in detail of the grievance or dispute, the

(61) The Department of Labor states that as yet there has been no change in the machinery for the settlement of labor disputes. The conclusion is that the Bureau of Mediation and Conciliation will be maintained under the new system, hence a discussion of it is herein included, following the Laws of 1909, c.36.
cause, and also an agreement to abide by the determination of the board, and during the investigation to continue in business or at work without lockout or strike. The board then examines the matter in controversy and for the purpose of this inquiry has the power to subpoena witnesses, compel their attendance, take and hear testimony, call for and examine books, papers, documents and the like of any of the parties. The decision of the board must be rendered within ten days after the completion of the investigation.

Within ten days after the completion of every arbitration, the board or a majority thereof renders a decision in writing of their findings of fact and their recommendations to each party. Every decision must be filed in the office of the board and a copy served upon each party.

There is also provision for the submission of a dispute between an employer and employees to a local board of three persons. One arbitrator is chosen by the labor organization of which the employees are members in good standing, and if not members, by a majority; one is chosen by the employer; and these two designate a third member, who is chairman. Notice of the time and place of hearing must be given to the parties.
This local board also has power to subpoena witnesses, compel their attendance, and to take and hear testimony. It must likewise give a written decision within ten days showing the nature of the controversy and the questions decided. One copy of the decision must be filed in the office of the clerk of the county or counties where the controversy arose and one must be sent to the bureau of mediation and arbitration.

Some idea of the work and progress of the New York scheme may be gained from the following data (62):

( Key: 1-Number of strikes and lockouts; 2-Employees involved directly; 3-Employees involved indirectly; 4-Aggregate days of working time lost.)

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While the above table shows the bulk of work handled, the following data shows the results of the interventions:

( Key: 1- Number of disputes in which intervention occurred 2- Number of requests received for intervention 3- Number of disputes in which intervention was a success 4- … … … … was not a … 5- Number of interventions before strikes 6- Number of disputes in which conferences were arranged

7- Number of disputes settled by mediation with parties separately
8- Number of disputes settled by arbitration
9- Number of public investigations conducted

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<td>3-</td>
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<td>9-</td>
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</tbody>
</table>

**OHIO**

Ohio created in 1913 (63) an industrial commission composed of three members appointed by the governor, with the advice and consent of the senate (64), serving terms of six years each. Not more than one member can be a man who can be classed as a representative of employees; and not more than two of the members of the commission can belong to the same political party (65). By the law creating this commission, the state board of arbitration and conciliation ceased to have a legal existence (66) and its duties, liabilities and powers were transferred to the Industrial Commis-

(64) S.B. 74 (1919).
(65) Indus, Com. admin. body, not a court -23 OCC(NS)433.
(66) 103 OL 97; Supp. Page & Adams, etc. (see 63), #871-11.
sion. (67). Among the duties of the Industrial Commission, it is stated that it shall have full jurisdiction and authority (68) to do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees and to avoid the necessity of resorting to lockouts, boycotts, blacklists, discriminations and legal proceedings. In pursuance of this duty it has power to appoint temporary boards of arbitration, to provide for their expense and prescribe for them rules of procedure, and to conduct investigations, hearings, and publish reports.

It is the duty of the commission to designate a deputy to be known as Chief Mediator. It may detail other deputies to act as assistants. The Chief Mediator is to offer his services voluntarily.

Note: The Chief Statistician states that the Chief Mediator has offered his services on several occasions.

OKLAHOMA (69)

The constitution of Oklahoma provides that (70):

(68) Ibid., #871-22(8).
"The legislature shall create a Board of Arbitration and Conciliation in the Department of Labor and the Commissioner of Labor shall be ex-officio chairman."

The governor upon his own motion, appoints two farmers and one employer, and upon the recommendation of the commissioner of labor appoints one employer and two employees, by and with the advice and consent of the senate; and the six persons so appointed constitute the "State Board of Arbitration and Conciliation" and hold office during the term of the governor appointing them. Except the farmers, the appointments are made from the employers and employees who have been, for at least three years preceding the appointment, engaged as employer or employee in the mining, transportation, mechanical, or manufacturing industries of the state. The commissioner of labor, who is ex-officio chairman, organizes the board.

Whenever it comes to the knowledge of the state board of arbitration and conciliation that a strike or lockout is seriously threatened in the state, involving an employer and his employees, if he is employing not less than twenty five persons, it is the duty of the board to put itself in communication, as soon as possible, with the parties and endeavor to persuade them to submit the matter in dispute to the
It is the duty of the mayor of any city or justice of the peace of any municipal township, whenever such a strike or lockout as involves more than twenty-five persons is threatening or has actually occurred, immediately to notify the state board of arbitration and conciliation giving the names of the parties, addresses, and nature of the controversy and such other information as may be required by the board. It is also the duty of the chief executive officer of every labor organization immediately to communicate in the same manner the same to the state board.

Whenever a strike or lockout exists wherein, in the judgment of the majority of the board, the general public is likely to suffer, and neither party shall consent to submit the matter or matters to the state board, then the board, after having first made due effort to secure such submission, may proceed of its own motion to make an investigation of all the facts and make public its findings, with such recommendations to the parties as will contribute to a fair and equitable settlement of the differences. In the prosecution of such inquiry the board has the power to issue subpoenas, and if the party fails and refuses to appear before the
board, the board has power to certify that fact together with the name of the person subpoenaed, to the district court having jurisdiction of the person subpoenaed; and the district court then serves a subpoena upon him, and if he fails, he is proceeded against as provided by law in cases of contempt.

The members of the board serve only when needed and receive five dollars per diem and necessary expenses. Any process issued by the state board is served by any sheriff or constable. Injunction will not lie against the board of arbitration and conciliation except from the supreme court, and then shall not be final until the supreme court is satisfied that the board is abusing or transgressing the privileges allowed.

OREGON (71)

Oregon has two schemes for arbitration and conciliation: one conducted by a state board and another one by a board agreed upon in each particular case.

The State Board of Conciliation is composed of three commissioners, the governor appointing two members and these two appointing a third member. If the

(71) Oregon Laws, including Spec.Sess.1920, Title 38, c.21; or Laws 1919, c.178.
two members do not agree on the third member, the governor then appoints him. The governor may remove the commissioners for cause. The board established its own rules. The members receive five dollars for each day of actual service and necessary travelling and other expenses. The board may administer oaths, subpoena witnesses, punish for contempt, require the production of books and papers - the same as is conferred on judges of the circuit court of Oregon. The board is required to endeavor to persuade the disputants to adjust the difficulty, but if unable to do so, either party or a city or county official may require the board to make an investigation if fifty or more persons are employed. The board holds public hearings, investigates, and makes recommendations to the parties. If either party, or both, are not satisfied, then either party may make application to submit the question to a board of arbitration. The application must contain a statement of the grievances and an agreement to abide by the decision.

For the board of arbitration, three members may be mutually agreed upon, or the employer may choose one, the employees one, and these two the third member. If the two members do not agree on the appointment of a third member, the State Board of Conciliation appoints
the third member. This board has the same powers of investigating such controversy, strike, or lockout as the Board of Conciliation.

If either party refuses to accept the findings of the Board of Conciliation or refuses to consent to the appointment of a board of arbitration, then the State Board of Conciliation places the responsibility and files copies with the clerk of the county court wherein the controversy arose, and one in the office of the Commissioner of Labor of the State of Oregon, as public documents.

The compensation for the board of arbitration is the same as for members of the Board of Conciliation. The Board of arbitration files its report - one with each party, one with the clerk of the county court, one with the Board of Conciliation, and one with the Commissioner of Labor of Oregon.

The Board of Conciliation makes an annual report to the governor.

PENNSYLVANIA

The Act (72) which created the Department of Labor and Industry provided that one of the three

(72) Laws 1913, c.267.
bureaus (73) should be a Bureau of Mediation and Arbitration (74). The head of the bureau is a chief. At the present time, he has as assistants, a secretary, five mediators, and one investigator (75).

Whenever a difference arises between an employer and his employees, which cannot be readily adjusted, it is the duty of the chief of the bureau to proceed promptly to the locality and endeavor by mediation to effect an amicable settlement. If this cannot be accomplished, the dispute may be arbitrated by a board composed of one person selected by the employer, one selected by the employees, and a third one who is selected by these two members. If such appointment is not made within five days, the Chief of the Bureau of Mediation and Arbitration constitutes the third member and becomes chairman of the board. If the third member is chosen by the two representatives, then the chairman is established by the board itself. The submission to the board must be made in writing and the parties must agree to abide by the determination of the board. The board must render a written decision within ten days after

(73) Ibid., #4.
(74) Ibid., #4,17,18,19.
the completion of the investigation, one copy being filed in the bureau, and a copy furnished to each party to the controversy. The chief of the bureau makes an annual report, containing such information as the Commissioner of Labor and Industry requests. The Commissioner of Labor and Industry assigns to this bureau from his department such clerical assistance as he thinks necessary.

The following data gives some idea of the work and progress of the bureau (76):

<table>
<thead>
<tr>
<th>Year</th>
<th>1916</th>
<th>1917</th>
<th>1918</th>
<th>1919</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of strikes reported during the year</td>
<td>316</td>
<td>498</td>
<td>317</td>
<td>484</td>
</tr>
<tr>
<td>Settled</td>
<td>298</td>
<td>410</td>
<td>289</td>
<td>472</td>
</tr>
<tr>
<td>Total number of strikes in which Dep't Mediators acted</td>
<td>200</td>
<td>259</td>
<td>162</td>
<td>233</td>
</tr>
<tr>
<td>Settled</td>
<td>186</td>
<td>184</td>
<td>143</td>
<td>223</td>
</tr>
</tbody>
</table>

SOUTH CAROLINA (77)

South Carolina has a Board of Conciliation for the investigation and arbitration of industrial disputes and strikes, which is appointed by the governor

(77) Laws 1916, c. 545 and amended by Laws 1919, c. 87, adding section 9-a, providing a penalty.
for a term of six years, the members having overlapping terms. One member is an employer of labor in behalf of an incorporated company, one is a member of a recognized labor union, and the third member is appointed on the recommendation of the other two members. If the two members do not agree upon a third member, the governor uses his own discretion, but the third member must be neither an employer of labor nor an employee of any such company.

It is the duty of the board to investigate disputes, strikes, and lockouts, to ascertain causes and make findings of fact, to report to the governor, and to induce both sides to arrive at an agreement; to remove misunderstandings, to nominate, appoint, or act as arbitrators when required by both sides to a controversy. The board has power to summon witnesses, take and hear testimony, and to summon any person concerned before it. The board can be called into session by the governor.

A violation of the provisions of this act and conviction thereof subjects the person so violating the same to a fine of twenty five to one hundred dollars and not more than thirty days on the chain gang.
Texas has an Industrial Commission, composed of five members, one representing employers of labor, one the employees or laborers, and three representing the general public. The members are appointed by the governor and hold office for a term of two years. They serve without pay but are allowed actual expenses. The commission elects one of its members chairman.

Whenever the governor of Texas becomes convinced or has reason to believe that controversies between employers and employees are of such nature and character as to be of public concern or interest, he must refer, by proclamation, such controversy or controversies to this commission for hearing and report. The commission, and the members thereof, must proceed immediately to the place of controversy for the purpose of making investigation and report. After the investigation has been completed, it is the duty of the commission to make a full report to the governor, including recommendations to the governor as to what action should be taken in reference to the controversy or settlement thereof.

All the hearings by the commission must be public and the findings and recommendations are furnished to news agencies and newspapers of the state for publication. The commission must also make a full report to the legislature, if in session, and if not in session, then to the succeeding session of the legislature. The commission has power to summon witnesses, issue subpoenas, to compel the attendance of witnesses, to compel the production of books and records by witnesses, to punish for contempt, to take testimony in and out of the State, to pay witnesses as paid in felony cases, to administer oaths, and to have all the powers now given by the statutes of Texas to Legislative Investigation Committees (79).

UTAH

The constitution of Utah provides as follows (80):

"The legislature shall provide by law for a Board of Labor, Conciliation, and Arbitration which shall fairly represent the interests of both capital and labor. The Board shall perform duties and receive compensation as prescribed by law."

Utah created the Industrial Commission in 1917 (81)

(79) Under the Complete Texas Stat., 1920, #5517-24 the legislative investigation committee may administer oaths, and issue such process as is necessary to compel attendance of witnesses and production of books and papers.

(80) Constitution, adopted 1895, Art. 16, #2.

(81) Sess. Laws 1917, c.100, as am'd by Laws 1919, designated as Title 49, Compiled Laws Utah, 1917.
to which were transferred the duties, liabilities, authority, powers, and privileges of the former state board of conciliation and arbitration (82). All laws then existing relating to the state board of conciliation and arbitration were declared as applying and referring to the Industrial Commission (83). The Commission is composed of three members appointed by the governor, by and with the advice of the senate, for terms of six years, all of their terms overlapping. Not more than two members of the Commission can belong to the same political party. Under the general powers of the Commission, the law states that it is "to do all in its power to promote the voluntary arbitration, mediation, and conciliation of disputes between employers and employees" (84).

Whenever it comes to the knowledge of the Commission (85) that a strike or lockout is seriously threatened in the State, involving any employer and his employees, if he is employing not less than ten persons, it is the duty of the commission to put itself

(82) Comp. Laws 1917, Title 49, Sub.-div.9,#3076.
(83) Hence, although many of these references read "state board of conciliation and arbitration", to avoid confusion, the author has used "Industrial Commission", which is the body now handling such matters.
(84) Comp. Laws 1917, Title 49, Sub.-div.5,#3076.
(85) Ibid., Title 58,#3636.
in communication with the parties as soon as may be and endeavor by mediation to effect an amicable settlement. It is also the duty of the commission to request each of the parties to forward to its secretary an application for arbitration. As soon as practicable after receiving such applications (86), the commission must request each of the parties to the dispute to agree upon a written statement of facts and to submit the same to the commission. If, however, when such agreement and statement cannot be reached, each of the parties may separately submit to the commission a written statement of grievances. Applications for arbitration on the part of employers must precede any lockout, and on the part of the employees must precede any strike; but if the lockout or strike already exists, the commission must accord arbitration if the parties resume their relations with each other. The applications also must include a promise to abide by the decision of the commission and be signed by the employer or employers, or his or their duly authorized agent, on the one side, and by a majority of his or their employees on the other side. The commission has power (87) to summon witnesses by subpoena,

(86) Ibid., #3637.
(87) Ibid., #3639.
to examine witnesses, to administer oaths, to require the production of books, papers, and records. In case of disobedience to a subpoena the commission may invoke the aid of any court in the state in requiring attendance and testimony and the production of books, papers, and documents.

It is the duty of the mayors of cities and sheriffs of counties (88) when any condition likely to lead to strike or lockout is threatening to immediately forward information to the secretary of the commission. As soon as practicable after the commission has investigated (89) the differences it must render an equitable decision which states what, if anything, should be done by either or both parties. The findings of a majority of the commission constitutes a decision. The decision is at once made public (90), is recorded upon the proper book of record by the secretary, and a short statement published in the annual report made to the governor.

Note: The law apparently places it upon the parties to the dispute whether they will avail themselves of its provisions.

Under the provisions of the constitution, Art. 21, #1-2, the boards are an exception to the requirement to pay all officers a fixed and definite salary each. They accept fees as full compensation.

(88) Ibid., #3640.
(89) Ibid., #3642.
(90) Ibid., #3643.
The State Board of Conciliation and Arbitration consists of three persons appointed by the governor for terms of three years with overlapping terms. One member is an employer, one is selected from a labor organization and must not be an employer of labor, while the third member is appointed upon the recommendation of the other two members. If the two members do not agree upon a third member at least thirty days before the expiration of the term of such third member, then such member is appointed by the governor. The board chooses from its members one who acts as chairman. Any member of the board is disqualified to act in any matter in which he is "directly or indirectly interested"; and, in case of such disqualification, the other two members choose a third member not interested directly or indirectly in the matter in dispute. The board reports biennially to the governor. The board has power to summon witnesses, administer oaths, and require the production of books containing the record of wages paid.

If it appears to the mayor of a city or to the selectmen of a town that a strike or lockout is serious-

(91) Laws 1913, c.190; or Gen. Laws, Title 33, c.245.
ly threatened or actually occurs, notice must be given to the board at once, and a like notice may be given by the employer or employees concerned. When the board has such knowledge, if the employer at the time the dispute occur is employing not less than ten persons in the same general line of business in any town, it is its duty to communicate with the parties at once and endeavor by mediation to obtain an amicable settlement, or, if a strike or lockout has not actually occurred or is not then continuing, to persuade them to submit the controversy to the board for arbitration. It is the duty of the board to investigate the cause of the controversy and publish a report fixing the responsibility or blame. It is also the duty of the board upon request of the governor to investigate and report upon any controversy if in his opinion it seriously affects or threatens seriously to affect the public welfare.

An application for submission of a dispute to the board must be signed by the employer or by a majority of his employees or by the duly authorized agent of the employees or by both parties. The names of employees giving such authority are kept secret. The application must contain a concise statement of the controversy and a promise to continue in business or at
work until the board has made its decision, if made within three weeks after the date of filing the application.

Upon the filing of such an application, the secretary of the board gives public notice of the time and place of hearing, unless both parties request that public notice shall not be given. However, the board may give public notice notwithstanding such a request. If the petitioner fails to perform the promise required in its application, the board proceeds no further without the written consent of the adverse party. Each party to the application may submit the names of persons fit to act as expert assistants to the board and the board appoints one person from each list. The board may appoint such additional experts as it deems necessary.

If the controversy is one not involving questions which might be the subject of an action at law or suit in equity, the board must, upon application as stated above, and if the employer is employing not less than ten persons in the same general line of business, visit the place of controversy as soon as practicable and make a careful inquiry into the cause, and may with the consent of the governor conduct the inquiry beyond the limits of the state. The board hears all persons in-
interested who come before it, advises the respective parties what ought to be done or submitted to by either or both, and makes a written decision thereof. The decision is made public at once and is recorded by the secretary of the board. A copy of the decision is filed with the clerk of the town where the controversy arose, and also a short statement is included in the annual report. Such a decision is binding upon the parties who join in an application for six months or until the expiration of sixty days after either party has given notice in writing to the other and to the board of his intention not to be bound thereby.

WISCONSIN

Wisconsin has two agencies for the settlement of labor disputes: (1) the Industrial Commission; and (2) the Board of Conciliation.

The Industrial Commission, in addition to its numerous other powers and duties, is empowered (92) "to do all in its power" to promote the voluntary arbitration, mediation, or conciliation of disputes between employers and employees, and to avoid strikes and lockouts and other labor and industrial disturbances. This commission may appoint temporary boards of arbi-

(92) Laws 1911, c.485; Wisc.Stat.1919 (all laws in force), #2394-52(8).
tration, prescribe rules for the same, and conduct investigations and hearings. The commission designates a commissioner known as chief mediator and may detail other deputies. These deputies may act on the temporary boards.

The Board of Conciliation (93) consists of three members, one a skilled employee, one an employer of labor and one of general knowledge of manufacturing and labor conditions. All are appointed by the governor for terms of three years with overlapping terms. When disputes arise between an employer and employees, if the former is employing at least twenty five persons, either the employer or employees may request investigation. If the dispute is one involving a public service corporation or its employees, the board reports the dispute to the Wisconsin Railroad Commission which makes further investigation and makes an order for certain wages, for instance, or whatever is needed to settle the dispute.

The board may issue subpoenas, administer oaths, and apply to the circuit court of any county to compel obedience by attachment proceedings. When the board

(93) Laws 1919, c.530; or Wisc.Stat.1919 (all laws in force),#1729t.
has made a complete investigation, it files a written report which is open to the public.

Note: It is seen that the board is charged with the arbitration of disputes submitted to it voluntarily.

PORTO RICO (94)

The governor is authorized to appoint a mediation and conciliation commission of five persons, two from a list submitted by labor and two from a list submitted by the employers. A list of persons who may serve as mediators and arbitrators is to be prepared. The commission may intervene in all labor disputes involving industries affecting the public service, such as railroads, street railways, and the like. In other cases the commission may intervene only when required to do so by the governor, but if a controversy threatens to interrupt business to the detriment of the public interest the commission may require the parties to submit to an arbitration board of three members. If all efforts fail the commission shall publish its conclusions.


The PHILIPPINE ISLANDS have a scheme of arbitration and conciliation with general powers of investigation. Commons and Andrews, "Prin. Labor Leg.",1916,p.131.
UNITED STATES

"Great Britain and the United States occupy the unique position of having no legislation abridging the right to strike. ... With the exception of these two nations all governments of any importance have, in one way or another, attempted by repressive legislation to prohibit strikes and compel the settlement of industrial disputes by arbitration. ..." (95). The following countries have provisions for mediation and conciliation and arbitration of some sort (96): England, France, Germany, Austria, Denmark, Italy, Sweden, Belgium, Roumania, Servia, Spain, Netherlands, Switzerland, and Argentina. To this list may be added (97): Australia, New Zealand, Russia, Turkey, Portugal, and Canada. Norway (98) has an advisory scheme for private and public concerns employing not less than fifty persons, which was enacted in July, 1920. Argentina, Columbia, and Chile have recently passed arbitration laws (99). It takes but little research to discover that

(95) Report of U.S. Com'r of Med.&Conc.1913-19,
(97) Same as (95) p.18.
most of the countries have gone farther than the United States in the matter of compulsion. (1).

Five Acts of Congress relating to the adjustment of railroad labor disputes make up the more definite steps in the history of legislation by the United States aimed at the adjustment of trade disputes. They are: 1- An Act approved Oct. 1, 1888; 2- Act of June 1, 1898, commonly known as the Erdman Law; 3- the Newlands Law, approved July 15, 1913 (later supplemented by other acts); 4- Act creating the Department of Labor, 1913, giving Secretary of Labor power to act as mediator and to appoint commissioners of conciliation; 5- Title III of the Transportation Act of 1920.

The Act approved Oct. 1, 1888 (2) was never called into use during the ten years of its existence. The Erdman Law of 1898 (3) remained practically a dead letter for eight and one half years, since in 1899 the first case to come under this law ended disastrously for the progress of the scheme because the railroads refused to accept the friendly offices tendered by the mediators. The mediation features of the law proved

(1) See "Industrial Conciliation and Arbitration", c. 6, by Douglas Knapp; "Mediation, Investigation, and Arbitration in Industrial Disputes", by Barnett & McCabe,
(2) 25 Stat. 501.
(3) 30 Stat. 424.
the more efficacious. Sixty one cases of mediation and arbitration were held under the Erdman Act. An Act of March 4, 1911 (4) supplemented the Erdman Law by authorizing the President to designate any member of the Interstate Commerce Commission or Court of Commerce to exercise the powers conferred and duties imposed upon the chairman of the Interstate Commerce Commission by the provisions of the Erdman Act.

This brings us to the Newlands Law of July 15, 1913 (5) which, as supplemented by other acts, is the present law on this subject. In the same year, the U.S. Department of Labor was created (6). By this Act the Secretary of Labor was given power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace should require it (7). Hence, there are two agencies of the United States government to act as mediators: 1- the Secretary of Labor; 2- the Board of Mediation and Conciliation created by the Newlands Law.

(4) 36 Stat. 1397.
(5) 38 Stat. 103; Public 6, 63 Cong.1st Sess.
(6) 37 Stat. 736 ff; Public 426, 62 Cong.3rd Sess.
(7) 37 Stat. 738.
The Newlands Law repealed the Erdman Act. The scope of the present law includes, on the side of the employers, all interstate common carriers by railroad, and on the side of the employees, all those engaged in train operation or train service. The Board of Mediation and Conciliation consists of a commissioner and two other officials appointed by the President, by and with the advice and consent of the Senate. The Commissioner is appointed for seven years and can be removed only for misconduct in office. There is appointed in the same manner an Assistant Commissioner. Boards of arbitration consist of three or six persons, as may be agreed, selected one third by each party and one third by those thus chosen, or, in default of such selection, by the Board of Mediation and Conciliation. The matters which are cognizable are controversies as to wages, hours of labor, or conditions of employment which interrupt the business of the employer to the serious detriment of the public interest. Jurisdiction by the board is acquired by the request of either party, or the board may proffer services. As to procedure, mediation and conciliation are attempted through the board, but if this fails, the board then seeks to procure the submission of the dispute to a board of arbitration.
through agreement of the parties. The agreement to arbitrate must be in writing, signed and acknowledged by representatives of both parties, must specify the questions to be arbitrated, must determine the period of beginning hearings and time allowed for making an award (which is thirty days unless otherwise agreed), must fix the date and length of the term of the operation of the award, must provide for the faithful execution of the award, must provide for filing the awards and papers in the office of the clerk of the district court of the United States of local jurisdiction, to be final and conclusive, unless set aside for error of law apparent on the record, and may provide for a reference to the same board or a subcommittee thereof of any dispute as to the meaning or application of any provision of the award.

The duties and powers of the board of mediation and conciliation are to attempt mediation and conciliation on the request of either party, or voluntarily; to seek to procure arbitration where mediation is unsuccessful; to appoint the neutral arbitrator or arbitrators where the representative arbitrators fail to do so; to take acknowledgments of agreements to arbitrate; to notify arbitrators of their appointment and
fix the rate of their compensation. The duties and powers of the boards of arbitration are to administer oaths and affirmations, require attendance of witnesses, production of books, papers, and contracts; to make rules for the conduct of hearings; to employ assistants for carrying on its work; and to make awards in accordance with the terms of the agreement to arbitrate.

The award must be restricted to questions specifically submitted to the board, or to matters directly bearing thereon. A copy must be furnished to each party, and one copy filed with the clerk of the U.S. District Court of the locality. A copy of the award and the papers, proceedings, and testimony in the case must be furnished the Board of Mediation and Conciliation and filed in its office.

Exceptions may be entered within ten days of the filing of the award "for matter of law apparent upon the record" to the U.S. District Court. An appeal on questions of law may be taken from this court to the Circuit Court of Appeals having jurisdiction, within ten days after its rendition, the decision on this appeal to be final.

Ten days after an award is filed in the office of the clerk of the court, or ten days after the deci-
sion on the exceptions or appeals, if such are taken, the award shall go into practical operation, if sustained, and judgment shall be entered thereon accordingly. If the exceptions are sustained, the award shall be set aside in whole or in part; but the parties may agree to a judgment disposing of the matter in dispute, which shall be final.

The award having thus become a judgment of a court, statutory and adequate jurisdiction can be enforced by the same methods as in other judgments. Nothing in this act is to be construed as requiring an employee to render personal service without his consent and no legal process may issue to compel such service (8).

There have been two instances (9) in the history of the present law where, mediation having been unsuccessful, the mediators could not induce the parties to arbitrate and it was necessary for the Board to invoke the assistance of the President. The first of these cases was the Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen against ninety-eight roads in western territory in July 1914.

(8) This is taken almost verbatim from the digest of the law as given in the Report (note 95 supra) of the U.S. Com'r of Mediation and Conciliation, p.19ff.
(9) Ibid., p.21.
It was finally arbitrated. The second one which called for executive intervention was one involving every railroad of the United States engaged in interstate commerce and grew out of concerted demands for a basic eight-hour day without reduction in wages. The participants in the demand were all the employees who were members of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and Brotherhood of Railroad Trainmen. This was the first time in our history that a nation-wide demand was made by the most powerful of the labor organizations for a reduction to eight hours without decrease in pay. The result was the Adamson Law (10). It was hurriedly passed and although it unlocked what was at the time one of the greatest labor controversies, it has now lost its influence and occupies no place in the settlement of labor disputes (11).

During the period from July 15, 1913 to June 30, 1919, the services of the Board were (12):

<table>
<thead>
<tr>
<th>Requested by -</th>
<th>No. cases</th>
<th>RR s</th>
<th>Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Railroads</td>
<td>92</td>
<td>392</td>
<td>477,667</td>
</tr>
</tbody>
</table>

And tendered to -

<table>
<thead>
<tr>
<th>Employees</th>
<th>Jointly in</th>
<th>The public in</th>
</tr>
</thead>
<tbody>
<tr>
<td>74</td>
<td>27</td>
<td>2</td>
</tr>
<tr>
<td>85</td>
<td>50</td>
<td>2</td>
</tr>
<tr>
<td>23,211</td>
<td>21,401</td>
<td>135</td>
</tr>
</tbody>
</table>

RRs and employees jointly, without request in

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<td>16</td>
<td>57</td>
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Total - - - - - - - 148 586 620,810

Disposition was made of these 148 cases as follows (13):

Settled by - - - - -

- Mediation alone 70
- Mediation and arbitration 21
- Sub-total - - - - 91

Parties before mediation began 11
Parties after mediation began 8
- Sub-total - - - - 19

Congressional action (Adamson Law) 1

Total - - - - - - - - - - - - - - - - 111

Mediation suspended or discontinued 3
No action, because controversy not within provisions of Act 11
Controversy abandoned by employees 2
Agreement on some points reached in mediation and discontinued before final settlement because roads were taken under Federal control 2
Removed from jurisdiction of Board before mediation began, because roads were taken under Federal control 14
Services of Board declined by -
- Railroads 2; employees 1 3
- Total - - - - - - - - - - - - - - - - 35

Cases pending
- Grand total - - - - - - - - - - - - - - - - - - - - - - 148

The Clayton Act of 1914 (14) included a provision restricting restraining orders and injunctions in the case of controversies involving terms and conditions of employment to cases where necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which there is no adequate remedy at law; and such property must be described with particularity. Too, it provides that no restraining order or injunction shall prohibit any person or persons from terminating any relation of employment or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do, nor from peacefully assembling or communicating. There is also a provision (15) excluding labor unions not conducted for profit, but for mutual help and for the legitimate objects of the union, from the operation of the anti-trust laws.

Title III of the Transportation Act of 1920 (16) provided that the Mediation and Conciliation Act of 1913 was not to apply to transportation sys-

tems covered by the Act (17). It created plans for adjusting labor disputes arising in any express company, sleeping car company, and any carrier by rail under the Interstate Commerce Act, except a street, interurban or suburban electric railway not part of a general steam railroad system. There is provision for two kinds of boards: (a) Railroad Boards of Labor Adjustment; (b) Railroad Labor Board. The Act declares that it is the (18) "duty of all carriers and their officers, employees, and agents to exert every reasonable effort and to adopt every available means to avoid the interruption to operation of any carrier growing out of any dispute between carrier and employees or sub-officials thereof." There is no penalty here and whether the injunction will be employed by the courts to enforce this duty is one for future determination. There is no provision for a compulsory delay in striking pending investigation of a dispute. If a dispute arises, it is to be settled if possible in conference between representatives of both sides. Grievances which cannot be settled in this way go before the railroad boards of labor adjustment, which

(17) Ibid., #316.
(18) Ibid., #301.
are established by agreement between any road or group of roads and the employees. These railroad boards of labor adjustment created by agreement between the parties may take jurisdiction of any dispute upon the application of the chief executive of any carrier or organization of employees, or upon a written petition of not less than one hundred unorganized employees, or upon motion of the adjustment board itself, or upon request of the Railroad Labor Board (19).

The Railroad Labor Board is the final tribunal for the settlement of railroad labor disputes and is the principal agency. It is composed (20) of nine members: three representing the employees and sub-officials, three representing the carriers, and three representing the public. All are appointed by the President with the advice and consent of the Senate, the first two groups from not less than six nominees by each group. If either group fails to propose a list, the President appoints directly, as he does for the third group. Their terms are five years. Disputes may come before the Railroad Labor Board either upon failure of the adjustment board, or directly.

(19) Ibid., #303.
(20) Ibid., #304-6.
It hears cases on appeal from the adjustment boards or not within the jurisdiction of the labor adjustment boards. The labor board obtains jurisdiction (21) upon its own motion or by petition the same as in the case of the labor adjustment boards. The board may suspend the operation of any decision between the carrier and its employees if there is involved any increase in wages or salaries such as to necessitate a substantial re-adjustment of rates. A decision of the labor board requires the assent of five of the nine members and in cases affecting wages or salaries, at least one of the representatives of the public must concur. The board in making decisions affecting salaries and wages is directed to take into consideration certain relevant circumstances (22) such as: scale of wages in other industries, cost of living, hazards of employment, training and skill required, degree of responsibility, character and regularity of the employment, and inequalities resulting from previous adjustments.

The Railroad Labor Board has powers to compel

(21) Ibid., #307.
(22) Ibid., #307.
the attendance of witnesses, production of books, and documents (23). There is no penalty for violation of decisions of the labor board, but the board has authority to publish the facts. Failure to obey a subpoena or to give evidence results in invoking the services of the U.S. District Court and failure to obey an order is, of course, contempt. The board or agent of the board has the right to investigate (24) or copy any book, account, record, or correspondence relating to any matter which the board is authorized to consider and investigate. Any person refusing, is liable to a penalty of five hundred dollars for each offense and each day is a separate offense. This is recoverable in a civil suit in the name of the United States. The labor board becomes the continual investigational agency (25) respecting the relation between carrier and employees, particularly as to the question of wages, hours of work, conditions of employment and privileges, rights, and duties of the carriers and employees. It is authorized to gather, classify, and publish such information and is required to publish annually its administration, decisions, and regulations

(23) Ibid., #310.
(24) Ibid., #311.
(25) Ibid., #308.
as well as those of the Interstate Commerce Commission affecting industrial relations.

Note: It is noted that the only compulsory feature of the powers of the Railroad Labor Board is that of compulsory investigation. #311, above.

GROUP III

The characteristic feature of the third group is the substitution of the word "compulsory" for the word "voluntary". It includes the two states which have the highest forms of machinery: Colorado and Kansas. Since they form interesting comparisons, Canada is discussed in connection with Colorado and Australasia with Kansas.

CANADA and COLORADO

CANADA

A very brief discussion of the Canadian Industrial Disputes Act of 1907 (26) cannot be inappropriate in view of the fact that one of our states, Colorado has adopted certain of its features. In fact Colorado is the only state following that part of the Canadian Act forbidding strikes or lockouts in certain industries.

(26) 6 & 7 Edward VII, c. 20 (Dom.).
prior to or pending investigation (27).

The Canadian Industrial Disputes Act (28) has its genesis in a coal mine strike. The year before the passage of the Act there had been a prolonged strike in the Alberta coal mines which threatened a coal famine. When a strike is threatened in any one of the industries necessary to life or essential to public welfare, the parties, if unable to adjust their difference, MUST refer it to a board for settlement before a strike or lockout. If they are going to strike or lockout, they must serve a notice on the government that unless a board is appointed a strike will take place. The notice must say that all possible means of adjustment have been exhausted and pray the government to appoint a board of investigation.

The notice must also contain a statement of differences.


When a notice is served, the Minister of Labor calls on each party to name a member of the board. These two choose a third member or if they are unable to agree, then the Minister appoints the third member. The board has all the powers of a court of record. It may compel the production of documents, subpoena witnesses, and require evidence to be given under oath; but its duty is primarily that of a conciliation board and board of inquiry and only secondarily that of a court. The board reports to the government. If there is no settlement, the facts are published for public consumption. Here the function of the government ends and the parties may proceed to a strike or lockout. It is also unlawful to change the terms of employment in the industries enumerated above without thirty days' notice. Thus the outstanding features of the Canadian Act are: 1- compulsory investigation; 2- prohibition of strikes and lockouts prior to or during reference of a dispute to arbitration; 3- illegality of change of terms of employment without thirty days' notice.

The law seems to be a success and it is said that labor leaders endorse it. Its success seems to be due largely to fear of publicity although they
have had many illegal strikes and a few prosecutions.
An illegal strike or lockout is action taken before
reporting to a board, or before investigation by a
legally constituted board.

As in the Canadian Act, the law in Colorado
gives to the Industrial Commission powers of com-
pulsory investigation and to deliver an award which
is not mandatory. Also, as in the Canadian Act, change
of terms of employment, strikes, and lockouts are
prohibited until thirty days' notice. Failure to
give notice renders the parties, as in Canada, liable
to prosecution and fine. The Colorado law goes farther
in that it is not limited to public utilities and mines,
but covers all employees except those in domestic ser-
vice, agriculture, and establishments employing less
than four employees.

Note: The above paragraph will serve to notify
the reader of those more interesting comparisons which
are apparent as he reads the discussion of Colorado.
Other comparisons may possibly appear.

COLORADO
"The nearest approach to the Kansas statute
is an Act of the state of Colorado enacted in 1915, ...". (29).

(29) "Conciliation and Arbitration - Adjustment
of Industrial Disputes in Kansas and Colorado", U.S.
Dep't of Labor, Bureau of Labor Statistics, Monthly
By an Act of April 1915 (30), Colorado created an Industrial Commission consisting of three members who are appointed by the governor by and with the consent of the senate and serve for six years with overlapping terms. Not more than two of the Commissioners may be members of the same political party. Not more than one of the members of the Commission may be a person who, on account of his previous vocation, employment, or affiliations, can be classed as a representative of employers, and not more than one who, under the same description, could be classed as a representative of employees. The Act does not apply (31) to employers of private domestic servants or farm and ranch labor, nor to employers who employ less than four employees regularly in the same business, or in or about the same place of employment. The Commission has power, with the approval of the State Auditing Board to employ such assistants as are necessary, and all assistants, except experts and actuaries, must have been for two years previous to such employment or appointment, bona fide residents of the state of

(31) Ibid., Sec. 4-(c)-III.
Colorado.

In addition to its administration of the workmen's compensation act and its power to investigate and supervise the enforcement of the other labor laws of the state, this Industrial Commission has powers respecting conciliation, arbitration, and investigation of labor disputes (32). "The Commission shall do all in its power to promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees, and to avoid the necessity of resorting to strikes, lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment." The Commission may appoint temporary boards of arbitration and provide for expenses and compensation and make rules for the procedure of such boards. Any investigation, inquiry or hearing may be undertaken or held by any commissioner, deputy, agent, or board of arbitration and for the purpose of such investigations, the Commission or any arbitration board has the powers of summoning before it and enforcing the attendance of witnesses, of requiring witnesses to give evidence on oath, and to produce books,

(32) Ibid., #27-33 inclusive.
papers or other documents. The Commission is not bound by strict rules of legal evidence, but may "accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not". (33). Employers and employees must give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours. Pending the investigation of any dispute by the Commission or arbitration board the parties cannot alter wages or hours or declare a strike or lockout. However, to use this provision or any other provision of the Act for "unjustly maintaining a given condition of affairs through delay" is a misdemeanor punishable by a fine of not more than one hundred dollars. It is unlawful for any employer to declare a lockout or for any employee to strike, on account of any dispute, prior to or pending an investigation or arbitration of any dispute. An employer violating this provision is guilty of a misdemeanor and subject to a fine of $100-1000 a day for each or part of a day that such lockout exists and an employee violating the same provision by striking likewise commits a misdemeanor and is subject to a fine of $10-50

(33) Ibid., #28.
for each day or part of a day he is on strike. Any person who "incites, encourages, or aids" any person to violate the provisions of the Act is guilty of a misdemeanor punishable by a fine of $50-1000, or by imprisonment in the county jail for not more than six months, or both fine and imprisonment.

Any findings, determinations, or decision of the Commission or of any board of arbitration are not binding unless the parties have agreed in writing prior to or during the investigation to be bound, or unless the parties agree to be bound by such action after the same has been known to them. Any employer or employee or any other person who violates any lawful order of the Commission is punished by a fine of not less than one hundred dollars for each such offense, every day during which there is failure to comply with the order constituting a separate and distinct offense. Any person affected by any finding, order or award of the Commission may petition for a hearing on the reasonableness of such action. Any person in interest being dissatisfied with such final hearing may commence an action in the district court against the Commission as defendant. All such actions have precedence over any civil cause. The court may
confirm or set aside such order upon certain specified grounds. From this review by the district court, the Commission or any party aggrieved may have the questions of law only reviewed by the Supreme Court by writ of error. In such a case, the cause is advanced upon the calendar of the Supreme Court and a final decision rendered within sixty days from the date of the issuance of the writ.

If any person fails to comply with an order of the Commission or to obey a subpoena, the Commission may apply to the District Court upon proof by affidavit for an order directing such person to show cause why he should not be committed to jail (34). All orders are valid and in force and prima facie reasonable until found otherwise (35).

From December 1, 1918 to December 1, 1919, 79 cases were reported to the Commission. Demands were granted in 27 cases, 17 were settled by mutual agreement or compromise, and 11 cases were settled by the Commission awards or arbitrated through the Commission (36).

(34) Laws 1919, c. 210, #36.
(35) Ibid., #38.

NOTE: This law in Colo. was changed materially 1921.
In New Zealand a scheme is employed whereby for unregistered unions the strike without due notice is not prohibited, but for registered unions all strikes are prohibited. It is thus illegal for some unions to strike and not illegal for others to do so.

"Unlike New Zealand, there can be no legal strike in Australia outside of Tasmania and Victoria, since the compulsory arbitration laws have 'blanket' provisions against strikes and lockouts." (38). In each of the six Australian states - Victoria, Queensland, South Australia, Tasmania, Western Australia, and New South Wales - there is some kind of a wages board or arbitration court. But the main object of most of these is to prevent under-payment. The administration of the laws is weak and there still are many state-wide strikes.

But for our purpose, the federal law of Australia is more important since perhaps it is better developed and has acquired more permanency than the

(38) Commons and Andrews, supra, 1920, p. 166.
laws of the states of Australia. The Australian federal constitution of 1900 gave the Federal Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State" (39). In pursuance to this power, an Act of Dec.15, 1904 provided for a court of conciliation and arbitration. The arbitration feature is compulsory in the sense that an award, if made, binds the parties. A strike or lockout is an offense if the dispute extends beyond the limits of one state. The court consists of a President and a deputy-President - both justices of the High Court of Australia (40). The court has gradually adopted about thirty three principles to be taken as established in the settlement of a minimum wage. The system is based on unionism. No party can file a complaint for the settlement of a dispute except an "organization" - i.e. a union of employers and employees. One of the chief objects of the Act, as is stated in the Act itself (41), is

(39) Sec.51, XXXV.
(40) Higgins, author of above cited articles, has been President of the Court since 1907.
(41) Sec. 2.
to "facilitate and encourage the organization of representative bodies of employers and employees and the submission of industrial disputes to the court by organizations". The court, however, can use its discretion and intervene although not invoked by a union. The court has power to withhold an award if it appears that the employees will not abide unless satisfactory, for the court will not proceed under restraint. In 1910 Parliament gave the President power, when a dispute exists or is threatened, to summon any person to attend a conference in his presence. The attendance is compulsory, enforceable by penalty.

Compulsion may be applied at either of two points: to submit to arbitration before the strike, and to compel to obey an award. There are both kinds of compulsion in Australia and there seems to be no serious objection. The fact that the court has power often impels the parties to find a solution (42). The court cannot enforce its decisions but this is done through the police magistrates.

(42) President Higgins, also of the High Court, says that there is no danger of a "servile state", for the worker is not compelled to work any more than the employer is compelled to give work.
Justice Higgins points out that there still are many defects in the court, but that one of the most serious is due to a constitutional limitation which confines the action of the court to inter-state disputes. There still are many strikes and lockouts which are intra-state, but over these the federal court has no jurisdiction. The President of the Court states that the federal constitution will have to be amended if the best results are to be obtained due to this fact that at present intra-state labor difficulties are handled by each state.

That Australia is satisfied with this court is evidenced by the fact that the government is in control of the Labor Party and there seems to be no move to abolish or weaken it. From the establishment of the court in 1904 to May 1919, there were only three strikes within the jurisdiction of the federal court that were accompanied by a strike general or partial. This is evidence of the efficiency of the court of Australia and it must be borne in mind constantly that the great majority of strikes and lockouts occurring there are intra-state, handled by the weaker and less efficient state boards, and without the jurisdiction of the federal court.
During the closing months of 1919, Kansas found itself nearing a serious coal famine because the miners had gone on a strike for shorter hours and higher pay. As soon as the war-time regulations were withdrawn the operators raised the price of coal, and the miners proceeded upon the theory that if the war was over for the operators it was over for the miners. Consequently, they demanded their share in the increased returns from the coal, but were refused. Offers were made to them that they should return to work pending an investigation and that any adjustment which should be made should be retroactive. While some of the individual miners were willing, the union officials who held perfect control of the situation refused to allow any coal to be mined. Judge Anderson, from a federal bench in Indiana, insisted that technically the war was not over and ordered the arrest of the miners' officials unless these officials should recall the strike orders. They went through the form of yielding, but the strike did not stop. In the meantime, the situation was growing critical. Schools were closing, earlier closing hours for business houses were made, some cities went without lights, and there
was suffering in homes and hospitals. The state of Kansas now determined to mine its own coal and announced such an intention by taking over all the mine properties under an order of the supreme court. A call was issued for volunteers and the response was ready. The National Guardsmen were sent to preserve order. These inexperienced men set to work with a will to mine coal and continued until the miners returned.

The people of Kansas were in a frame of mind to endorse some plan which would prevent the recurrence of this industrial warfare. In January a special session of the state legislature was called to enact industrial legislation. Labor leaders, representatives of employers, and the general public were given opportunity to be heard. The result was the creation of the Court of Industrial Relations (43). The tribunal is composed of three judges appointed by the governor, by and with the consent of the senate,

(43) Spec. Sess. Laws 1920, c. 29. Section 2 of this Act discontinued the Public Utilities Commission and gave the Court of Industrial Relations all of its jurisdiction. But the state legislature, 1921, by Senate Bill No. 218, repealed that section, and re-established the Public Utilities Commission by Senate Bill No. 217.
and who hold office for three years with overlapping terms. Certain employments, industries, and public utilities are declared to be affected with a public interest and therefore subject to the supervision of the state. They are:

1- the manufacture or preparation of food products in any stage of the process from their natural state to a condition to be used as food for human beings;

2- the manufacture of clothing and all manner of wearing apparel in common use by the people in any stage of the process from natural state to a condition to be used as such clothing and wearing apparel;

3- the mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes;

4- the transportation of all food products and articles or substances entering into wearing apparel or fuel;

5- all public utilities and common carriers as defined by the general statutes of Kansas.

The court is required to keep a record of all its proceedings which are a public record. The court has power to adopt all reasonable rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, except that in taking of testimony, the rules of evidence as recognized by the supreme court of the State of Kansas apply.
It is expressly provided (44) that

"no person, firm, corporation, or association of persons shall in any manner or to any extent wilfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association or persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit, or suspend such continuous and efficient operation ... ."

In case of a serious controversy in any of the industries covered by the Act, the Court is authorized on its own motion, or complaint of any ten tax-paying citizens in the locality, or upon complaint of either party to such controversy, or upon complaint of the attorney-general to summon the parties before it and to investigate the conditions of the industry. After the conclusion of any such hearing and investigation, the findings of the court must state "specifically the terms and conditions upon which said industry ... should be thereafter conducted. ...". The court is empowered to order such changes as are necessary to be made in and about the conduct of such industry, employment, utility, or common carrier, in the matter of living conditions, hours of labor, rules and practices, and a reasonable minimum wage or standard of wages. Such changes must be such as are reasonable

and will enable such industries to produce and transport their products or continue their operations.

The court is empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to summons and subpoenas, and may bring suit in the supreme court to compel obedience to its orders. On the other hand, either party, if aggrieved at any order, may bring proceedings in the supreme court to compel the court of industrial relations to issue a reasonable order. The right of collective bargaining is expressly recognized. It is unlawful for any person, firm, or corporation to discharge any employee or to discriminate in any way against any employee for bringing controversies to the attention of the court, or for testifying before it, and, on the other hand, it is unlawful to take any action against an employer by strike, picket, or boycott because of his invoking the jurisdiction of the court or because of his taking any action under an order of the court. But it is expressly stated that the right of workmen to quit their employment individually is not restricted. Any person wilfully violating the provisions of the act, is guilty of misdemeanor and upon conviction in a court of competent jurisdiction is punished by a fine of not to
exceed $1,000, or by imprisonment in the county jail for
a period of not to exceed one year, or by both such fine
and imprisonment. Any officer, however, of a corporation
or of a labor union or association of persons in any of
the industries or employments coming under the act, who
wilfully uses his power to compel or intentionally in-
fluence the violation of the provisions of the act is
guilty of a felony and upon conviction in any court of
competent jurisdiction is punished by a fine not to
exceed $5,000, or by imprisonment in the state peniten-
tiary at hard labor for a term not to exceed two years,
or by both such fine and imprisonment.

In case of the suspension, limitation, or cessa-
tion of the operation in any industry covered by the
act, the court may take it over and operate it during
the emergency. In the case of controversy arising be-
tween an employer and workmen in an industry to which
the act does not apply, they may voluntarily submit
their differences to the court, with its consent. The
justices of the court are empowered to make such in-
estigations and inquiries within the state and else-
where as may be necessary or profitable for the pur-
pose of familiarizing themselves with industrial prob-
lems.
It is expressly provided that if any section or provision of the act be found invalid by any court, that the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found invalid.

The Kansas Court of Industrial Relations has been called the "Court of the Penniless Man". If he is engaged in one of the industries named in the act, the poorest man may bring his complaint before the court. It then becomes a state matter and the state provides him with a lawyer to prepare his case, with expert accountants and engineers, and with trained examiners, who will investigate his case and prepare his evidence for him, and with everything he needs in the way of expert advice and assistance - all without cost to him. If he is dissatisfied with the order of the court, the present Chairman of the Court states that likewise without cost, they will assist him in carrying his case through the supreme court. The act requires this Court of Industrial Relations to investigate his living and working conditions, and so even his wife and children, "if they desire to do so, can come into this court with the same complaint and receive the same treatment." The law also expressly
declares that the workers shall receive a fair wage. The court, in the case of "Kansas v. The Topeka Edison Company" (45) adopts as a fair wage the statement of the Congress of the United States in the recent railroad legislation (46), which is:

"In determining the justness and reasonableness of such wages and salaries or working conditions the Board shall, so far as applicable, take into consideration among other relevant circumstances:

1- The scale of wages paid for similar kinds of work in other industries;
2- The relation between wages and the cost of living;
3- The hazards of the employment;
4- The training and skill required;
5- The degree of responsibility;
6- The character and regularity of the employment; and
7- Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments."

The court also adds another:

8- The skill, industry, and fidelity of the individual employee.

Up to May 11, 1921, twenty-eight decisions have been made in the Court of Industrial Relations. Of these cases, twenty-three were filed by labor, two by capital, and three were original investigations. There have been no appeals from any of these decisions.

(45) Docket No. 3254 1-2, March 29, 1920. In the same case, "living wage" is defined.
(46) See note (16) above.
Some idea of the nature of these decisions can best be obtained by reviewing briefly some of the more important ones. In the Topeka Edison Company case, involving a wage controversy, the court ordered an increase of 7½ cents per hour on the basis of eight hours per day, allowing time and a half for overtime and double time for Sunday (47). The members of the Amalgamated Association of Street and Electric Railway Employees of America brought a case involving wages against the Joplin & Pittsburg Railway Company (48). The court allowed an increase in pay which was obeyed by the railway company, and the increases were satisfactory to the employees. In a case brought by the International Brotherhood of Stationary Firemen and Oilers against the various railroads of the state, the court increased the minimum wage from 35 cents to 45 cents per hour and the maximum from 42 cents to 55 cents per hour (49). After the decision in April, 1920 (50), the Amalgamated Association of Street and Electric Railway Employees of America brought action

(49) Docket No. 3293, June 15, 1920.
(50) Same as (48).
a second time against the Joplin & Pittsburg Railway Company for an increase in wages and other adjustments (51). The court refused the complainants a second advance in wages, since it was the opinion of the court that they were already receiving, under orders of the court, a fair wage in the sense of the Kansas industrial law. Upon an original investigation by the court under the provisions of the act, citations were issued and served upon several milling companies concerning the continuity of production in the flour-milling industry at Topeka and other points in the State of Kansas (52). Under the provisions of the act, it was noticed that the individual employee could quit work as he may choose, "while the right of capital to close down and cease operations is regulated by the law in the interests of the public welfare." The court held that the mills had not limited production for the purpose of affecting the price and that the operation was being conducted with reasonable continuity. In the application of the Fort Scott Sorghum-Syrup Company, a corporation, for an order modifying

(52) Docket No. 3803, December 20, 1920.
the terms and conditions of contract between the company and certain of its employees (53), the court held that the insistence on the part of the International Brotherhood of Firemen and Oilers prohibiting an engineer from performing also the duties of fireman in a small plant out of season, was unreasonable under the circumstances of this particular case and an economic waste. The court therefore ordered a modification of the terms of the contract, since such a provision seemingly had been an oversight by both parties.

A decision of the Supreme Court of Kansas on July 19, 1920 (54) held the defendants guilty of contempt for failure to obey an order of the District Court requiring them to appear as witnesses before the Court of Industrial Relations. The defendants attacked the constitutionality of the act on several grounds, but the court held for the Act in each instance. Another decision by the Supreme Court rendered May 7, 1921 (55) held that the title of the act is sufficiently comprehensive to include the penalties provided for in the act. In the case of State v. Howat

(53) Docket No. 3885, Feb. 11, 1921.
(54) State ex rel v. Howat 107 Kan. 423; 191 Pac. 585. Appealed to U.S. Supreme Court.
(55) Jerry Scott case - No. 23, 183 - from Wyandotte Co.
Justice Mason said that the act apparently was framed to avoid the features of the Court of Visitation Act of 1898 (56) which was declared unconstitutional (57) because it commingled legislative, judicial, and administrative functions (58).

The scope of the act creating the Kansas Court of Industrial Relations has been grossly exaggerated and it can be best understood by a careful reading of the act itself. Some of the more common misunderstandings have been pointed out above, but to emphasize them again, it is noted that collective bargaining is expressly recognized, that the right to quit individually is not prohibited, but that strikes, boycotts, and picketing in the named industries are prohibited because in the first place, it is alleged that the laborer is given a better remedy, and in the second place, the public has a direct interest in such economic waste. The law merely extends common law principles to certain named industries in which the public

(56) Laws 1898, c. 28; Gen.Stat. 1899, #5779-5820.
(57) State of Kansas ex rel v. Johnson, 61 Kan. 803; 60 Pac. 1068.
(58) The authors of the Act of 1920 were careful not to commingle these functions, since they gave the industrial court inquisitorial power, but left the enforcement of attendance of witnesses, etc. to the district court, and the enforcement of its decisions to the supreme court.
unquestionably has an interest. In creating this act, the legislature has attempted to do two new things only (59):

"1- It has impressed with a public interest the manufacture of food and clothing, and the production of fuel.

2- It has declared labor, as well as capital invested and engaged in these essential industries, to be impressed with a public interest, and to owe a public duty."

The prime purpose of the law is the protection of the public.

Properly speaking, this Court of Industrial Relations is not a court, but an administrative body exercising certain police powers. It has inquisitorial powers and can act ex propria vigore, but cannot enforce its decisions without the aid of the supreme court, for a reason pointed out above. It has judicial attributes, but not judicial powers. It can do anything any other court does, except enforce its decisions, and can do some things other courts can not do. It approaches a Master in Chancery.

However, the court is not one of arbitration, but proceeds upon the principles of adjudication.

(59) "Justice and Industrial Relations", Address before the International Convention of Rotary Clubs, Atlantic City, N.J., June 22, 1920 by Wm.L. Huggins, Chairman of the Court.
Herein it is essentially different from the labor courts of Australasia. Arbitration is always a compromise tending to favor the stronger party. The Kansas court is composed of three judges who, in theory (60), favor neither side and have the interests of the public to protect. The Kansas court "has in most respects more sweeping powers and broader jurisdiction than the Australian court. It takes cognizance of every kind of industrial dispute without reference to unionization, provided it arises in one of the industries declared to be affected with the public interest." (61). The Kansas court is also different from the Australian court in that the Kansas court has an indirect method of enforcing its subpoenas and decisions.

It is apparent that Kansas has the highest known form of machinery for protecting the public and settling industrial disputes (62). However, the Kansas plan,

(60) This is no attack upon the present personnel of the court, but whether the plan becomes a permanent one will be determined in the future largely by this factor.

(61) "The Kansas Court of Industrial Relations, with its Background", by Wm.R.Vance, Yale Law Journal, 30: 456-477, no.5, March 1921.

although it has operated successfully for over a year, is almost untried and it is not claimed that it is as yet a success, for that remains for the future to determine. "The Kansas experiment is not yet a demonstration, and the Kansas plan must encounter many difficulties that lie deep in the very nature of a democracy not to mention those incident to our scheme of constitutional law, but it is fundamentally right and will prevail." (63).


#

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CONCLUSION

The settlement of individual disputes is effectively accomplished through the courts established for their adjustment, but the settlement of industrial and labor disputes is still in a very primitive stage. The relations between capital and labor are almost as estranged as those between individuals centuries ago. In the writings of Tacitus, we find that every man was bound to take up the friendships and enmities of his kinsmen (64). At the end of the Anglo-Saxon period, if the kindred of the accused were unable by composition to swear him free or to pay the wergeld, the feud went on until a number of the nearest kindred, head for head, were killed subject to certain rulings of comparative worth, such as "six ceorls must die for one thegn" (65). By the time of the Norman rulers, the public administration of justice had supplanted self-help and physical force and today the extra-judicial has developed into judicial distress (66). On the other hand, generally speaking, little has been done toward the adjustment of labor disputes and cap-

ital and labor are still largely left to settle their controversies by the primitive methods of self-help. It is true that the problem has presented itself within the last fifty years as an accompaniment of large-scale production, but this sudden development and vital interest to the public coupled with the fact that the conditions creating the problem have come to stay, is all the more argument for creating within the next few years some workable plan embodying a "civilized appeal to reason, instead of a barbarous recourse to arms". Government is established to provide peaceable means for the adjustment of disputes, but as long as it shirks its duty in respect to trade disputes, we can expect nothing else but these trials by battle for "the preservation of existence is the deepest instinct of every creature" (67). Just as in other fields, here also it should be true that "ubi jus, ibi remedium".

Disputes between capital and labor do not continue because either the laborers or the public have to be convinced of the cost of strikes (68), but because society has not fulfilled its obligation. We

(67) Same as (66).
cannot take away from labor the right to strike until we have provided a better remedy. Annoyance, inconvenience, and injury to the public is not the only reason for something approaching adjudication in these cases. Justice should be done to the participants and this can be accomplished by a careful study of the economic, human, and social questions involved. And labor will be aided only by legislation, either (a) extending the jurisdiction of the courts of general jurisdiction, or (b) by creating new industrial adjudicative tribunals to effect speedy and adequate remedy for both individual and collective industrial wrongs. The first probably would be practically impossible, because it would require too radical a departure from the scheme upon which they are based in order to include powers sufficiently elastic to cope with the many collateral social and economic issues. The second scheme seems the more plausible and here adjudication is stressed for the reason that arbitration cannot claim success. Some plan for the settlement of these collective disputes which approaches the peaceful adjudication in individual disputes certainly is forthcoming. Walter Lippmann, in speaking of the dispute between managers and employees, says:
"The reactionaries say it will be ended now by forbidding strikes. Mr. Gompers says it will never be ended. The statesmanship of labor would consist in saying that it will be ended on certain conditions. The formulation of those conditions is not an easy task but it is an inevitable one." (69)

Just as notwithstanding the present criminal codes, there are crimes, so even new industrial laws perhaps can never give a guarantee against occasional disturbances, but if these laws are to be such as to deserve a place in our judicial system, they must reduce trade disputes to a minimum. The whole problem is very well put by Prof. James H. Brewster:

"Of course it is as vain to hope for the total disappearance of strikes and lockouts as it is to hope for the total disappearance of less public frays. People still quarrel with violence over matters which might be determined in the courts, but the fighting method of settling private disputes is generally effectively prevented by society, which furnishes courts for their adjustment, while the hostile method of settling these larger disputes is permitted because, when the parties have got beyond the conferring stage, or have never reached it, no other way is provided for their settlement." (70).

APPENDICES
APPENDIX A.

STATE LEGISLATURES (1)

( Abbreviations: A - annual; B - biennial; Q - quadrennial. Then follows the month, and the next year, in which the legislature meets. )

Alabama - Q - Jan. 1923
Arizona - B - Jan. 1923
Arkansas - B - Jan. 1923
California - B - Jan. 1923
Colorado - B - Jan. 1923
Connecticut - B - Jan. 1923
Delaware - B - Jan. 1923
Florida - B - Apr. 1923
Georgia - A - June 1921
Idaho - B - Jan. 1923
Illinois - B - Jan. 1923
Indiana - B - Jan. 1923
Iowa - B - Jan. 1923
Kansas - B - Jan. 1923
Kentucky - B - Jan. 1922
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New Jersey - A - Jan. 1922
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North Dakota - B - Jan. 1923
Ohio - B - Jan. 1923
Oklahoma - B - Jan. 1923
Oregon - B - Jan. 1923
Pennsylvania - B - Jan. 1923
Rhode Island - A - Jan. 1922
South Carolina - A - Jan. 1922
South Dakota - B - Jan. 1923
Tennessee - B - Jan. 1923
Texas - B - Jan. 1923
Utah - B - Jan. 1923
Vermont - B - Jan. 1923
Virginia - B - Jan. 1922
Washington - B - Jan. 1923
West Virginia - B - Jan. 1923
Wisconsin - B - Jan. 1923
Wyoming - B - Jan. 1923

Alaska - B - Mar. 1923
Hawaii - B - Feb. 1923
Porto Rico - A - Feb. 1922

( Note that Alabama is the only state which does not meet at least every two years; that Georgia, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Porto Rico, and the Philippine Islands meet yearly; that all the rest meet every two years. Excepting those which meet yearly, all meet in the odd years, except Kentucky, Louisiana, Maryland, Mississippi, and Virginia. Of all the states, all meet in January except Florida (April), Georgia (June), and Louisiana (May).

(1) American Year Book 1919, pp. 217-218, and corrected for next meetings.
APPENDIX B.

The following states have laws on the right of trade unions to organize or limiting the injunction in trade disputes. There may be others not included in this list. The later ones are modeled on the Clayton Anti-Trust Act of 1914, U.S. Comp. Stat. 1916, #8835f, 1243d.

1872 - Pennsylvania, Act 1872; 4 Purd. Dig. (13th ed.) p. 4807 - right to organize
1883 - New Jersey, Laws 1883, p. 36; 3 Comp. Stat. 1910, p. 3051 - right to organize
1913 - Iowa, Laws 1913, c. 171; Laws 1919, c. 213.
      Kansas, Laws 1913, c. 233.
      Montana, Laws 1913, c. 28.
1914 - Massachusetts, Laws 1914, c. 778.
1915 - West Virginia, Laws 1915, c. 10.
      organization allowed but intimidation prohibited
1917 - Minnesota, Laws 1917, c. 493.
      Utah, Laws 1917, c. 68; Comp. Laws, 1917, #3652.
      North Dakota, Laws 1919, c. 171.
      Oregon, Laws 1919, c. 346.
      Michigan, Laws 1919, c. 231.
      incorporation of labor unions permitted
      Virginia, Extra Sess. 1919, c. 54, #8
      anti-trust law not to be construed against the existence of labor unions.
APPENDIX C.

The following are the constitutional provisions in the various states relating to arbitration and conciliation and while it is possible that labor disputes were not always in the minds of the authors, yet this list will serve to indicate the constitutional trend. There has been no attempt to take excerpts from the latest constitutions, since for this specific purpose the earlier ones were preferred.

Alabama
1819, Art. vi, #18: "It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators to be appointed by the parties, who may choose that summary mode of adjustment."

Colorado
1876, Art. xviii, #3: "It shall be the duty of the general assembly to pass such laws as may be necessary and proper to decide differences by arbitrators to be appointed by mutual agreement of the parties to any controversy, who may choose that mode of adjustment. The powers and duties of such arbitrators shall be prescribed by law."

Idaho
1889, Art. 13, #7: "The legislature may establish boards of arbitration whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such boards shall possess all the powers and authority, in respect to administering oaths, subpoenaing witnesses, and compelling their attendance, preserving order during sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on justices of the peace."

Indiana
1851, Art. 7, #19: "Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such shall have no power to render judgment to be obligatory on the parties unless they voluntarily submit their matters of difference and agree to abide the judgment of such tri-
bunal or court."

Kentucky
1890, #250: "It shall be the duty of the General Assembly to enact such laws as shall be necessary and proper to decide differences by arbitrators, the arbitrators to be appointed by the parties who may choose that summary mode of adjustment."

Louisiana
1898, Art. 176: "It shall be the duty of the General Assembly to pass such laws as may be necessary and proper to decide differences by arbitration."

Michigan
1850, Art. 6, #23: "The legislature may establish courts of conciliation with such powers and duties as shall be prescribed by law."

Nebraska
1875, amendments 1920, Art. xv, #9: "Laws may be enacted providing for the investigation, submission and determination of controversies between employers and employees in any business or vocation affected with a public interest, and for the prevention of unfair business practices and unconscionable gains in any business or vocation affecting the public welfare. An Industrial Commission may be created for the purpose of administering such laws, and appeals shall lie to the Supreme Court from the final orders and judgments of such commission."

North Dakota
1889, Art. 4, #120: "Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts."

Ohio
1851, Art. 4, #19: "The General Assembly may establish courts of conciliation, and prescribe their powers and duties, but such courts shall not render final judgment in any case, except upon submission by the parties, of
the matter in dispute, and their agreement to abide such judgment.

Oklahoma
1907, Art. 6, #21: "The legislature shall create a board of arbitration and conciliation in the department of labor and the commissioner of labor shall be ex officio chairman."

Art. 9, #42: "Every license issued or charter granted to a mining or public service corporation, foreign or domestic, shall contain a stipulation that such corporation will submit any difference it may have with employees in reference to labor, to arbitration as shall be provided by law."

South Carolina
1895, Art. 6, #1: "The General Assembly shall pass laws allowing differences to be decided by arbitrators, to be appointed by the parties who may choose that mode of adjustment."

Texas
1875, Art. 16, #13: "It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial."

Utah
1895, Art. 16, #2: "The legislature shall provide by law for a board of labor, conciliation and arbitration, which shall fairly represent the interests of both capital and labor. The board shall perform duties and receive compensation as prescribed by law."

Wisconsin
1848, Art. 7, #16: "The legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township and shall have power to render judgment to be obligatory on the parties, when they shall voluntarily submit their matter in difference to arbitration and agree to abide the judgment, or assent thereto in writing."
Wyoming

1889, Art. 19, #1 - ARB - "The legislature may provide by law, for the voluntary submission of difference to arbitrators for determination, and said arbitrators shall have such powers and duties as may be prescribed by law, but they shall have no power to render judgment to be obligatory on the parties unless they voluntarily submit their matters of difference and agree to abide the judgment of such arbitrators."

Art. 5, #28: "The legislature shall establish courts of arbitration whose duty it shall be to hear and determine all differences and controversies between organizations or associations of laborers and their employers, which shall be submitted to them in such manner as the legislature may provide."
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